CITATION: 2025 ONSC 6853
COURT FILE NO.: CV-25-00756175-0000
DATE: 20251208

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: NATHÁLIA ELINO DA SILVEIRA, MD ILANA POLEGATTO LAGOSTA, MD

Applicants/Moving Parties

AND:

MINISTER OF HEALTH and ATTORNEY GENERAL OF ONTARIO

Respondents/Responding Parties

BEFORE: Koehnen J.

COUNSEL: *Allan Rock K.C., Warda Shazadi Meighen* for the applicants

Zachary Green, Andrea Bolieiro, Sean Kissick for the Respondents

HEARD: December 1 and 4, 2025

ENDORSEMENT

[1] The Applicants move for an interlocutory injunction to restrain the Respondents from implementing a direction that was introduced on October

8, 2025 that governs the matching program for medical residents in Ontario (the “New Policy”).

[2] Given the urgency of the issue, I issued a dispositive ruling on Friday, December 5, 2025 which granted the injunction and which extended the time for graduates from medical schools outside of Canada to apply for medical residencies in Ontario until 5:00 PM on Monday December 8, 2025, with reasons to follow. These are those reasons.

I. Background Facts

[3] As a general rule, to practice as a physician in Ontario, requires the person to have successfully completed a medical residency. A Medical residency is a period of practical training that leads to a specialized certification by the Royal College of Physicians and Surgeons of Canada or to certification as a family physician by the College of Family Physicians of Canada. The length of residency and the number of residency positions vary according to the specialization involved.

[4] Medical residencies are assigned through a national matching platform known as the Canadian Resident Matching Service (“CaRMS”). In the first stage of the matching process (known as the First Iteration), candidates submit applications for all residencies in which they are interested through an online portal and rank the positions in order of preference. Those applications are then reviewed by medical schools. The application review

process may also include interviews with candidates. All applications must be reviewed by a predetermined date. On another predetermined date, all medical schools submit a list of candidates to whom they wish to offer a residency position, also ranked in order of preference. A computer algorithm then matches candidates to positions in optimal order.

[5] Historically, a number of residency positions has been reserved for graduates of Canadian medical schools, referred to as Canadian Medical Graduates or CMGs; and a number has been reserved for graduates of medical schools outside Canada referred to as International Medical Graduates or IMGs. Members of the CMG pool compete with each other for the designated CMG positions and members of the IMG pool compete with each other for the designated IMG positions.

[6] Candidates who did not match in the First Iteration were then permitted to compete in the Second Iteration for those positions that were not filled in the First Iteration. As a practical matter over 92% of positions are filled in the First Iteration. The First Iteration fills all specialty programs with the Second Iteration being devoted principally to unfilled family medicine, general practitioner or rural medicine positions. As a general rule, there are more candidates than residencies.

[7] The applicants for the 2026 residency program were able to begin filing their applications on the CaRMS the portal on September 10, 2025 with the deadline for submissions being November 27, 2025.

[8] On October 8, 2025 almost one month after applications opened, the Ontario Minister of Health directed CaRMS to implement a new policy with respect to the First Iteration and the allocation of IMG positions (the "New Policy"). The New Policy provided that the First Iteration for IMG candidates would, effective immediately, be limited to IMGs who completed at least two years of high school in Ontario.[1]

II. The Applicants

[9] The applicants are two individuals who would have been able to participate in the First Iteration under the old policy but are precluded from doing so under the New Policy.

[10] The applicant Nathalia Da Silveira qualified and practised as a vascular surgeon in Brazil. She graduated in the top 1% of her program in Brazil. She is a permanent resident of Canada. She has an 18 month old child who was born in Canada and is a Canadian citizen. In July 2025 and she and her husband purchased a home in Ontario. She and her husband pay

[1] Applicants are exempted from the two year Ontario high school requirement if they were unable to do so as a direct result of a legal guardian's deployment or posting outside Ontario as a member of the Canadian Armed Forces, Canadian Diplomatic Service or Department of Foreign Affairs.

taxes exceeding 50% of their joint income. She intends to remain in and practice in Ontario. She has met all the standards required to participate in the First Iteration as that policy existed up to October 8, 2025. This included passing the necessary exams, paying approximately $15,000 in examination fees, and completed clinical work to maintain her medical experience.

