



Reply to the Attention of: Adam D.H. Chisholm
Direct Line: 416.307.4209
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Our File No.: 301354
Date: October 24, 2023

DELIVERY AND EMAIL TO PRESIDENT@OREA.COM

Tania Artenosi
Ontario Real Estate Association
15 Kern Road
Toronto, Ontario
M3B 1S9

Dear Ms. Artenosi,

Re: Increase in OREA Membership Dues For Mandatory Implementation of Ontario Realtor Wellness Program

We act for certain members of the Ontario Real Estate Association ("**OREA**"). These members oppose their OREA dues being increased and being used toward a mandatory wellness, insurance and benefits package, termed the Ontario Realtor Wellness Program ("**ORWP**").

This letter serves to advise you of our views on the potential legal implications of OREA continuing to implement ORWP on January 1, 2024. We are raising these issues now to avoid unnecessary possible legal implications and attendant costs which we expect may arise should the ORWP come into effect on January 1, 2024.

Background of OREA's Membership

OREA members are in the business of buying and selling real estate in the Province of Ontario. As you know, there are two classes of OREA members. The first class, "SBF Members", includes approximately 96,000 salespersons, brokers and firms who practice real estate in the Province of Ontario.

The SBF Members are non-voting members; they do not participate in approving by-laws or establishing policy guidelines.¹ Despite their non-voting status, SBF Members are clearly the

¹ Ontario Real Estate Association By-law, art. 12.03(d).

centerpiece of OREA's existence: OREA's *Who We Are* webpage exclusively refers to these members.²

The second class is OREA's Member Boards.³ The Member Boards are local real estate boards comprised of the SBF Members. Member Board nominees receive notice of, and vote at OREA meetings. This is presumably under the guise that Member Board nominees reflect the views of jurisdictions across Ontario. For example, nominees of the Toronto Regional Real Estate Board ("**TRREB**"), have voting rights at OREA. Collectively, we understand that TRREB holds close to 50 per cent of OREA's votes.⁴

Background of the ORWP

In 2023, OREA undertook the concept of obtaining wellness benefits for the SBF Members. OREA struck a *Wellness Task Force* after its PEAK Leadership Summit in January 2023. According to OREA's website, the Wellness Task Force was struck to consider the issue of member benefits in February 2023.⁵

At the time that the Wellness Task Force was struck, OREA's Restated Articles of Incorporation and By-law did not list benefits, insurance, wellness or healthcare in OREA's objects. This remains true today.

We understand that within two weeks of the striking of the Wellness Task Force, an RFP soliciting services for a Broker was issued on February 15, 2023.⁶ We are not aware of OREA making the RFP available to SBF Members.

Early on, the Wellness Task Force appears to have been aware that OREA's SBF Members were not interested in benefits. Online search results of the OREA website returned results (which have now been deleted) where it appears that during the second meeting of the Wellness Task Force it was acknowledged that:

"if the program is not made mandatory, the uptick in the program would not be much, with less than 10% membership participation"

Notwithstanding, it appears that OREA and Comprehensive Benefit Solutions Ltd. entered into a contract on April 4, 2023 (the "**Broker Contract**").⁷ Comprehensive Benefit Solutions

² Ontario Real Estate Association, *Who We Are* (October 2023), online: <https://www.orea.com/about-us/orea>.

³ Ontario Real Estate Association By-law, art. 4.01.

⁴ Real Estate Magazine, *Opposition mounts as OREA members face mandatory insurance plan* (July 11, 2023), online: <https://realestatemagazine.ca/opposition-mounts-as-orea-members-face-mandatory-insurance-plan/>.

⁵ Ontario Real Estate Association, *Ontario Realtor Wellness Program FAQs: The Process*, Questions #2 and #6 (accessed October 2023), online: <https://www.orea.com/resources/REALTOR-Wellness-Program>.

⁶ Ontario Real Estate Association, *Ontario Realtor Wellness Program FAQs: ORWP Background*, Question #8 (accessed August 2023), online: <https://www.orea.com/resources/REALTOR-Wellness-Program>.

