THE HIGH COURT OF NEW ZEALAND
TE KŌTI MATUA O AOTEAROA

26 March 2026

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***New Zealand College of Midwives Inc v Attorney-General* [2026] NZHC 405**
CIV-2022-485-558

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

What this judgment is about

This proceeding was brought by the New Zealand College of Midwives Inc (the College) and two representative midwife plaintiffs, on behalf of 1,473 lead maternity care (LMC) midwives, against the Attorney-General representing the Ministry of Health (the Ministry). The proceeding concerned the remuneration of LMC midwives and other terms and conditions of their work. The focus of the case was an alleged promise by the Ministry to pay LMC midwives "fair and reasonable" remuneration for their services.

The plaintiffs successfully brought claims for breach of contract, and breach of an obligation to take all necessary steps and to work together in good faith. They were also successful in their claim that the Ministry unlawfully discriminated against LMC midwives on the basis of sex under s 19 of the New Zealand Bill of Rights Act 1990 (Bill of Rights). The plaintiffs' claims for equitable estoppel and quantum meruit were unsuccessful.

Background

LMC midwives provide the vast majority of lead maternity care in Aotearoa New Zealand. Since 1993, midwives have been paid under Notices issued by the Crown , which set out the terms and conditions for the provision of primary maternity services. The Notice mechanism unilaterally imposes the terms of LMC midwives' remuneration. Since 1996, Notices have used a "capped", modular model, which caps fees for specific "modules" of services. For most of the period in question, the New Zealand Public Health and Disability Act 2000 was in force. The relevant Notices, issued in 2007 and 2021, were issued under s 51 of that Act.

In 2015, the College filed judicial review proceedings against the Ministry, alleging a breach of the right to freedom from discrimination on the basis of sex under the Bill of Rights. The College and the Ministry entered into a series of six agreements between 2016 and 2018 and the judicial review proceedings were discontinued in 2017.

The Ministry made a series of contractual promises under the 2018 Settlement Agreement. The College believed that those promises were to be implemented by 1 July 2020. Disappointed by the lack of progress on those promises, the College filed these proceedings in 2022.

Causes of action

Breach of contract

The first cause of action was for breach of the 2018 Settlement Agreement. The plaintiffs alleged that the Ministry had breached three key substantive obligations in the Agreement. The Attorney-General denied that those obligations existed and raised a series of constitutional impediments, asserting that the 2018 Settlement Agreement could not bind the Crown.

The Court rejected these constitutional arguments. It found that the official who signed the 2018 Settlement Agreement on behalf of the Ministry had authority to do so. The Agreement was also not subject to further Ministerial or Cabinet approvals. Although performance of the Agreement required public expenditure, the Agreement was enforceable against the Crown. It also did not impermissibly "fetter" the Crown's future freedom to make policy choices regarding funding of healthcare services.

The Court also found that the Agreement contained the three substantive obligations contended for by the plaintiffs. The Ministry was required to:

(a) implement a national midwifery contract by 1 July 2020;

(b) pay LMC midwives a "fair and reasonable service price" by July 2020; and

(c) provide the ability for midwives to renegotiate the fees paid to them on an annual basis.

The text of the Agreement itself, its context and the subsequent conduct of the Crown all supported this finding. As the Crown failed to meet those three obligations, it breached the Agreement.

Breach of obligations to take all necessary steps and to work together in good faith

The second cause of action was for breach of obligations under the 2018 Settlement Agreement to take all necessary steps to fulfil its terms, and to work together with the College in good faith to fulfil those commitments. The Court found that such obligations were both express and implicit in the Agreement.

The Crown denied it breached those obligations. It asserted that the COVID-19 pandemic, Health and Disability System Review and political arrangements put restraints on the Ministry's ability to implement the 2018 Settlement Agreement.

The Court did not accept those explanations and found that the Ministry breached its obligations, by:

(a) pausing development of a national provider organisation in October 2019;

(b) failing to reach agreed deadlines and repeatedly reassuring the College that it was still on track for the July 2020 deadline;

(c) not clearly communicating with the College, particularly about the constraints placed on its actions; and

(d) commissioning work from a professional services firm, PwC (the PwC Extension Work) to help determine the cost of implementing a "fair and reasonable service price" without informing the College it had done so or the outcome of that work.