[11] The applicant Ilana Polegatto Lagosta qualified as a surgical oncologist and general surgeon in Brazil. She immigrated to Canada as part of the Federal Skilled Worker Program. She was invited to Canada in large part because of her medical degree. She has a 3-year-old son who was born in Canada and is a Canadian citizen. Surviving as new immigrants to Canada and paying the fees for the required examinations exhausted her and her husband's savings. Her husband is trained as an engineer but was obliged to take a job in door to door sales upon arriving in Canada. After he lost that job, Dr. Lagosta worked as a housecleaner for 2 months and a dishwasher for 4 months to make ends meet. She and her family fell below the poverty line and relied on food banks to survive. Her husband has since found work within continuous improvement for nuclear energy sites. Both Applicants have demonstrated a considerable degree of commitment to Ontario.

[12] Under the New Policy both Dr. Da Silveira and Dr. Lagosta are precluded from participating in the First Iteration because they did not attend two years of high school in Ontario.

III. The Positions of the Parties

[13] The Applicants submit that the New Policy violates the following rights enshrined in the *Canadian Charter of Rights and Freedoms*:

a. Section 6 mobility rights, because it denies Canadians and permanent residents from other provinces equal access to pursue their livelihood in Ontario;

b. Section 15 equality rights, because it discriminates against and disproportionately impacts immigrants, racialized communities, and those educated abroad; and

c. Section 7 liberty and security rights, because it deprives certain applicants of the right to pursue a medical residency in a manner not in accordance with the principes of fundamental justice.

[14] The Respondents submit that no interlocutory injunction is appropriate because the applicants have not suffered irreparable harm and because the balance of convenience favours the Respondents.

IV. The Test for an Interlocutory Injunction

[15] Both sides agree that the governing test for interlocutory injunctive relief against government action is that set out in the well known case of *RJR MacDonald- Inc v Canada*[2] which requires an applicant to demonstrate that: (i) there is a serious issue to be tried; (ii) the applicant will suffer irreparable harm if relief is not granted; and (iii) the balance of convenience, including the public interest, favours granting the injunction. [3]

i. Serious Issue / Strong *Prima Facie* Case

[16] Where, as here, the relief sought is directed at a government policy that affects the public, the injunction would effectively grant substantially all of the relief sought or where the injunction would affect public programs, courts have required applicants to demonstrate a strong *prima facie* case rather than merely a serious issue to be tried.[4]

[17] In oral argument, the Respondents stated that the first branch of the *RJR MacDonald* test was better assessed at the merits stage rather than now. They focussed their arguments entirely on the second and third branches of the test: irreparable harm and balance of convenience. I will nevertheless spend some time on the first branch of the *RJR MacDonald* test because it has been acknowledged that the three branches are not separate, water-

[2] *RJR MacDonald- Inc v Canada (AG),* [1994] 1 SCR 311 at 334.
[3] *RJR MacDonald- Inc v Canada (AG)*, [1994] 1 SCR 311 at 334.
[4] *R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 12

tight categories. Rather, they relate to each other such that strength on one part of the test can compensate for weakness on another.[5]

[18] In my view, the applicants have made out a strong *prima facie* case for the breach of at least two of the alleged *Charter* breaches.

[19] Section 6 of the *Charter* provides, in part:

> (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
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> (a) to move to and take up residence in any province; and
>
> (b) to pursue the gaining of a livelihood in any province.
>
> (3) The rights specified in subsection (2) are subject to
>
> (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
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> (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.
>
> (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically

[5] Robert J. Sharpe, *Injunctions and Specific Performance,* § 2:17; *Haudenosaunee Development Institute v. Metrolinx*, 2023 ONCA 122, at para. 6.

> disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

[20] The New Policy draws a distinction between IMGs who have spent two years at a Canadian high school and those who have not. That distinction places a limitation on Canadian citizens and permanent residents of Canada "to pursue the gaining of a livelihood" in medicine in Ontario if they did not spend 2 years at an Ontario high school. Although section 6 (3) (a) limits the right in section 6 (2) by making it subject to laws and practices of general application, it specifically carves out from that exception, laws or practices that discriminate among persons primarily on the basis of province of past or previous residence. The New Policy clearly discriminates between IMGs candidates based on their place of residence during high school.

