

January 15, 2009

Dear Colleagues,

Special General Meeting of the BCMA

We would like to wish you all a Happy New Year and thank those who have already signed the Request for a Special General Meeting of the BCMA related to the BC Supreme Court Judgment released November 17, 2008 and the subsequent decision of the BCMA Board and leadership to appeal the decision without the support of four BCMA district delegates (3 opposed and 1 abstained).

There has been an overwhelming response by colleagues throughout the Province signing the request for a Special General Meeting of the BCMA. We are now in the home stretch of reaching the threshold of signatures required and it is inevitable that a Special Meeting will need to be held.

We are disappointed that Dr. Bill Mackie, our BCMA President, has not responded to email, telephone messages and a registered priority post mail requesting:

- Cooperation in using the member contact list to ensure that all members of the BCMA receive the information pertaining to a call for a Special Meeting not just those members we have been able to reach through ad hoc means; and
- A current member list or methodology to allow us to independently audit the petition in avoiding any disputes at the time of delivery thereof.

Meanwhile, the BCMA Board and leadership have continued to utilize BCMA resources themselves to communicate their views to the membership through President Letters and Bulletins, and reports from the Board Chair, senior and other district delegates.

The BCMA President has also issued one-sided statements to the press suggesting there is no legitimate purpose for a Special Meeting. This could not be further from the truth.

For the BCMA Board and leadership to commit the Association to a protracted and expensive legal process at the members'

expense without discussion and consideration of the views of the membership is unacceptable. Furthermore, for the Board and leadership to state that open discussions cannot take place because of "solicitor-client privilege" begs the question: who is the client, if not the Association members who are to bear the costs?

There is absolutely no doubt that the BCMA Board and leadership are accountable to the membership. The events that transpired in 2008 are as unprecedented as they are unacceptable. They started with the President Letters of February 2 and March 6 that cast doubt on the conduct of an individual BCMA Officer with ten years experience as a Board delegate. The communications were alarming in tone and lacking in substantive detail. Efforts made by Dr. Wang to ensure her right to natural justice; the right to know what if any allegations existed and the right to be heard impartially by the membership were repeatedly denied by the Board and the leadership leaving her no recourse but to seek relief through the BC Supreme Court.

The BC Supreme Court hearing of the case was on April 10 and 11, 2008 and the decision released seven months later on November 17, 2008 in **Wang v. BC Medical Association, (2008 BCSC 1559)**. See below for the court web site link.

The Court ruled that despite the Board's apparent intentions, the Board failed to follow its own rules and that the requirement of the Code of Conduct to initiate a special committee was not met, as at no time was there any allegation that Dr. Wang had breached the Code of Conduct, the Constitution or Bylaws, or the fiduciary duties of a director. Furthermore, Justice Ballance found that there was sufficient apprehension of bias on the part of two committee members disqualifying them from the committee and it was noted that the

Board chose not to substitute others when requested to do so by Dr. Wang.

Justice Ballance cited the failure of the Board to follow the rules as not being in the best interests of the membership of the Association and thus in contravention of s.25 of the Society Act warranting intervention by the Court.

Justice Ballance said, "I find it astonishing that the executive of the Board would move to destroy tapes and transcripts of its February Board meeting in circumstances where it was plain by virtue of the Board's own accusations that Dr. Wang's conduct during the February meeting was in issue. The audio tapes, in particular, would be the best evidence of the exchange during that meeting." (The judge did not say the Board has destroyed audio tapes of meetings, only that the Executive passed such a motion. Even to this date the Executive and Board despite the opportunity have not rescinded this decision.)

Justice Ballance also remarked that the Board was "heavy-handed and misguided in its treatment of Dr Wang" and that the President Letter of February 2, 2008 was "rich with innuendo". "Based on the evidence before me, I cannot say whether Dr. Appleton or any member of the Board deliberately intended to sabotage Dr. Wang's participation in the election. However, it would have been reasonably foreseeable to them that the contents of the February 2 letter put her reputation and integrity squarely in issue and would cast a dark cloud of suspicion over Dr. Wang."

The fact that intervention by the BC Supreme Court was required has already generated significant legal expense to the Association and directly to Dr. Wang. The fact that the Board failed to follow its own rules and has been "heavy handed and misguided in its treatment" of one individual in good standing including communications "rich with innuendo" are all sufficient to warrant proper reflection by the Association and membership. This should lead to collective and responsible corrective actions

and remedies in the diminution of further damages.

The decision of the Board to appeal the Judgment delays resolution and further increases legal costs. ***How far will this go? Will this continue to the Supreme Court of Canada?*** This would have the potential to prolong the matter for many years, allowing those currently involved to have moved on [except Dr. Caroline Wang] and leaving us, the BCMA membership, with a staggering bill.

The explanation by Board delegates that the purpose of the appeal is to refute the BC Supreme Court Judgment highlighting that Board directors are contractually responsible to the membership is extraordinary. Most members will agree with the Judgment view that BCMA Officers, Board delegates, and committee members paid honoraria and expenses, do in law have a contract with, and should be responsible to, the membership. **In this, it is not the purpose of the Association, and it is most certainly not the BCMA Board's mandate to pursue the establishment of an alternative legal precedent not supported by the membership. Similarly, the use of Association funds from members dues to legally argue one side, while the legal costs for the other view are personally borne and paid for by one long serving colleague in good standing with the BCMA is unacceptable.**

We urge you to sign, distribute and return the attached petition as soon as possible. We would further appreciate your continued efforts in discussing this matter with your colleagues in encouraging them to consider signing the request for a Special Meeting and preparing to attend. This matter affects the entire membership and signatures from more than the required threshold of ten percent or 1,051 signatures will add to the strength of the request.

Thank you,

Zafar Essak, MD
Barry Koehler, MD, FRCPC

Request for a Special Meeting of the BCMA General Membership

Please sign and return by toll free fax to 1-866- 383-1656.

We the undersigned members in good standing of the BCMA respectfully request a Special Meeting of the BCMA be convened, pursuant to Bylaw 12.2, with the purpose to review the BCMA Board conduct and decision to appeal the BC Supreme Court Judgment in Wang v. BC Medical Association (2008 BCSC 1559) and to establish an alternative process to ensure a rapid, equitable remedy ensuring the fair and ethical treatment of all members without incurring further unnecessary legal costs.

Date	BCMA ID#	Name (Please print)	Signature
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