⁷ Ontario Real Estate Association, *Ontario Realtor Wellness Program FAQs: ORWP Background*, Question #8 (accessed August 2023), online: <https://www.orea.com/resources/REALTOR-Wellness-Program>.

is not an insurer. It is a consultant which is currently retained in relation to some of the Member Boards, including TRREB.⁸

The Broker Contract has not been publicly disclosed to OREA members.

The Wellness Task Force only surveyed OREA's SBF Members regarding a wellness plan *after* the Broker Contract was entered into with Comprehensive Benefit Solutions. That survey was distributed on April 28. The survey did not disclose that the benefits being considered by OREA would be mandatory.

The Wellness Task Force made its recommendation to the Board about a benefits program on May 10, 2023, approximately a month after the Broker Contract was executed by OREA.⁹

In the meantime, communications by OREA to its SBF Members continued to fail to disclose the mandatory nature of the ORWP to its members. OREA sent emails to its members dated March 20, 2023, April 28, 2023, May 26, 2023 and June 6, 2023 regarding a potential benefits package. None used the word "mandatory".

It appears from a search of the OREA website that during the fifth Wellness Task Force it was noted that "details like the mandatory nature of the program have not been shared with the Members".

Member Board nominees ultimately voted on the ORWP at a Special Meeting of the Assembly held on June 20, 2023.¹⁰

OREA's public statement that "All OREA Members were informed about the proposal months before the vote and their input was sought"¹¹ cannot be accurate given that SBF Members were not advised of the mandatory nature of the program, at the earliest, until the month that the Member Board nominees voted.

The Member Board nominees voted in favour of implementation of the ORWP. Although OREA has publicly disclosed that the vote was in favour of the ORWP, OREA has refused to disclose specifics of the voting. It has done so on the basis that it used telephonic or electronic means to conduct the vote and disclosure of the specific votes is therefore contrary to law.¹²

⁸ For example, TRREB and the Brampton Real Estate Board. Those Member Boards and others comprise a majority of OREA votes due to the corresponding number of SBF Members they represent.

⁹ Ontario Real Estate Association, *Ontario Realtor Wellness Program FAQs: The Process*, Question #8 (accessed October 2023), online: <https://www.orea.com/resources/REALTOR-Wellness-Program>.

¹⁰ Ontario Real Estate Association, *OREA Introduces New Industry-Leading Benefits Program for All Ontario Realtors* (July 21, 2023), online: <https://www.orea.com/resources/media-room/press-releases/June-21-2023>.

¹¹ Ontario Real Estate Association, *Ontario Realtor Wellness Program FAQs: The Process*, Question #6 (accessed October 2023), online: <https://www.orea.com/resources/REALTOR-Wellness-Program>.

¹² Ontario Real Estate Association, *Ontario Realtor Wellness Program FAQs: The Process*, Question #13 (accessed October 2023), online: <https://www.orea.com/resources/REALTOR-Wellness-Program>.

The ORWP contains several elements. These include: life insurance; critical illness, travel and accidental death & dismemberment insurance; drug coverage; massages and chiropractic care; virtual healthcare; and a subscription to an online app for meditation and mindfulness. Although different aspects of the ORWP are provided by different entities, *all* elements are mandatory for OREA's members.

Concurrently with the approval of the ORWP, OREA's directors and the Member Board nominees amended OREA's by-law on June 20, 2023. These changes to OREA's bylaw did not amend OREA's objects. Rather, OREA's by-law was amended only to add a couple of statements purporting to expressly permit the use of member dues for the "Ontario REALTOR® Wellness Program".

Some of the benefits now being offered in relation to the ORWP are linked to previous "Qualifying Member Board Life Insurance Program" participants. As of January 1, 2024, certain SBF Members from certain Member Boards may be immediately eligible for group benefits if they retire,¹³ while members from the other Member Boards will not. As far as we are aware, these Member Boards voted in favour of the ORWP. We are not aware of information being provided to SBF Members about the differential treatment afforded to members of those boards, aside from a footnote and content in a "Summary of Options" document. We are similarly unaware of any declaration of the interests of such Board Member nominees having been disclosed at the time that the ORWP was approved.