[21] The Applicants submit that the New Policy cannot be saved by s. 6(3) (b) of the *Charter* which authorizes laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services. Assuming medical residencies fit within the concept of public social services, it is difficult to see any reasonable basis for requiring candidates to have spent two years of high school in Ontario. There was no evidence before me that attending high school in Ontario for two years predicts a physician's likelihood of remaining in Ontario. The requirement is arguably more probative of the likelihood of the physician's parents

remaining on Ontario than of the physician's. In that light, the New Policy does not advance the Respondent's purported purpose. Moreover, IMGs are already required to enter into contracts with the Government of Ontario to practice where the Government wants them to for up to five years or face significant financial penalties if they do not.

[22] I underscore that we are not dealing with foreign students who are attending school in Ontario with an intention (and in many cases an obligation) to leave Ontario when their studies are complete. IMGs must be permanent residents of Canada to apply for a medical residency.

[23] Although the purported rationale of the policy is to favour medical residencies for those who are likely to remain in Ontario, the limited evidence in the record is that the retention rates for IMGs and CMGs in Ontario are comparable and sit at approximately 87%.

[24] In my view, the Applicants have made out a strong prima facie case that the New Policy breaches s. 6 of the *Charter.*

[25] Section 15 of the *Charter* provides in part:

> 15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[26] The Applicants submit that the requirement for two years of high school education in Ontario is irrelevant to the qualifications required to practice medicine. The requirement adversely affects those of a different national origin and age who could not have completed two years of high school in Ontario.

[27] The Respondents submit that the New Policy is not discriminatory because it is not triggered by any protected *Charter* grounds such as national or ethnic origin but applies equally to those born in Canada, those born in Ontario. The trigger is failing to attend high school in Ontario for two years, not national origin.

[28] I have two difficulties with that argument. First, it predicates the absence of the s. 15 violation on what at least appears on its face to be a violation of s. 6 of the *Charter*. That is to say, the only reason the New Policy does not discriminate on the basis of national origin is that it also discriminates against people from other parts of Canada.

[29] The Respondents' argument that the New Policy also affects people born in Ontario who did not spend two years at an Ontario high school gives rise to my second difficulty with the argument which is that it ignores the concept of adverse effects discrimination. This concept allows courts to examine a law that is neutral on its face to determine whether it has a disproportionately adverse effect on protected groups. The failure to have

attended two years of high school in Ontario operates as what the Supreme Court of Canada identified as a "built-in headwind for protected groups."[6] The requirement is, in effect, a proxy for national origin because it prevent someone from obtaining a medical residency based on where they lived as a teenager.

[30] Section 15 requires the court to consider whether the distinction imposes a disadvantage that perpetuates prejudice or stereotyping.[7] On the current record, the New Policy entrenches existing barriers faced by international and racialized candidates, who already contend with historic underrepresentation and systemic obstacles in medical training and licensing.[8] In doing so, it disproportionately harms newcomers, internationally trained professionals, immigrants who arrived as adults, racialized communities, and refugees.

[31] The two applicants here exemplify the point. After being lured to Ontario with a certain set of rules entitling them to participate in the residency matching program, after having spent their life savings pursuing that program, they are now precluded from meaningful participation in the program simply because they did not attend high school in Ontario.

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[6] *Fraser v. Canada (Attorney General),* 2020 SCC 28 (CanLII), [2020] 3 SCR 113 at para. 53.
[7] *Kahkewistahaw First Nation v. Taypotat*, [2015] 2 S.C.R. 548, at paras 16 - 18 ; *Quebec (Attorney General) v A,* 2013 SCC 5 (CanLII), [2013] 1 SCR 61*,* at paras 173, 331
[8] Affidavit of Julie-Ann Sobowale, paras. 10-13, p. 168; Affidavit of Dr. Stanley Feinberg, paras. 55-59, pp. 222-223.

[32] A further comparison makes the point. Assume we have two students: Susan and Rahima. Susan attended 4 years of high school Ontario. Rahima is a Syrian refugee who attended the same high school as Susan but arrived only in grade 12. Susan and Rahima then attended the same Canadian university for undergraduate studies. They then attended the same foreign medical school. Assume further that Rahima outperformed Susan on both academic and extracurricular measures. When it comes time to apply for residencies under the New Policy, Susan is entitled to participate in the First Iteration. Rahima is prohibited from doing so, in effect by reason of her national origin. Rahima had no choice about where she lived as a teenager. In effect, the New Policy discriminates on the basis of an indelible characteristic in a manner that the *Charter* prohibits.

