



February 24, 2020

Dear Honorable Minister Elliott,

We write with respect to the recent remedial decision of the Ontario Human Rights Tribunal in *Association of Ontario Midwives v. the Ministry of the Attorney General as represented by the Ministry of Health and Long-Term Care*, 2020 HRTO 165 (“Remedial Decision”), released on February 19, 2020.

As you know, this is a long awaited decision addressing the remedial relief owed to midwives in Ontario to redress the systemic discrimination they have experienced in their compensation over the past decade. Before the Tribunal, both the AOM and the Ministry argued for clarity and finality with respect to the lost wages owed to midwives on account of the Ministry’s discriminatory compensation practices. We are pleased that the Tribunal has ordered specific and concrete remedies to address the lost wages owed to midwives, as well as prospective remedies to promote the Ministry’s compliance with the *Human Rights Code* and align its practices with its obligations under the *Code*. Included among the remedies are the following:

- Within three months of the Remedial Decision, the Ministry must 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 (Remedial Decision, para. 205).
- Within six months of the Remedial Decision, the Ministry must (Remedial Decision, para. 205):
 - 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.
- The Ministry must pay interest on the compensation owed to midwives (Remedial Decision, para. 205).
 - Within six months of the Remedial Decision, the Ministry must implement, with the assistance of an expert who is either internal or external to government, “a gender-based analysis (“GBA”)” which assesses “the gender impacts of the policies and practices associated with compensating midwives working as independent contractors and compensated by the MOH”. The Ministry must deliver a summary of the analysis to the AOM upon completion of the work (Remedial Decision, para. 192).
 - Within three months of the Remedial Decision, the parties are ordered to commence a joint-compensation study for 2014-2020 that will serve as the baseline for reinstating the 2010 Courtyard benchmarks. This study must be completed within seven months of the Remedial Decision and updated prior to each new round of negotiations. The study must also meet the following minimum requirements (Remedial Decision, para. 187-189):

(a) a SERW analysis, accounting for the specialized and autonomous nature of the work of midwives and their onerous on-call duties, among other things; the 1993 principles and methodology; the comparators in the Courtyard report; and any other comparators deemed appropriate by the parties and compensation expert;

(b) study conducted by a compensation expert agreed upon by the parties experienced in pay equity, pay equity job evaluation methodologies and GBA;

(c) expert will be informed by the equal participation of the parties on a steering committee;

(d) the expert will consider any issues raised by the MOH and AOM as members of the steering committee and will have access to the Tribunal's decisions and full record of proceeding;

(e) the expert will be chosen and the study commenced no later than three months after this Decision and to be completed no later than four months after it is commenced;

(f) the study will inform the negotiations but will not be binding on the parties;

(g) the study will be updated PRIOR to the start of the negotiations leading to each new contract;

(h) the cost of the study and updates will be paid by the MOH; and

(i) the parties will jointly retain and pay a third party facilitator to resolve any disagreements arising out of the development or implementation of the study and any updates.

Midwives have waited many years for remedial relief from the discriminatory compensation practices they have worked under since prior to 2010. As you can imagine, the AOM and Ontario midwives are eager to move forward with implementing the Remedial Decision in order to ensure that systemic sex discrimination in the compensation of midwives is finally redressed and prevented from occurring in the future.

We respectfully request the Ministry of Health to implement these orders and invest in upholding the human rights of midwives instead of judicially reviewing this decision at Divisional Court.

We would be pleased to meet with you regarding the implementation of the Remedial Decision at your earliest convenience. We look forward to hearing from you and working collaboratively to establish new *Code*-compliant compensation negotiation processes.

Sincerely,

Elizabeth Brandeis, RM and President

Kelly Stadelbauer, RN, BScN, MBA, Executive Director