November 4, 2020

Ms. Thushitha Kobikrishna
Clerk, Committee on Justice Policy
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON

Email: comm-justicepolicy@ola.org

Dear Ms. Kobikrishna:

Re: Bill 218, *Supporting Ontario's Recovery and Municipal Elections Act, 2020*

The Canadian Medical Protective Association (CMPA) welcomes the opportunity to offer its support for Bill 218, *Supporting Ontario's Recovery and Municipal Elections Act*. I was pleased to participate in the Committee Hearings on November 4, 2020. The following submissions are a supplement to my comments in the course of that consultation.

About the CMPA

The CMPA delivers efficient, high-quality physician-to-physician advice, education and assistance in medical-legal matters, including the provision of appropriate compensation to patients injured by negligent medical care. Our evidence-based products and services enhance the safety of medical care, reducing unnecessary harm and costs. As Canada's largest physician organization – with over 40,000 members in Ontario and over 100,000 members across Canada – the CMPA collaborates, advocates and effects positive change on important healthcare and medical-legal issues.

Throughout the pandemic and afterwards, the CMPA will be there to provide peer-to-peer support to its doctor members who have medical-legal concerns. The CMPA will also continue to provide our members with legal assistance for difficulties arising from care provided in Canada. However, our work with doctors on a daily basis demonstrates their need for additional support.

Support for Bill 218

The CMPA is supportive of Bill 218. In terms of statutory liability protection, the CMPA believes it is a positive step in providing reassurance to our valuable frontline healthcare workers.

Frontline healthcare workers have assumed significant personal and professional risks while providing care throughout the pandemic. They should be reassured that their good faith efforts to provide care has not put them at increased medical-legal risk.

Doctor Health and Wellness

Over the last several months, the CMPA has heard daily from our doctor members in Ontario and across Canada on the frontlines during the pandemic. In these difficult times, frontline

healthcare workers are doing the best they can to provide appropriate medical care to patients. They are providing this exceptional care at great personal and professional risk, and with limited resources.

Doctors must adjust to continuously changing public health directives and guidelines and adapt to the ever-evolving clinical information related to COVID-19. This has created additional anxiety for doctors not only to stay abreast of rapidly changing information, but also from the inability to provide robust, evidence-based reassurance to patients regarding the diagnosis, treatment and prognosis of the disease.

Some of the pandemic's impact on doctors is already documented and described. Frontline healthcare workers engaged in direct COVID-19 care are at higher risk of depression, anxiety, insomnia and distress.[1] Not surprisingly, they are also suffering from increasing levels of exhaustion and burnout.[2]

There are likely to be longer-term implications on the resilience of doctors in providing care through this protracted public health crisis. Research shows that feelings of distress may reduce doctors' ability to deliver care, increase their medical-legal risks, and impact the healthcare system.[3]

Improving Bill 218

Our work with doctors on a daily basis demonstrates their need for additional support, beyond protection for "exposure-related" allegations as currently provided under Bill 218.

As an immediate step, the CMPA recommends an amendment to Bill 218 to clarify that it is intended to protect healthcare providers from exposure to liability arising from screening, assessing, diagnosing and treating patients infected with or suspected of being infected with COVID-19.

Broader Statutory Liability Protection

The CMPA also recommends broader protection to assist healthcare workers with additional liabilities that arise in the context of providing care during the COVID-19 pandemic.

The healthcare system is challenged to provide medical services in the current environment. A recent study suggests it may take over a year to clear the backlog of surgeries in Ontario.[4] The CMPA is aware that some patients and their families have already threatened to bring legal

---

[1] Shaukat, N., Ali, D.M. & Razzak, J. Physical and mental health impacts of COVID-19 on healthcare workers: a scoping review. Int J Emerg Med 13, 40 (2020).
[2] For example see, Rodriguez, R., Medack, A., Baumann, B., Lim, S., Chinnock, B., Frazier, R. & Cooper, R. Academic Emergency Medicine Physicians' Anxiety Levels, Stressors, and Potential Stress Mitigation Measures During the Acceleration Phase of the COVID-19 Pandemic. Academic Emergency Medicine 27, 700–707 (2020).
[3] See, Wallace J, Lemaire, J, Ghali W. Physician wellness: A missing quality indicator. Lancet. 2009:374(9702); 1714-1721; Shanafelt T, Goh J, Sinsky C. The business case for investing in physician well-being. JAMA Intern Med. 2017:177(12);1826-1832; and West C, Huschla M, Novotny P, et al. Association of perceived medical errors with resident distress and empathy. A prospective longitudinal study. JAMA. 2006:296(9);1071-1078
[4] Wang J, Vahid S, Eberg M, Milroy S, Milkovich J, Wright FC, Hunter A, Kalladeen R, Zanchetta C, Wijeysundera HC, Irish J. Clearing the surgical backlog caused by COVID-19 in Ontario: a time series modelling study. CMAJ. 2020 Sep 1:cmaj.201521. doi: 10.1503/cmaj.201521. Epub ahead of print. PMID: 32873541.

actions against doctors because of delayed care, or care that was disrupted for reasons related to the pandemic.

Many doctors, especially specialists, are also being asked to provide general care to patients to address access to care issues. This may require doctors to provide care outside their usual scope of practice, which can increase medical-legal risk.

With the current models suggesting that numbers in the "second wave" of COVID-19 may peak in the coming weeks, there will continue to be significant health and health system consequences.[5] This will inevitably lead to further delays in care and surges in patient levels in hospital. When faced with a lack of adequate resources, doctors and other healthcare providers will not be able to provide all patients with the level of care as would be expected outside of a pandemic emergency.

Given the time required to enact an appropriate response, efforts to help frontline healthcare workers must be considered now.

Experience in Other Jurisdictions

While no Canadian province or territory has yet enacted broad immunity for doctors and other healthcare workers, efforts in the United States to support health care providers can be considered in the context of COVID-19.

Various Executive Orders and legislation at the state level in the US provide broader civil liability protection for healthcare providers in the context of COVID-19 who provide care in good faith during the public health emergency.

For example, the need to protect healthcare providers from civil liability has been recognized in Massachusetts's *Act to provide liability protections for health care workers and facilities during the covid-19 pandemic*.[6] This *Act* provides civil liability immunity to healthcare providers for any damages alleged to have been sustained by an act or omission in the course of providing healthcare services in good faith during the COVID-19 emergency and pursuant to an emergency rule, subject to certain exceptions such as gross negligence.

Despite different healthcare systems in Canada and the United States, some of the measures adopted in support of healthcare providers should be explored.

Conclusion

It is undeniable that Bill 218 is a necessary first step to providing reassurances to our valuable frontline healthcare providers. The CMPA is supportive of these and continued efforts by the government to work towards ensuring Ontario's valuable frontline healthcare providers can continue providing needed care to patients in the face of COVID-19 with confidence and support and without undue fear of liability.

---

[5] *Supra* note 4.
[6] Chapter 64 of the Acts of 2020.

Yours sincerely,

Dr. Lisa Calder, MD, MSc, FRCPC
Chief Executive Officer/Executive Director