[33] Ontario submits that the New Policy only precludes IMGs who did not attend high school for two years in Ontario from participating in the First Iteration while leaving them free to participate in the Second Iteration. While that is strictly speaking correct, 92% of all residencies are offered during the First Iteration, including almost all specialties. In addition, Ontario submits that the affected IMGs can simply apply for residency in the following year. That, however, does not solve the problem. In the following year the New Policy would remain in effect. Moreover, the number of non-Ontario IMGs competing for the 8% of residency positions that are not filled in the First

Iteration is now larger than in year one because it includes the year one unfilled matches plus the ordinary application numbers for year two.

[34] In my view, the Applicants have made out a strong *prima facie* case that the New Policy breaches s. 15 of the *Charter.*

[35] Section 7 of the *Charter* provides:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[36] The Applicants submit that s. 7 protects a sphere of personal autonomy involving "inherently private choices" if "they implicate basic choices going to the core of what it means to enjoy individual dignity and independence"[9] which the Applicants submit includes decisions about one's career and livelihood.

[37] Section 7 also requires that deprivations of liberty or security accord with the principles of fundamental justice, including the absence of arbitrariness, overbreadth, and gross disproportionality.[10]

[38] The Applicants contend that the New Policy is arbitrary because there is no evidence that Ontario high school attendance furthers physician retention

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[9] *Association of Justice Counsel v. Canada (Attorney General),* 2017 SCC 55 (CanLII), [2017] 2 SCR 456.
[10] *Canada (Attorney General) v Bedford*, 2013 SCC 72 (CanLII), [2013] 3 SCR 1101; *Carter v Canada (Attorney General),* 2015 SCC 5 (CanLII), [2015] 1 SCR 331

given the comparable retention rates between IMGs and CMG's. In addition, IMGs are frequently subject to contractual obligations to work in designated regions of Ontario for a minimum period of time or face significant financial consequences which further improves retention rates.

[39] Although the Applicants' s. 7 arguments are not as strong as their s. 6 and s. 15 arguments because the law about the application of s. 7 to employment rights is less developed, the Respondents conceded during oral argument that the Applicants had met the first branch of the *RJR MacDonald* test in this regard, at least insofar as they have demonstrated a serious issue to be tried.

[40] Perhaps anticipating s. 1 arguments, the Applicants also argue that the New Policy is overbroad because the goal of retention could be pursued through less rights impairing measures (such as continued or expanded use of Return-of-Service commitments) without excluding all IMGs without Ontario high school education from the First Iteration. Finally, the applicants submit that the New Policy is grossly disproportionate because the serious harm to IMGs' careers bears no reasonable relationship to any marginal or speculative gain in retention rates.

ii. Irreparable Harm

[41] As noted earlier, the record discloses that 92% of residency positions in Ontario are filled in the First Iteration. The positions remaining in the

Second Iteration are typically rural family medicine or generalist northern posts. Even there, the number of candidates exceeds the number of positions. Limiting the applicants to the Second Iteration therefore results in loss of a meaningful opportunity to match, at least a one-year delay in starting postgraduate training; and a real risk of never matching at all.

[42] The Respondents rely on *Shrieves v British Columbia (Attorney General)*,[11] for the proposition that the Applicants "must adduce clear and non-speculative evidence that irreparable harm will follow if the application is denied."[12] They say any evidence of harm here is speculative because we do not and cannot know the results of the match for the Applicants given that the match has not yet occurred and because there is no evidence about the Applicants' chances of success in the match because there is no evidence about other candidates. The thrust of the argument is that if superior candidates in the pool when residencies, the Applicants have not suffered harm from a *Charter* breach but have simply lost out to superior candidates. That would be a more persuasive argument if the Applicants were allowed to compete with those other candidates rather than being excluded from the competition because of where they attended high school.

