



Aug 7, 2020

Several midwives have requested legal support from the AOM in obtaining remedial relief ordered by the HRTO in AOM vs MOH, despite the fact that they are not Applicants in the proceeding.

The AOM has provided an overview of the process an individual had to follow to opt in to become an Applicant, which you can access here (log in required): www.ontariomidwives.ca/applicant-eligibility-members-applicants-only. In this overview, we explain how some midwives made efforts to be Applicants or had extenuating circumstances for not making efforts. The AOM is advocating for these midwives, but we cannot guarantee the MOH will agree to add them as Applicants. In addition, we explain how some midwives did not make efforts, despite having received communication from the AOM and an opportunity to opt in as Applicants. Because of this, The AOM has no grounds to advocate to the MOH that they add these midwives as Applicants. Instead it will continue to advocate that they receive retroactive compensation for their discriminatory pay as a matter of fairness.

For several reasons, the AOM's legal team is not able to provide legal counsel to midwives, either as an individual or as a group:

1. The AOM undertook to the Ministry in August 2019 it was submitting a final list of Applicants. The AOM made clear that it could not guarantee additional individual midwives would not come forward or file human rights complaints *on their own*. The AOM would arguably be in breach of that agreement with the Ministry if it were to launch a complaint on behalf of these individual midwives.
2. From a legal perspective, it could constitute an abuse of process for the AOM to bring a second complaint forward at this time. This is a legal concept that prevents a party from relitigating an issue that has been finally decided by the Tribunal.
3. We are advised by our legal team that it may be detrimental to your interests, and the ultimate success of your individual or group complaint, for the AOM to be involved in a representative capacity in your complaint. The application of the AOM vs MOH has already been decided. Individuals or a group will have to explain why they were not part of the original application. The AOM will not be in a position to argue that question on your behalf and indeed it would likely constitute a legal conflict to do so, particularly where the

AOM communicated the process to opt in for the midwife and the midwife failed to take steps to act.

For the AOM, learning after the fact that you wanted to be an Applicant but are not has been very distressing. The AOM wanted all midwives to have the opportunity to be an Applicant if they wanted to be one, while respecting the individual choice that some did not want to be Applicants.

Midwives, not the AOM, passed a resolution that bound all members to pay the legal levy, regardless of Applicant status, in recognition that go-forward changes that addressed the gender pay gap would be of benefit to all, regardless of Applicant status. In addition, the resolution specifically related to the application taken by the AOM against the MOH at the HRTO. New resolutions can be proposed by members at annual general meetings, and the next AGM is scheduled for October 2020. Information on resolutions can be found here:

www.ontariomidwives.ca/agm

The AOM has provided, and will continue to provide, staff support and template language to individuals who wish to file an individual complaint at the HRTO. The AOM has also advised midwives to access free legal support from the Human Rights Legal Support Centre (HRLSC) and has relayed information about the situation to the HRLSC. These supports are the extent to which the AOM is able to assist midwives in their position without legal compromise to you, the broader midwife membership or its agreements with the Ministry of Health.

Sincerely,



Jasmin Tecson

President



Juana Berinstein

Interim Executive Director