



Present

Jasmin Tecson	President
Bounmy Inthavong	Acting Vice President
Mandy Levenscrown	Treasurer
Disha Alam	Member at Large
Kim Cloutier-Holtz	Member at Large
Janis Dalacker	Member at Large
Liz Fraser	Member at Large
Sarah Martineau	Member at Large

AOM Staff

Juana Berinstein	Interim Executive Director, Director, Policy & Communications
Ellen Blais	Director, Indigenous Midwifery
Cara Wilkie	Manager, Quality Risk Management
Anna Ianovskaia	Executive Assistant (recorder)

Guests

David Dennis	Broker, Devencore
Blake Chapman	Devencore
Adrienne Telford	Legal counsel, Cavaluzzo

Regrets

Genia Stephen	Secretary
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The meeting began at 1:05 pm.

Land Acknowledgement

J. Tecson began the meeting with a land acknowledgement.

The Board was introduced to Nancy Chisholm, Director of Human Resources and Operations.

1. Agenda Approval

Item 5.3 will be presented before Item 5.2.

***MOTION:** To approve the agenda as amended.*

***Moved:** M. Levenscrown*

***SECONDED:** D. Alam*

CARRIED.

The agenda was approved as amended.

2. Meeting Evaluation

The evaluator for this meeting was B. Inthavong.

3. Consent Agenda

The June 17 board meeting minutes were removed from the consent agenda and will be circulated by e-mail.

Item 3.3 – QIRM Committee Terms of Reference – was removed from the Consent Agenda.

***MOTION:** To approve the consent agenda as amended.*

***MOVED:** L. Fraser*

SECONDED:** B. Inthavong **CARRIED.

***Recorder's Note:** David Dennis and Blake Chapman joined the meeting at 1:30 pm.*

Business Arising

QIRM Committee Terms of Reference

S. Martineau commented on the lack of mention regarding marginalized care for midwives, specifically through AOM on Call. A suggestion to add acknowledgment or goals around having good quality assurance for all midwives and diverse communities was made. C. Wilkie agreed to take ToR back to staff to include language that better reflects approaching Quality Assurance through a racial equity lens.

J. Tecson noted it is valuable and timely to expand definitions of quality for midwives' and client experiences. B. Inthavong added a consideration to improve capacity of research for Africa and Southeast Asia research data. The board was reminded that the ToR amendments coming to the board intended to focus on approving the change to allow the previous AOM president to stay on, given the continuity of J. Tecson's newer presidency.

***MOTION:** To approve the current amendments and provide direction for further amendments that were discussed.*

***MOVED:** J. Dalacker*

***SECONDED:** D. Alam*

CARRIED.

David Dennis and Blake Chapman entered the meeting at 1:29 pm.

4. Lease at 365 Bloor St E

David Dennis and Blake Chapman of Devencore presented regarding the Lease at 365 Bloor St E.

The lease issue has been actively discussed since October 2019 by K. Stadelbauer. The history of the building and lease at 365 Bloor St E. was presented for board members. In 2019 it was recognized that rental rates in the building and in downtown Toronto have doubled from the original time of signing. AOM staff office space needs have changed, and support for remote work was heard among staff members even prior to the COVID-19 pandemic.

David Dennis demonstrated the market trend related to downtown Toronto historic vacancy and gross rent. Employers have, for the last couple of years, focused on collaborative areas and workplace-led strategies, putting a tremendous burden on the market and rent demand. Additionally, with COVID-19, larger tenants (e.g. major banks) are acquiring more space in order to socially distance employees.

The current lease offer provides an extension of five years on the current agreement, while giving back space. The space is easy to sub-lease, due to the feasibility of putting up a wall and the high demand for small office space on Bloor St. This option is strongly recommended by Devencore, considering the difficulty of finding more affordable or comparable office space, plus the costs for moving. Construction costs during COVID have also increased, with a backlog of work. Putting this decision on hold does put at risk for penalty, and does not guarantee that the same offer will be on the table. The current agreement ensures that the AOM has the ability to stay put at the lowest possible cost, and in the best case scenario, provide significant savings.

Recorder's Note: David Dennis and Blake Chapman left the meeting at 2:10 pm.

N. Chisholm recapped the broker's recommendation to accept the lease offer. The AOMBT has concerns on the face of the lease extension considering current uncertainty, though they have not been intimately involved in the lease discussion process, and may not be familiar with the details of the current offer.

Additional factors to consider include remote work and space. Travel expenses are predicted to decrease as things will likely transition to become more virtual in the coming years. However, IT and technology costs may be higher. It will take some time to see how all will play out with respect to current projections.

Board members discussed risks of rejecting the offer and renegotiating closer to the end of the lease period in 2023. The option to sublet in the future remains.

Discussion paused at 2:29 pm and resumed at 3:48 pm.

N. Chisholm reminded board members of their options to accept or reject the lease amendment and extension offer. Board members agreed that there were fewer risks by choosing to amend and extend the current lease. Particularly in terms of shared work spaces, a reduced office space

can create a collegial and collaborative option for staff, while continuing those who would prefer to continue working remotely.