[11] *Shrieves v British Columbia (Attorney General),* 2024 BCSC 889
[12] *Shrieves v British Columbia (Attorney General),* 2024 BCSC 889

[43] The Respondents further submit that loss of an opportunity to obtain a residency position is not irreparable harm and is harm that can be compensated for in damages. They say the harms are essentially economic in nature. There is, however, a considerable line of authority holding that a loss of professional opportunity constitutes irreparable harm for the purposes of an injunction.

[44] In *Amdiss v. University of Ottawa*, [13] the court concluded that the withdrawal of and admission to medical school amounted to irreparable harm "considering the personal impact on her and her personal plans and expectations and the inadequacy of monetary damages".[14]

[45] Those observations are equally apt here. The Applicants have spent a large part of their lives developing expertise. At least one was invited to come to Canada because of that expertise. Both have invested in the province. They have given birth to children here, have made homes here, have committed to the rules they were told they had to follow only to have the rules changed on them at the eleventh hour in a way which, practically speaking, deprives them of the ability to pursue their already proven expertise in vascular surgery and oncology; all because they did not attend

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[13] See for example: *Amdiss v. University of Ottawa, See also: Burke v. Cape Breton (Regional Municipality)* 2011 CarswellNS 260, 2011 NSSC 169, [2011] N.S.J. No. 220, 201 A.C.W.S. (3d) 1043, 23 Admin. L.R. (5th) 34, 302 N.S.R. (2d) 297, 83 M.P.L.R. (4th) 256, 955 A.P.R. 297

[14] *Amdiss v. University of Ottawa*, 2010 ONSC 4738 at para. 31.

two years of high school in Ontario. To deprive someone even of the chance to pursue that specialization because of a requirement which, on its face appears to be irrelevant to the issue at hand, strikes me as constituting irreparable harm. It is harm that goes to a person's entire life plan and sense of self based on an indelible characteristic which is seemingly irrelevant to the issue at hand.

[46] In *Injunctions and Specific Performance*,[15] former appellate Justice Sharpe observes that "it has been held that courts should avoid taking a narrow view of irreparable harm. The concept is not to be restricted to market loss or damage to business reputation and may include harm in the form of administrative disruption and inconvenience…"[16]

[47] The Supreme Court of Canada reflected this approach in *RJR-MacDonald Inc.*[17] where it gave as examples of irreparable harm a party being put out of business, permanent market loss or a permanent loss of natural resources.[18] Those are all closely analogous to the concept of a person being deprived of the ability to pursue a particular career. If anything, evaluating the potential of an individual's medical career in Ontario before

[15] *Injunctions and Specific Performance* (Thomson Reuters, looseleaf,
[16] *Injunctions and Specific Performance* (Thomson Reuters, looseleaf, § 2:7.30
[17] *RJR-MacDonald Inc. v. Canada (Attorney General),* 1994 CanLII 117 (SCC), [1994] 1 SCR 311
[18] *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 at p. 405-406

the person has even met the prerequisites of practising as a physician is considerably more difficult than valuing the loss of a business, loss of market share or loss of natural resources; issues that courts value on a fairly regular basis.

[48] In view of the foregoing, I am satisfied that the Applicants have demonstrated that they will suffer irreparable harm if the New Policy is not enjoined.

iii. Balance of Convenience

[49] The balance of convenience branch of the test for an injunction requires the court to weigh the harm the respondents would face if the injunction were granted against the harm the applicants would face if the injunction were not granted.

[50] The Respondents submit that the balance of convenience favours them for five reasons:

(a) The presumption that offer our need government measures are in the public interest.

(b) Preservation of the status quo.

(c) Institutional competence.

(d) The highly compressed timetable and imperfect information on which the injunction is sought.

(e) Delay in seeking the injunction

I address each in turn below.

(a) Presumption in Favour of the Public Interest

[51] The Respondents submit that they benefit from a presumption that they are acting in the public interest. They rely heavily on the statement of Justices Sopinka and Cory in *RJR MacDonald* to the effect that:

> The test [for establishing irreparable harm to the public interest] will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.[19]

[52] The Respondents submit that the New Policy reflects an effort to ensure that medical residencies in Ontario are occupied by individuals with a long-standing connection to the province and who are more likely to remain in the province after their residency has been completed..

[19] *RJR-MacDonald Inc. v. Canada (Attorney General),* 1994 CanLII 117 (SCC), [1994] 1 SCR 311 at 346.