Equitable estoppel

The third cause of action was for equitable estoppel. The plaintiffs claimed that the Ministry made representations that payment for LMC midwives would be in line with Government pay equity principles, free from systemic undervaluation and free from any element of gender-based discrimination. They also claimed that LMC midwives detrimentally relied on those representations.

The Court found that a claim of equitable estoppel was available against the Crown, that the representations relied on were clear and unequivocal, that the plaintiffs relied on those representations and that this reliance was reasonable until 1 July 2020. However, the Court found that continued reliance was not reasonable after 1 July 2020, as it was clear by then that those representations would not be met. The Court also found that the individual midwives had not established that they had suffered detriment causally related to their reliance on the representations. This cause of action was therefore unsuccessful.

Quantum meruit

The fourth cause of action was for quantum meruit. The plaintiffs claimed that the Ministry ought to have known that the services LMC midwives have provided since 1 July 2020, which the Ministry has freely accepted, were provided in the expectation of the payment of a fair and reasonable service price for those services.

The Court found that when the plaintiffs carried out the services from 1 July 2020, they expected payment of a fair and reasonable service price at some point. But there was no evidence supporting an expectation that such a price would be paid retrospectively, backdated to 1 July 2020. The expectation was therefore not for "those services". This cause of action was therefore unsuccessful.

Unlawful discrimination on basis of gender

The fifth cause of action was for unlawful discrimination on the basis of gender. The Court held that:

(a) obstetricians providing lead maternity care in straightforward cases and general practitioners (GPs) are suitable comparators for the purpose of the test for unlawful discrimination under s 19 of the Bill of Rights;

(b) there is differential treatment between LMC midwives and obstetricians. The Notice prohibits LMC midwives from supplementing their income by charging a co-payment for maternity services provided under the Notice, but permits obstetricians to do so;

(c) there is differential treatment between LMC midwives and GPs. GPs have rights to negotiate the terms and conditions of their work, and to ensure "fair and reasonable" payment. No such provisions exist for LMC midwives;

(d) these differences in treatment are "on the ground" of gender (meaning this is a "material ingredient" for the difference). Midwives are, historically and currently, almost exclusively female. Obstetricians and GPs are now majority female occupations but were historically male-dominated. The differences in treatment between LMC midwives and obstetricians/GPs cannot solely be explained by other factors, such as differences in training. Gender remains a material factor;

(e) this differential treatment imposes a material disadvantage on LMC midwives, in the form of financial detriment, a lack of autonomy and a lack of self-worth; and

(f) the limit on the plaintiffs' rights to be free from discrimination is not "demonstrably justified" under s 5 of the Bill of Rights. The Court rejected the Attorney-General's justifications that this was due to the midwifery profession's historic preferences or the Crown's longstanding policy of providing free maternity care to New Zealanders.

The plaintiffs therefore succeeded in this cause of action.

Remedies and next steps

The Court granted a series of six declarations in relation to the three successful causes of action.

The Court found that a declaration was not an adequate remedy for the fifth cause of action (discrimination). An award of damages was necessary as an incentive to avoid repetition of the breach. The Court held that an amount of $1,000 per LMC midwife was appropriate to recognise injury to dignity as a result of the breach, and to vindicate the right.

The Court found that the appropriate remedy for the first and second (contractual) causes of action was to attempt to restore the plaintiffs to the position they would have been in had the breaches of contract not occurred. Here, this required LMC midwives to be paid the difference between what they were paid since 1 July 2020 and a "fair and reasonable service price" for that work.

The Court determined that the PwC Extension Work offered the best approximation of a fair and reasonable service price. As at 1 July 2020, fair and reasonable take home pay for an LMC midwife working 1.0 FTE was $170,340. This is to be adjusted for each successive year based on the Labour Cost Index (LCI). For example, adjusted by the LCI, fair and reasonable take home pay was $206,946.03 in July 2024.

The judgment sets out a series of steps by which the individual midwives on whose behalf the proceedings were brought can calculate their damages entitlement. That is to be the subject of Phase 2 of the proceedings.