In a bulletin referred to as "straight talk", OREA's 2023 President Tania Artenosi advised members that, on three different occasions at the June 20 meeting, "voting representatives" were given the opportunity to voice criticisms or concerns. This "straight talk" omits mention of the fact that the non-voting SBF Members were not permitted to speak, a restriction that has been described as "departing from past practices"¹⁴ and contrary to "longstanding practice".¹⁵

One portion of the mandatory dues which SBF Members are being asked to pay in relation to the ORWP are "Administration Fees" which will result in collective payments to Member Boards and OREA. In some instances, these payments will total hundreds of thousands of

¹³ A prerequisite for the "Retirement Program" is that Members have 3 years participation in the ORWP or in a life insurance program offered to the following Member Boards: Brampton Real Estate Board; Brantford Regional Real Estate Association (optional); Durham Region Association of REALTORS®; London St. Thomas Association of REALTORS®; Mississauga Real Estate Board; Sarnia-Lambton Real Estate Board; TRREB; Windsor-Essex County Association of REALTORS®; and Woodstock-Ingersoll & District Real Estate Board.

¹⁴ Real Estate Magazine, *Mandatory health benefits: OREA members not permitted to speak at Tuesday's special meeting* (June 20, 2023), online: <https://realestatemagazine.ca/mandatory-health-benefits-orea-members-denied-speaking-rights-at-tuesdays-special-meeting/>.

¹⁵ Real Estate Magazine, *Mandatory health benefits: OREA members not permitted to speak at Tuesday's special meeting* (June 20, 2023), online: <https://realestatemagazine.ca/mandatory-health-benefits-orea-members-denied-speaking-rights-at-tuesdays-special-meeting/>.

dollars. Member Boards, including those who voted in favour of imposing the burden of the ORWP on SBF Members, will receive a portion of these payments.

Although OREA has held town halls concerning the ORWP, we understand that few or no accommodations have been made for individual SBF Members who do not wish to be part of ORWP. We are not aware of any SBF Member who has been exempted from the program's mandatory implementation.

We understand that the ORWP has been promoted as having "no exclusions from enrollment due to a pre-existing condition".¹⁶ This may be true, but we understand that eligibility for critical illness insurance and out-of-country emergency medical travel insurance (part of the ORWP) will be limited based on pre-existing conditions.

Based on communications since the Wellness Contract was signed and the Member Boards' approval of the ORWP, Ms. Arsenosi has confirmed that the ORWP is mandatory and is a "great deal that we can only get with everyone taking part". She has contradictorily stated both that "[t]here is not one specific demographic that is subsidizing another" but also that "younger/healthier Members" opting out would lead over time to a "spiral that makes the whole Program ultimately collapse".¹⁷

We understand that the primary concern of OREA members who oppose implementation of the ORWP is that it is mandatory. A member recently informed the *Globe & Mail* that she feared the effects of the mandatory ORWP on her family's drug costs.¹⁸ Another member recently advised *Real Estate Magazine*, "[h]aving a mandatory program that penalizes individuals who receive diminishing benefits due to age and still have to pay the full fee appears very much like age discrimination."¹⁹

Concerns About the Effects of Member Dues Used for Mandatory Wellness Benefits

One of the consequences of fast-tracking implementation of the ORWP is that it appears that OREA may not have considered the legal implications of imposing such a program on all SBF Members.

Ontario's *Human Rights Code* protects individuals from discrimination and requires equal treatment in relation to services and contract. All members of OREA will pay the same total annual premium regardless of their age or coverage level. The increase in member dues in

¹⁶ Email from Tania Arsenosi to OREA membership, dated September 6, 2023, titled: "Why is the ORWP mandatory?"

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¹⁸ The Globe & Mail, *Mandatory wellness program stirs up a hornet's nest among Ontario realtors* (October 18, 2023), online: <https://www.theglobeandmail.com/real-estate/article-mandatory-wellness-program-stirs-up-a-hornets-nest-among-ontario/>.