[53] The Respondents contend that they benefit from a presumption that they are acting in the public interest, as a result of which there is no duty on them to establish the beneficial impact of the policy at this stage.

[54] There are, however, several nuances to be teased out of the Respondents' position.

[55] First, the comments of Justices Sopinka and Corey in *RJR MacDonald* must be read in context. The comments arose in the context of a discussion about the degree to which a private applicant could rely on harm to the public interest, as opposed to harm to the applicant, when advancing their claim. The Applicants before me did advance arguments about the alleged harm that the New Policy would inflict on the healthcare system and thereby harm the public interest. I do not, however, base my decision on the effects of the New Policy to the healthcare system at large. I base my decision solely on the New Policy's apparent effects on the *Charter* rights of the Applicants and those who are similarly situated.

[56] Second, a few paragraphs after Justices Sopinka and Cory made the comments quoted in paragraph 51 above, they noted:

> One of the functions of the *Charter* is to provide individuals with a tool to challenge the existing order of things or status quo.

[57] This makes it clear that the earlier passage about the presumption of harm to the public interest when public authorities are restrained from implementing their desired policy is not intended to bar restraining orders. The *Charter* remains there to act as a guide for and restraint on state action. The presumption merely provides guidance about how the respective interests and harms alleged by the parties are to be weighed when considering the balance of convenience. One public interest is harmed when a democratically elected government's desired policy is restrained. That harm, however, must be balanced against the harm to individual *Charter* rights if the impugned policy infringes upon those rights. As noted earlier, the strength of an applicant's case with respect to the alleged breach of the *Charter* right figures in this balancing exercise.

[58] Third, the presumption that restraint on a government's action would cause irreparable harm to the public interest is just that; a presumption. Presumptions can be overcome with evidence to the contrary. The avowed public interest here is to have medical residencies taken by people who are more likely to remain in Ontario. The Applicants' record discloses that IMGs are no more likely to leave Ontario than CMG's. The Applicants themselves appear to have demonstrated a significant commitment to Ontario. Ontario can also enforce further commitments to the province by requiring medical residents to practice in Ontario or face financial penalties to compensate

Ontario for the cost of residency programs if the province does not obtain longer-term benefit from a particular physician.

(b) Preserving the Status Quo

[59] The Respondents submit that preserving the status quo is an element in granting injunctive relief and that the status quo is the state of affairs that prevailed after the New Policy took effect.

[60] The difficulty with that argument is that the matching program for 2026 began before October 8. Residents were able to submit applications as of September 10, 2026. The New Policy therefore introduced a new state of affairs midway through the process. In those circumstances, the appropriate status quo, in my view, is the one which prevailed before the New Policy changed the rules. Indeed, if the status quo to be preserved is that which was introduced by an impugned policy, it would by definition be impossible to obtain an interlocutory injunction to restrain any offending conduct because the offending conduct amounts to the status quo. This would only encourage parties to take quick unilateral action to create a new status quo before anyone could object. This would allow form to overwhelm substance.

(c) Institutional Competence

[61] The Respondents submit that the application has the court involved in matters far beyond its institutional competence. Their argument is summarized as follows: The New Policy is merely an example of the myriad of difficult choices governments are required to make in allocating limited resources. Any policy choice will, in the words of Respondents' counsel, have "winners and losers." Who wins and who loses are inherently public policy decisions that should be reserved for government. The public interest is that residency positions are filled, not who fills them. Having courts interfere with the way the government runs the residency matching service has the court involved in matters far beyond its expertise.

[62] I agree with much of that argument. It is not the role of the court to determine who fills residency positions. Who fills residency positions is, at least at first instance a public policy decision to be made by government. Interfering in details of the residency matching service is beyond the court's expertise.

[63] It is nevertheless the role of the court to ensure that the policies that govern the selection of medical residencies, like any other government action, do not violate the *Charter*. Courts do have institutional competence with respect to the violation of *Charter* rights.

[64] As noted earlier, the Applicants have made out a strong *prima facie* case that the New Policy results in breaches of at least two sections of the

Charter. The respondent has provided no persuasive rebuttal to that. Indeed, the Respondents have made a deliberate choice not to engage on the substantive merits of the alleged *Charter* breaches but to rely on irreparable harm and the balance of convenience.

