



BACKGROUND

Key Messages & Orders

Association of Ontario Midwives v. Ontario (Health and Long-Term Care)

The Tribunal orders ensure government (the Ministry of Health) sets the compensation of midwives taking into account the history of stereotyping and prejudice against the almost exclusively female midwifery profession, its overlapping scope of practice with male dominated physician's work, and the fact midwives and obstetricians and family physicians are considered equally competent providers of low risk maternity care.

The Tribunal found that midwives are sex-segregated workers and "vulnerable to the forces of gender discrimination on their compensation." Requiring the use of an evidence-based methodology focused on "the value of midwifery work and the maintenance of a physician comparator makes visible the overlapping scope of practice that midwives share with a historically male profession." Para. 8

It also exposes "the stereotypes about women's work which suppressed the compensation of midwives...The maintenance of a physician comparator is what keeps midwives from slipping back into a place where the objective evaluation...is at risk of being replaced by stereotypic attitudes about women's work." Para. 20

"The Tribunal has found that the level of compensation paid to midwives was affected by gender discrimination. Para. 67

"Fundamentally, it is the obligation of the MOH to ensure that its practices do not contravene the Code. If the MOH takes no steps to monitor the compensation it pays to sex-segregated workers, it has no basis for explaining how it determined that gender was not a relevant factor in what those workers were paid." Para. 59

The position of government (that there is no gender discrimination in their compensation setting practices for midwives) is "inconsistent with its promotion of midwives as equally competent providers of low-risk maternity care, along with family physicians and obstetricians." Para. 34

“In crafting an appropriate remedy, the Tribunal has often considered what will make the victim of discrimination “whole” or put them back, to the extent possible, in the position they would have been in but for the discrimination.” Para. 96

The Tribunal makes the following Orders:

- a. Within six months of the date of this Decision, the MOH will:
 - implement the 20% adjustment to the four components of the course of care fee as recommended by Courtyard;
 - calculate the necessary adjustments flowing from the new adjusted rate as of April 1, 2011, including the recalculation of the percentage increases from the 2013 and 2017 contracts;
 - pay retroactive compensation to midwives who meet the definition of a party; and
 - adjust the four components of the course of care fee for all midwives delivering services through the OMP as of the date of this Decision based on the implementation of Courtyard and the recalculation of the 2013 and 2017 contracts.
- b. To the extent that there is a dispute between the records of a midwife and the records of the MOH, the parties are directed to engage a third- party facilitator or work within an existing committee to resolve the dispute. The costs of a facilitator will be paid equally by both parties;
- c. The MOH will pay the sum of \$7500.00 as compensation for injury to dignity, feelings, and self-respect, to each midwife who meets the definition of a party, within 90 days of this Decision;
- d. Interest will be paid in accordance with paragraphs 177 through 180; and
- e. The MOH will implement the orders to promote compliance with the Code as set out in paragraphs 187 to 189 (joint study) and paragraphs 190 to 192 (GBA of compensation policies).