MOTION: *To follow the AOM staff recommendation to accept the lease amend and extend for 365 Bloor St E.*

MOVED: *L. Fraser*

SECONDED: *J. Dalacker*

CARRIED.

Recorder's Note: *Adrienne Telford joined the meeting at 2:29 pm.*

5. HRTO

J. Berinstein presented the update regarding the wage pay gap.

5.1 Update on Remedial Order

Dispute Resolution Facilitator

The Human Rights Tribunal of Ontario ordered AOM and MOH to hire a dispute resolution facilitator. MOH and AOM have contracted Dr. Elaine Todres for the role. A cost share between the AOM and the MOH was ordered.

Joint Study – Agreement on Expert

The AOM has engaged in discussions with Ministry regarding hiring an expert. AOM staff and legal have discussed options and have agreed on Paul Derber. The AOM suggests each party chooses an expert and explains why they would be appropriate, given Tribunal's directions with respect to scope of study and experience. If the two parties cannot agree on one expert, the AOM is of the opinion that each party retain its own expert. This has been done elsewhere, e.g. the Canadian Postal Union case, in which two experts were brought in.

The Ministry is concerned re: cost for two experts. AOM has requested MOH to advise on a specific budget for joint study. AOM agrees that the issue of agreement on the joint study expert(s) is a good issue with which Dr. Todres can assist. The expert(s) will work with a committee: Jasmin Tecson, Juana Berinstein, Elizabeth Brandeis, with background support from Mary Cornish.

Gender Based Analysis

The AOM has asked Ministry to advise if it intends to issue a tender for the Gender Based Analysis of the Ministry's compensation-setting practices. Mary Cornish has spoken to some experts who are likely to apply.

Appeal

MOH counsel has advised they will be seeking leave to appeal to the Court of Appeal. However, MOH counsel is not seeking a stay pending the appeal, and will continue to implement the Tribunal's remedial orders.

5.3 MOH Legal Costs paid to the AOM

The MOH has been ordered to pay AOM for legal costs. Funds are due to be received this week. It is unusual that the Ministry is paying out while seeking leave to appeal, however it is the position of the AOM that the chances for successful appeal are low. It is possible for the Ontario Court of Appeal to order costs throughout the courts, and that the AOM will later be ordered to pay amounts back.

***MOTION:** To use the \$100 000 received from MOH towards legal costs accrued in 2019-20, effectively decreasing the 2019-20 legal levy amount owed by each member. Members will be notified when billed the 2019-2020 amount that the levy has been decreased as a result of the court-ordered legal cost payment of the MOH.*

***MOVED:** K. Cloutier-Holtz*

***SECONDED:** B. Inthavong*

CARRIED.

***Recorder's Note:** Sarah Martineau left the meeting at 2:45 pm.*

5.2 Applicant Issues

Adrienne Telford presented the issues surrounding Applicants to the HRTO. The HRTO complaint was first launched in 2013. Major efforts were made in 2013, prior to the launch of the application, to ensure that midwives who wanted to be part of the complaint were given an opportunity to come forward. In order to be an Applicant in a human rights complaint, an individual must take positive steps, e.g. sign a consent form allowing the AOM to represent them in the complaint. Adrienne Telford noted the distinction of a human rights complaint from a class action case.

Typically, it is not customary to add Applicants once a decision liability has been issued. There was always some hesitation in terms of adding new Applicants, with the concern that the Ministry would object, as was within their right. There were a number of other issues with the HRTO case.

The first issue was that after consent forms were submitted in 2013, the Tribunal changed its consent forms and insisted that the AOM seek revised consent forms. The AOM went to great lengths to contact all midwives who filed the original consents to encourage them to file a revised consent. The vast majority did, though there were a handful who did not, for various reasons.

The second issue was the length of the case, as it was not anticipated that it would take so many years to reach a final result. The issue of New Registrants existed in 2013, 2014, 2015, and 2016.

The AOM added New Registrants for each year, due to the reasons that they could not have been Applicants in 2013. At this time there were also a handful of midwives who missed prior deadlines; the AOM advocated for their addition as Applicants.

The third issue was that, as of 2017, the AOM was making final submissions at the Tribunal, and the evidence was completed. At this time it was decided that it would be inappropriate to try to add 2017 New Registrants. It was thought that 2017 New Registrants would simply benefit from the decision on an ongoing basis. It was not anticipated that the Tribunal would take until the end of September 2018 before issuing its decision on liability. It was also not anticipated that the Tribunal would refuse to make a remedy, and instead redirect the question of remedy back to the parties.

As a result, 2017 and 2018 NRs were not invited to be applicants, as the evidence was in and the Tribunal had later issued its decision on liability. However, surprisingly during the Remedial hearing in May 2019, the Tribunal suggested, on its own motion, that Applicants be given another window of opportunity to be added. This was a complete surprise to both parties. The Ministry reluctantly agreed, but decided there had to be finality to this issue. Submissions of any additional Applicants had to be done before the Remedial Decision was issued, and an absolute final deadline of August 2019 was established.