¹⁹ Real Estate Magazine, *OREA membership fees expected to surge over 700% after ORWP approval* (June 22, 2023), online: <https://realestatemagazine.ca/orea-membership-fees-to-surge-over-700-after-orwp-approval/>.

exchange for benefits, insurance, wellness and healthcare services results in adverse effects on certain individuals within enumerated groups and may be held to be constructive discrimination.

While the *Human Rights Code* contains a statutory carve-out permitting insurers to offer group insurance to associations, in our view there is no protection available for OREA or Comprehensive Benefit Solutions to impose the ORWP on its members. Membership dues paid by SBF Members to OREA are not a payment for group insurance. On the whole, we are not aware of any established legal precedent under human rights law for the mandatory imposition of a wellness plan by an association in exchange for increased dues.²⁰ In our view, it is not necessary or reasonable.

It is no answer to discrimination at law to suggest that the SBF Members could receive OREA's services elsewhere. As you are no doubt aware, and as further discussed below, OREA provides a unique value proposition which facilitates the SBF Members making their living practicing real estate.

We are concerned about differential effects of the benefits of the ORWP based on increased dues charged to members based on age, disability and marital status.

In her "straight talk" communication of July 26, 2023, Ms. Artenosi said that the ORWP is "the opposite" of being ageist.²¹ This statement was based on a comparison of ORWP coverage with life insurance coverage purportedly available outside of the ORWP.

That comparison misses the point. OREA member dues will be the same for all SBF Members, regardless of age. The ORWP provides for a lower level of benefits for SBF Members when they reach the ages of 65 and 80. This is known by OREA. On September 6, 2023, Ms. Artenosi acknowledged that "there are some coverage reductions due to age".²² There is no option for reduced member dues for people over the age of 65 practicing real estate or others who will not receive full benefits.

Members who retire and are over 65 are only permitted to continue benefits coverage if they meet certain requirements. These requirements include a twenty-five year history of being an OREA member. If these requirements are not met, SBF Members compelled to participate in the ORWP will not have the opportunity to have coverage continue after retirement.

We expect that the imposition of drug benefits will also negatively impact certain SBF Members with disabilities whose current drug coverage will be eliminated or reduced once

²⁰ We are not aware of any legal challenge to any mandatory benefits plan previously implemented by any Member Board.

²¹ Email from Tania Artenosi to OREA membership, dated July 26, 2023, titled: "ORWP Straight Talk."

²² Email from Tania Artenosi to OREA membership, dated September 6, 2023, titled: "Why is the ORWP mandatory?"

the ORWP comes into force. In addition to paying increased dues to OREA, these SBF Members may now be faced with additional health care costs. In some cases, we understand that these costs are expected to be in the thousands or tens of thousands of dollars per year barring discretionary or compassionate discounts.

OREA's SBF Members also have differing marital status. In some cases, SBF Members will receive reduced benefits due to spousal coverage.

In other cases, we understand that some divorced SBF Members will have continuation of benefits from their former spouse eliminated once the ORWP takes effect. Upon implementation of the ORWP, these SBF Members will unnecessarily become dependent on OREA for insurance and other benefits. In many cases, the benefits offered by OREA pale in comparison to the benefits that divorced SBF Members are currently receiving through their former spouse.

Concerns That the Effects of ORWP Are Inconsistent with Reasonable Expectations of SBF Members

We appreciate that under OREA's by-laws, nominees of Member Boards are entitled to and do vote on by-law changes and other matters. There is nothing inherently wrong with such a system under the *Not-for-Profit Corporations Act, 2010*. Generally, it is voting members, such as Member Board nominees, who deserve notice of meetings and related matters.

The law does, however, draw a line. The discretion afforded to voting members such as Member Boards stops at the point at which the activities or affairs of a corporation have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a member.²³

The "cornerstone" of the oppression analysis is the consideration of the "reasonable expectations" of the parties involved.²⁴ We understand that the underlying expectations of SBF Members may not involve the imposition of a mandatory health-related benefits, insurance, wellness or healthcare program.

Indeed, in the more than 100 years since its inception²⁵, we are not aware of OREA ever playing a direct role in member finances, benefits, insurance, wellness or healthcare. It was therefore not foreseeable to SBF Members that OREA would enter into an agreement with Comprehensive Benefits Solutions before SBF Members were even informed of the mandatory nature of the program.

