

## HRTO Applicants—FAQ for midwives

July 14, 2020

There are currently 1053 midwives who provided written consents to be Applicants in the human rights complaint. Of those midwives, 1003 met the eligibility criteria set by the Tribunal in the [February 2020 decision](#). Since Friday July 10, 2020, we have heard from 58 midwives who wish to be, but who are not currently, Applicants. If this affects you, or if you know someone who is affected, please e-mail [Mary-K Dunn](#), Policy Analyst. In addition, we invite you to attend a Zoom meeting TODAY:

Tuesday, July 14, at 5:00 pm

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/83717898971?pwd=N1BNNTtheEI4QnRNMGtNUkkrMlhjUT09>

**Webinar ID**

837 1789 8971

**Webinar Password**

012284

A recording of the meeting will be made available for those who cannot attend.

This meeting is an opportunity for dialogue, information and discussion about the process to date, as well as available options for next steps. It has always been the AOM's desire to have as many midwives who wanted to be part of this litigation to be represented as Applicants. It is upsetting to find out that there are people who wished to participate in the litigation, but who are not listed as Applicants. We will do everything we can to both understand the situation and make best efforts to assist these individuals. The AOM is willing to advocate that these individuals be added as Applicants, although it will ultimately be for the ministry to decide. The AOM is also willing to assist any of these individuals who wish to file a human rights complaint currently.

### **Why aren't all midwives Applicants (when all midwives pay the AOM the legal levy)?**

The Tribunal has strict rules around becoming an "Applicant" in a human rights proceeding. An individual must take positive steps to become an Applicant. In this case, it required individuals to provide their express consent in writing to the AOM. A signed, written consent was necessary to prove that the individual wished to be: (1) named as an Applicant in the human rights complaint; and (2) represented by the AOM in the complaint. Without the individual's express written consent, the AOM would not have the right to represent them in the proceedings.

Even if an individual provided their express written consent to be an Applicant in the proceedings, they must also meet legal criteria established by the Tribunal in order to be eligible for a retroactive remedy. In this case, the [Tribunal determined on February 19, 2020](#), that only registered midwives who executed a signed consent form and who performed midwifery services in the Ontario Midwifery Program after November 2012 are eligible for a retroactive remedy.

The Ministry confirmed the list of Applicants who met the Tribunal's eligibility criteria on July 3, 2020. The list was posted for midwives on July 8, 2020.

## **Why wasn't the process to become an Applicant the same for all midwives?**

The litigation has been ongoing since 2013. In the normal course, Applicants in a human rights complaint are determined at the start of the litigation. It is unusual to add Applicants part way through a proceeding, and exceedingly rare to add Applicants following the issuing of the Tribunal's decision. The AOM has, however, advocated at every opportunity to add additional midwives as Applicants, including midwives who were entering the profession each year and midwives who responded to our calls for signed consents later in the proceedings. Over the past eight years, the AOM has fought for and advocated on behalf of every midwife who asked to be added.

## **If the AOM did not have a consent form from me, why didn't the AOM call me?**

A midwife must take the positive step of executing a written consent to become an Applicant in the human rights complaint. The AOM made best efforts to provide midwives with multiple opportunities to provide their written consent. The AOM communicated these opportunities in a variety of formats, including in direct emails to members and in Midwifery Memos. The AOM also made best efforts to communicate directly to midwives who were *not* listed as Applicants to inform them that this was the case and provide them with another opportunity to provide their written consent, should they wish to do so. For example, the AOM called midwives who were not listed as Applicants in 2017 and emailed them again, along with more recently registered midwives, in the summer of 2019. On both occasions the AOM communicated that we did *not* have a written consent from them and if they wished to be added as an Applicant, they must submit their written consent (see Appendix 1 below).

Not all midwives wanted to be listed as an Applicant, often for personal or political reasons. Some midwives complained when we called them in 2017 as they found it intrusive. The AOM did not want to pressure any midwife to join the human rights complaint and needed to respect the choice of midwives who did not want to be Applicants.

## **Will only Applicants benefit from the Human Rights Tribunal's ruling?**

All registered midwives, regardless of whether they are Applicants, will receive the 20% increase back to February 19, 2020 (the date of the Tribunal's remedy decision), as well as any further increases that are made to compensation from April 1, 2020, onward. All midwives will benefit from closing the gender pay gap moving forward. It is the retroactive pay adjustment and injury to dignity payment that are limited to eligible Applicants.