The AOM took steps to communicate to all midwives who were not yet an Applicant of their status in the proceedings. There was communication in a June 2019 e-mail, which was sent to every midwife who was not an applicant. The AOM also issued 3 Midwifery Memos during the summer of 2019, which set out the process of how to become an Applicant, underscoring the need to file a consent.

A very small handful of midwives did not receive the June 2019 e-mail, because they had stopped practicing at that point and were no longer AOM members. A few others did not receive it because they were not yet registered as midwives, and only became registrants in July/August 2019. There was additionally a handful of midwives who came forward immediately past the deadline, with compelling reasons for missing the due date. The AOM was able to advocate on their behalf.

The Ministry communicated that the issue of additional Applicants needs to stop, and asked the AOM stop adding applicants. The AOM agreed, while making it clear other midwives may decide to come forward at a later date with human rights complaints. The Tribunal made it clear that all midwives who were not eligible – e.g. those who did not sign consent – would benefit from the decision moving forward. The two parties were dealing with Judicial Review by Spring 2020, and began working on the final list of eligible midwives.

The list was finalized in early July 2020, including approximately 1003 midwives. Since this period, approximately 78 midwives have come forward indicating they wanted to be Applicants, and that they are uncertain as to why they were left out. This issue has been very distressing to

the entire team, because the AOM wanted to have as many midwives who wished to be an Applicant to be part of the process.

Adrienne Telford explained the AOM's duties in this situation, reminding the board that the AOM could have launched this complaint with just one Applicant. The AOM had no duty to go out and search for Applicants or insist that Applicants come forward. The duties of the AOM were to communicate the process for midwives, and to have a reasonably fair process in place for midwives. From a legal perspective, the AOM had a duty to provide a fair opportunity for all members, as well as a duty to respect midwives to not become Applicants. Midwives had an individual duty to take steps to inform themselves of the process (e.g. read emails, MMs, contact the AOM with questions, sign consent form, send it to the AOM, and confirm that they were on the list).

Adrienne Telford presented the midwives who have come forward with Applicant issues in three categories:

- A. Midwives with some documentary evidence they made efforts to sign consent by deadline
- B. Midwives who believe they signed consents before the deadline but have no documentary evidence
- C. Midwives who want to applicants but missed the deadline

Each category had additional subcategories.

Recorder's Note: D. Alam left the meeting at 3:05 pm.

The AOM will advocate that midwives in Category A be added as applicants. The AOM will additionally advocate on behalf of Category B and some Category C midwives, provided that they provide a legal affidavit with sworn testimony as to the details of when/where they signed the consent. The AOM will not advocate for midwives in some Category C subcategories to be added as Applicants, due to absence of compelling or exceptional circumstances.

The AOM will additionally advocate that all midwives, including those who are non-Applicants, should be entitled to retroactive pay as a matter of fairness, given that the Ministry received the benefit of their labour, and that the Tribunal has found that this labour was compensated at discriminatory levels.

J. Berinstein thanked Adrienne Telford for this incredible work. AOM staff have put in very intensive labour of forensics and records auditing, and ongoing contact with membership. The information about non-Applicants will be shared with all membership, as the AOM continues to be transparent with the process and its understanding of the situation.

Recorder's Note: M. Levencrown left the meeting at 3:35 pm.

Board members enquired as to the sense dissatisfaction or frustration from non-Applicant members. The question of risk of legal action remains difficult and unclear. The AOM is mitigating legal exposure by continuing to encourage all non-Applicant members to file individual Human Rights Tribunal applications.

Recorder's Note: Adrienne Telford left the meeting at 3:44 pm.

6. Ministry of Health 2019-20 Audit

N. Chisholm presented the Ministry of Health 2019-20 Audit. The presentation compared finances of the 2018/19 fiscal year to the 2019/20 fiscal year, finding no significant differences in revenues and expenses.

In terms of revenue lines, all remained the same or increased as compared to 2018/19, except for the Emergency Skills Curriculum, which decreased by 28%. In terms of expenses, total expenses were comparable to 2018/19, and slight variances were presented.

Typically the AOM aims to return a smaller percentage of funds, but given the extraordinary year associated with COVID-19, there is not likely to be penalty. Additionally, the AOM is in Year 1 of funding and will have a series of years to determine appropriate level of funding.

***Motion:** To approve the 2019-20 Ministry of Health Grant Special Report as presented.*

***MOVED:** K. Cloutier-Holtz*

***SECONDED:** L. Fraser*

CARRIED.

Recorder's Note: E. Blais left the meeting at 4:19 pm.

Recorder's Note: L. Fraser left the meeting at 4:20 pm.

Meeting Evaluation

B. Inthavong conducted the meeting evaluation.

Meeting Adjournment

***MOTION:** To adjourn the meeting.*

***MOVED:** J. Dalacker*

***SECONDED:** K. Cloutier Holtz*

CARRIED.

The meeting ended at 4:25 pm.