



### **Present**

Elizabeth Brandeis	President
Jasmin Tecson	President-Elect
Genia Stephen	Secretary
Mandy Levenson	Treasurer
Janis Dalacker	Member at Large
Liz Fraser	Member at Large
Kim Cloutier-Holtz	Member at Large
Sarilyn Zimmerman	Member at Large
Bounmy Inthavong	Member at Large

### **AOM Staff**

Kelly Stadelbauer	Executive Director
Juana Berinstein	Director, Policy & Communications
Allyson Booth	Director, Quality Risk Management
Leanne Horvath	Policy Analyst, Policy & Communications
Karen Augustine	Digital Media Officer, Policy & Communications
Anna Ianovskaia	Executive Assistant (recorder)

### **Regrets**

Carol Couchie	Vice President
Melodie Smith	Member at Large
Amy Nelson	Member at Large
Disha Alam	Member at Large

### **Guests**

Mary Cornish	AOM Legal Counsel, Cornish Justice Solutions
Adrienne Telford	AOM Legal Counsel, Cavalluzzo LLP
Adriel Weaver	AOM Legal Counsel, Goldblatt Partners LLP

The meeting began at 9:00 am.

Mary Cornish led discussions, noting that the AOM should be very proud of the decision. This is an incredible victory, not only for midwives, but an important decision in general for enforcing gender-based equality and human rights.

The AOM now has 3 decisions – the Interim Decision, the Liability Decision, and the Remedial Implications. Unless these decisions are overturned, they are legally binding and act as precedents – Mary Cornish noted that the original Interim decision has already been used as a

precedent. Adjudicator Reaume's reasoning appears clear in the Remedial decision and explains how each conclusion was reached.

*Recorder's Note: K. Cloutier-Holtz joined the meeting at 9:09 am.*

Part of what Reaume has done is made the decision clearer and more enforceable. The decision resets Compensation levels back to 2013. The decision uses the Courtyard analysis and a fixed amount of 20%, which may make it easier to enforce the decision.

Mary Cornish provided a legal opinion and analysis of the decision. She noted that it is fairly unusual for Human Rights Case decisions to have such extensive remedies moving forward from the day of complaint. Many of the extensive compliance payments that were requested by the AOM have been ordered.

Important elements of the decision included requesting a joint study moving forward, and calling for a joint gender-based analysis held by an expert. From the point of view of enforcement, the Judicial Review does not operate as an automatic stay, according to the Crown Law Proceedings Act. Mary Cornish's prediction for a Judicial Review timeline is approximately six months.

The Board enquired as to who would adjudicate disputes and issues around implementation of remedy, e.g. benefits or eligibility, if they were to arise. Mary Cornish noted that adjudicator Reaume has indicated that she will have no jurisdiction if a breach of Code arises. The recommendation is to continue having a strong and active campaign of government.

Mary Cornish addressed the question of eligibility, which will require further investigation and clarification between parties. Reaume's definition of an eligible party is somewhat vague, which may lead to disagreement. Going forward, as of February 19, 2020, the decision and its implications will not have jurisdiction over all midwives who work as employees in CHCs and other models outside of the MPG model.

The date of retroactive pay eligibility also remains to be clarified.

The Board requested a reminder for the Judicial Review timeline. An agreement had been reached with government and endorsed by the case management judge in the Court to have a hearing for the beginning of April 2020. The preparation deadlines for this hearing are intense.

#### **General Timeline:**

- February 21, 2020: Ministry's Draft Factum expected
- February 25, 2020: Ministry's amended Notice of Application for Judicial Review due
  - To include grounds on which Ministry is challenging Remedial Decision
- February 28, 2020: Deadline for AOM to file a dispute of the Decision
- March 10, 2020: Ministry provides AOM with Final Factum;
  - To include Remedial Decision and Liability Decision in one Factum
- March 20, 2020: AOM provides Final Factum

- March 27, 2020: Tribunal files its Factum
  - Factum to deal with narrow jurisdictional grounds
- March 27, 2020: Ministry to respond to AOM's Judicial Review file, if one is filed
- April 7, 2020: Expected Judicial Review hearing date

*Recorder's Note: L. Fraser joined the meeting at 9:57 am.*

The Board discussed implementation of the recently negotiated Agreement with Ministry. The group deliberated nuances of balancing positive relationships with bureaucrats while sending out political messaging in support of implementing the tribunal remedy decision.

*Recorder's Note: Adriel Weaver left the meeting at 10:32 am.*

K. Stadelbauer voiced interest in implementing the order and establishing timelines while preparing for Divisional Court. Mary Cornish advised to pursue the government based on timelines. It is important to hold to the deadlines and apply pressure if they are not honoured.

*Recorder's Note: A. Booth left the meeting at 10:36 am.*

*Recorder's Note: J. Tecson left the meeting at 10:39 am.*

AOM Board Members and staff thanked legal counsel for their representation for all midwives and for their work.

The meeting was adjourned at 10:57 am.