## **If I am not an Applicant, can I have my legal levy fees returned to me?**

Members voted to apply the legal levy to all members, regardless of whether they chose to become an Applicant. The thinking was that all midwives would benefit from an increase in compensation. This was a decision made by voting midwife members through a [resolution](#). The resolution never provided (and legally could not provide) consent to the AOM to represent individuals in the case. Regardless of paying the levy, midwives had to also sign and return to the AOM the two-page form affirming that they wanted to be listed as an individual applicant in the case represented by the AOM.

## **What were the AOM's protocols for informing Applicants?**

The AOM represents the interests of its members, and we aim to be transparent in all our undertakings. The AOM made best efforts to provide opportunities for midwives to consent to becoming Applicants. Our goal in the legal proceedings has always been to maximize the benefit to as many midwives as possible, including by representing as many midwives who wanted to be Applicants. The AOM had protocols in place for informing midwives of the need to provide a written consent, informing midwives who had not provided their consent, as well as for confirming with midwives that they were an Applicant if they inquired with the AOM. If you did not receive the AOM communications about the need to file a written consent or if you have a written record of sending us your consent but are not listed as an Applicant, please let us know immediately. Our protocols were designed with the intention of preventing such issues from arising. We want to know about and learn from any errors.

## **What can midwives who want to be Applicants do now?**

Midwives who want to be Applicants and have not done so already should contact [Mary-K Dunn](#). The AOM will make best efforts to advocate on your behalf to be added as an Applicant. However, the decision ultimately lies with the Ministry and the AOM cannot guarantee you will be added at this late stage. It is important for you to provide the AOM with as much information and evidence as possible so that we can advocate effectively on your behalf, including, for example, the original signed consent form in your possession or a confirmation from your fax machine demonstrating that you faxed your form.

In the interim, it is highly recommended that individual midwives who are not Applicants [file a human rights complaint immediately](#), in order to protect your rights. While not a guarantee, the human rights complaint may assist in obtaining an injury to dignity payment as well as retroactive pay going back at least one year from the filing of the human rights complaint.

If you have questions about filing a complaint with the HRTO, please contact [Christine Allen](#), Manager, Policy & Communications.

## I registered as a midwife after May 2020. Can I become an Applicant?

Midwives who registered in 2020 are not eligible to be Applicants, as the proceedings before the Human Rights Tribunal are over. There is therefore no need for 2020 new registrants to submit a consent form to the AOM. However, because the Tribunal has ordered remedies to close the gender pay gap in midwifery compensation for all midwives from February 2020 onwards, this cohort will enter the profession receiving the benefit of the Tribunal's remedial orders going forward.

### Appendix 1: Sample of letter sent to midwives who had not returned a consent form

**From:** Diana MacNab

**Sent:** June-27-19 1:29 PM

**Subject:** IMPORTANT: HRTO last call for Applicants – due August 2

**Importance:** High

Dear Midwives:

The HRTO will permit midwives who have not already done so to become Applicants by August 2, 2019.

The HRTO found government liable for a midwifery pay equity gap, dating back to 2005. Any midwife who worked in Ontario from 2005 to present can become an Applicant in the case. We have requested retroactive compensation for applicants. If the Tribunal chooses to order retroactive payment, likely those payments would be issued only to those who are Applicants. We expect a remedy ruling to be issued this fall.

You are receiving this letter because you are not currently an Applicant. There may be many reasons why you are not already an Applicant. Perhaps you started working in Ontario after April 2017 (when the Tribunal last accepted a list of Applicants from the AOM) or perhaps you retired before we began our legal action and thought you were not eligible.

Once you become an Applicant, you will also have access to key documents relevant to the case including the Application, the Ministry's submissions, expert reports and more.

Please note this will absolutely be the final opportunity to become an Applicant.

Becoming an Applicant is an easy two-step process – print the attached form, complete sections C & D only and then return it to the AOM by **August 2, 2019**. **Do not send your form directly to the Tribunal**. The AOM is gathering and verifying the forms and submitting them to the Tribunal.

For more information on our complaint, [visit the AOM website](#), or contact [Mary-K Dunn](#).

If you would like to be an Applicant, please take a moment and **complete the attached form now**. Submit your form by email to [Diana MacNab](#) or by fax to 416-425-6905 by August 2, 2019.

Please also consider sharing the information in this letter with midwives in your network who may be retired or working outside of Ontario.

Sincerely,

Juana Berinstein  
Director, Policy and Communications  
Association of Ontario Midwives  
365 Bloor Street E • Suite 800 Toronto ON • M4W 3L4  
416-425-9974 ext. 2229 or 1-866-418-3773

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[OntarioMidwives.ca](http://OntarioMidwives.ca)

@OntarioMidwives on [Twitter](#) [Facebook](#) [Instagram](#) [YouTube](#)

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