²³ *Ontario Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15, s. 174(2)(b).

²⁴ *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 61.

²⁵ Ontario Real Estate Association, *1920s* (accessed October 2023), online: <https://orea100.ca/1920s>.

It also appears that OREA is considering, in the long-term, playing a direct role in the finances of its members through what has been referred to as “self-insurance”. On October 10, OREA director Stacy Evoy indicated in a Q&A session with the Niagara Association of Realtors that in the two to three years following the implementation of the ORWP, OREA would revisit the insurance arrangements and potentially become “self-insured”. We assume this meant using member dues to underwrite claims that members may make.

The purpose and objects of OREA are laid out in its Articles of Incorporation and By-Law and can be broadly summarized as promoting interest in real estate, establishing standards of practice in marketing real estate, and maintaining public confidence in the vocation. While these purposes cover an array of real-estate related objectives, in our view, they do not contemplate OREA being involved with the finances, benefits, insurance, wellness or healthcare of its members. Moreover, they do not contemplate the vast majority (about 90%) of annual dues charged to OREA members being put toward these purposes.

Those who refuse to pay increased dues will not be permitted to remain members of OREA.²⁶ As such, SBF Members who refuse to pay increased dues or to participate in the ORWP will lose access to standardized, up-to-date and legally-vetted forms & clauses that they use every day in their real estate practices. SBF Members will also no longer have access to the proprietary multiple-listing service software that gives those practicing real estate the ability to find properties, analyze trends and post their own listings or the standard forms used by real estate professionals across Ontario.²⁷ This disadvantages SBF Members because their clients expect that their real estate listings will be marketed and priced properly through access to multiple-listing service systems.

Both the forms & clauses and MLS systems are inherently tied to the practice of real estate in Ontario. OREA’s tying of the mandatory benefits, insurance, wellness and healthcare program to membership unnecessarily jeopardizes SBF Members’ ability to practice real estate and, in our opinion, is likely outside of SBF members’ reasonable expectations.

We have witnessed OREA members opposing the implementation of this program being ignored and mocked online. Some of the participants who have been alleged to participate in this mockery include people associated with the Member Boards and OREA’s leadership.

There is a Facebook group entitled “Ontario Realtors Who Don’t Give A Damn About The Mandatory ORWP”. This online group includes OREA directors and a Wellness Task Force

²⁶ Specifically, the OREA website states: “ORWP will be a condition of membership in OREA”: Ontario Real Estate Association, *Ontario Realtor Wellness Program FAQs: Components of the Program*, Question #17 (accessed August 2023), online: <https://www.orea.com/resources/REALTOR-Wellness-Program>.

²⁷ The Globe & Mail, *Mandatory wellness program stirs up a hornet’s nest among Ontario realtors* (October 18, 2023), online: <https://www.theglobeandmail.com/real-estate/article-mandatory-wellness-program-stirs-up-a-hornets-nest-among-ontario/>.

member. While certain people, including those who presumably played a role in approving the ORWP may not “give a damn” about the mandatory nature of the ORWP, there appear to be real life consequences to some of OREA’s SBF Members that arise from their own individual circumstances. We are aware of attempts by these members – at the urging of OREA – to resolve those circumstances directly with OREA. We are not aware of any reasonable accommodations being made.

Instead, we are aware of an instance where OREA has encouraged a member to not report the existence of ORWP to a service provider. A proper accommodation at law would not involve OREA members being required to avoid disclosure of the existence of the ORWP.

We acknowledge that the foregoing issues have not been adjudicated or formally brought forward in the way of a legal proceeding. Nonetheless, we ask that OREA reconsider its implementation of the mandatory plan on January 1, 2024 and take all possible steps to avoid harm to any of its members as a result of the increase in member dues and implementation of the mandatory ORWP going forward.

Yours truly,

A handwritten signature in black ink, appearing to read "Adam D.H. Chisholm", with a long horizontal line extending to the right.

Adam D.H. Chisholm

Cc: OREA Board of Directors