



October 13, 2016

C. Michael Mitchell and the Honourable John C. Murray
Special Advisors, Changing Workplaces Review
Employment, Labour and Corporate Policy Branch
Ministry of Labour
400 University Ave, 12th floor
Toronto, ON M7A 1T7

Dear Sirs:

RE: Changing Workplaces Review

Thank you for taking the time to review this submission from the Association of Ontario Midwives (AOM) to the *Changing Workplaces Review – Interim Report* (Interim Report).

Registered Midwives in Ontario provide comprehensive primary care to pregnant women and their newborns. Midwives have provided personalized, excellent care for more than 180 000 Ontarians since 1994. There are approximately 800 midwives providing care in more than 86 communities, including more than 90 hospitals across the province. Midwifery is a unique and growing profession that is not adequately reflected in the Employment Standards Act (ESA) or the Labour Relations Act (LRA).

We are writing to provide two main comments to the Interim Report:

1. Midwives support a principled and transparent process for granting exemptions from provisions of the ESA. As the practice of midwifery and midwives' professional obligations are incompatible with many provisions of the ESA, midwives would like to be engaged in the consideration of new exemptions.
2. We support the Interim Report's commitment to a collective bargaining regime that gives meaningful access to a wider number of workers. However, midwifery is uniquely organized and compensated, such that any prescriptive labour relations regime would likely exclude midwives from exercising their right to collective bargaining since the work of midwifery does not fit into typically unionized work hours or conditions. A flexible and principled approach should be adopted that allows workers, unions, and employers to propose which employees, employer(s) and issues would be collectively

bargained and allows the Ontario Labour Relations Board (OLRB) to determine the proposal's appropriateness.

Incorporating these considerations will ensure that the LRA and ESA more accurately reflect the context of midwifery and ensure protection for midwives and their right to collectively bargain.

The Employment Standards Act

The work of a Registered Midwife is defined by the Regulated Health Professions Act (RHPA), the Midwifery Act and the Ministry of Health and Long-Term Care (MOHLTC) through its funding contracts. (1) The College of Midwives of Ontario (CMO) defines the midwifery model of care, which requires midwives to provide clients access to a known midwife 24/7 during pregnancy, labour and 6 weeks post-partum. (2-4) This model of care consistently demonstrates excellent clinical outcomes, cost-effectiveness and high rates of client satisfaction. (5-8) The availability of a known midwife at all times is consistently cited as one of the key components of midwifery care that contributes to such excellent outcomes.

However, it is impossible for midwives to comply with the ESA as it is now. Much of the work cannot be scheduled as it is dictated by the health needs of the client, the client's pregnancy, the timing of the labour and birth, and the needs of the newborn. A full-time midwife attends 8 births a month on average, but due to the unpredictability of births, she may attend more than 7 in one week.

To protect the model of care and comply with the ESA, midwives engage in non-standard work. The MOHLTC determined that midwives would work in small practice groups, like physicians do, as independent contractors. To allow alternative organization of their work that best meets clients' health needs, midwives request access to an exemption to requirements regarding time off between shifts; hours of work; eating periods; daily rest period; weekly/biweekly rest periods; overtime; and public holidays. These are the same exemptions as are currently granted to other regulated, client-focused professions such as engineers, physicians, lawyers, veterinarians and architects. (9)

Common among these professions is an ultimate responsibility to clients' need rather than standard scheduling. (10-12) Members of these professions will at times be unable to simultaneously meet their professional obligations and the requirements of the ESA. Considering the similar ethical and professional responsibilities held by midwives, as autonomous primary care providers, it would be appropriate to extend the exemption to the midwifery profession.

Midwives support a clear, transparent and principled process to assess current exemptions and their request for a new exemption. As the above explains, midwives would meet the criteria that the Ministry currently uses to assess possible exemptions. We would ask that such a process be transparent and accessible to professions seeking new exemptions. The MOHLTC

and the Ministry of Labour recognized the need for an exemption in 1997 and 2008 following submissions from the midwifery sector. Both times other legislative priorities took priority. With the growing interest in including midwives in new, innovative interprofessional care models, this exemption will also facilitate midwives to work in a variety of settings and in a variety of employment models, while maintaining the essence of what Ontarians seek in midwifery care.

The Labour Relations Act

In Ontario, midwifery services are entirely funded and levels of compensation set by the MOHLTC. The MOHLTC contracts with Transfer Payment Agencies, which contract with Midwifery Practice Groups (all owned by midwives who are also providing midwifery care), which contract with midwives. Despite these multiple layers of contracts, the MOHLTC sets compensation levels of all midwives, both those that own practices and those that do not.

Like the franchisee-franchisor relationship described in the Interim Report, midwives' relationship with the Ontario government bears many of the hallmarks of an employee-employer relationship. While the AOM and the MOHLTC have entered into discussions with respect to the terms and conditions of service delivery and compensation rates, the Ministry insists it does not negotiate contracts with the AOM. Instead, it characterizes these as "consultations" or "discussions". (13)

Given the nature of this relationship, excluding midwives from the LRA and the collective bargaining regime, it establishes violates the rights that the Interim Report acknowledges under section 2(d) of the Charter. Although the exclusion of midwives from the provincial labour relations regime flows from the organization and funding of the system, rather than their explicit identification as a class of employees to whom the regime does not apply, the effect of the exclusion is the same. Midwives are denied access to a meaningful collective bargaining process in which they have sufficient bargaining power to pursue their goals, and in which their *de facto* employer is obliged to engage and to do so in good faith.

This is particularly egregious since the sole reason why midwives were set up as independent contractors was to ensure that the model of care that assures clients' continuity of care by a midwife would be protected (as described above). That is, the independent contractor model is for the benefit of the recipient of midwifery care, and not the midwife. When midwives agreed to this model, they did not agree to give away their charter rights to collectively bargain their compensation with the MOHLTC.

The AOM submits that the LRA should be amended to allow the collective organization of as many types of workers as possible. As the Interim Report acknowledges, today's economy and workforce are becoming increasingly complicated. Midwives do not expect a legislative regime to specifically respond to their unique needs, but rather seek a regime that would allow them to

propose sectoral bargaining. The regime should allow workers to come together to propose a way to define the unit (e.g., all midwives in Ontario), the joint or related employers (e.g., the MOHLTC), and the issues that are subject to direction by those joint or related employers and thus to negotiation (e.g., compensation levels). For midwives, this could mean proposing to the OLRB that there be one provincial collective bargaining unit for all midwives (owners and non-owners) that is recognized as the negotiating body for compensation alone.

Conclusion

Midwives provide excellent, comprehensive care to childbearing families across Ontario, putting the needs of their clients above all else. The ESA strives to protect workers, but does not accurately reflect the context of midwifery as a regulated health profession. It would be most appropriate to provide a process that is principled, clear, transparent and accessible to professions seeking new exemptions. Furthermore, the most appropriate forum for protection of the rights of the midwife is through collective bargaining; an amendment to the LRA to create a regime that would allow uniquely organized workers to propose a means of collective bargaining and organization so that their rights may be protected.

Thank you very much for considering this submission to the Changing Workplaces Review. We look forward to learning the outcomes of this important review.

Sincerely,



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