[65] It cannot be a complete answer to an alleged breach of *Charter* rights for a government to say the alleged breaches arise in an area in which courts have no institutional competence. That would eliminate almost all *Charter* challenges except perhaps those that arise in the criminal law context. *Charter* challenges by definition relate to government action in the administration of public functions and in making policy choices. Courts have no institutional competence in the majority of those public functions or policy issues. Yet society has nevertheless called on courts to determine whether those government actions breach *Charter* rights. Although courts may not have expertise in the mechanics of the specific policy in question, they do have expertise in assessing compliance with the *Charter* and have a number of safeguards in place through the appeals process to ensure that no one judge's view prevails unchecked.

(d) Compressed Timeline and Imperfect Information

[66] The Respondents submit that it would be inappropriate for the court to intervene because it is being asked to do so on a highly compressed

timeline with imperfect information. Those concerns would, however, appear to lie on the Respondents' shoulders. It is the Respondents who changed the policy after applications for the 2026 residency program had already opened up.

[67] The Respondents have an entire public service who assists in the development and analysis of policy and has access to statistical evidence on which to base policies. One might think that it would be easier for the Respondents to explain the New Policy in short order and deliver persuasive, data based background information to support it, than it would be for two immigrant Applicants to deliver a record challenging the policy. Yet, as already noted, the Respondents made the strategic decision not to engage on the merits. To the extent the record is less than perfect, that is the product of the Respondents' conscious decision.

(e) Delay in Bringing the Application

[68] The Respondents further submit that the Applicants delayed bringing this application because the policy was publicly announced on October 8, 2025 but the motion was not heard until December 1, 2025.

[69] The Applicants have produced a timeline of the steps relating to this application in response to the allegation of delay. I am satisfied that the Applicants moved with haste throughout.

[70] The timeline discloses the following: As of October 9, various individuals began contacting leadership in medical schools to discuss the policy. On October 9, medical leadership indicated that they were reviewing the policy, were considering potential responses and would organize a town hall meeting in the near future to discuss those responses. As of October 15, various groups were seeking to meet with the Ontario Faculty of Medicine Deans to determine whether the universities would contest the New Policy. Efforts were also being made to determine the source and the reason for the New Policy. By October 27, members of the IMG pool met with counsel. Scheduling was complicated because the pool members were practising in various clinical programs and were not free to meet counsel at will. Some of the potential applicants backed out for fear of reprisal . One of the initial potential applicants was hospitalized to receive end-of-life care as a result of an aggressive cancer. On November 6, 2025 current Applicant's counsel agreed to accept the retainer on a *pro bono* basis.

[71] An application was initially commenced in the Divisional Court as a review of government action. The parties appeared before my colleague Justice S. O'Brien sitting as a single judge of the Divisional Court on November 24, 2025 at a case conference. By that time the Respondents were fully aware that the policy was being challenged as a breach of sections 6, seven and 15 of the *Charter*. At the case conference on November 24, 2025 Justice O'Brien expressed concerns that the application may not be properly before

the Divisional Court and that it should more properly be before the Superior Court. Justice O'Brien set a hearing date before her on November 27 at which point she granted an interim interim injunction to extend the timeline for applications until 5 PM on December 4, 2025.

[72] After Justice O'Brien expressed concerns of the case conference on November 24 that the Divisional Court may not have jurisdiction, the Applicants commenced this application in the Superior Court on November 25. A hearing was held on December 1, 2025.

[73] That to me reflects an applicant group that is moving with speed in challenging circumstances. I do not fault the applicant group for initially applying to the Divisional Court. The distinction between Divisional Court and Superior Court when dealing with review of government action can be complex and nuanced; all the more so when one is acting in a situation of urgency under tight timelines. I have no doubt that the nature and urgency of the application put immense pressure on the applicant group and their counsel.

[74] In those circumstances I cannot find fault or delay with the Applicants or their counsel in their efforts to bring the application to the court.

V. Applications for Residencies Outside of Ontario

[75] At the hearing of December 1, 2025 the Respondents submitted that granting an interlocutory injunction would be unfair to those residency candidates who submitted applications on the assumption that the New Policy was in effect. They submitted an affidavit of Anantha Soogoor, a Canadian citizen who moved to Canada in grade 7, who attended high school in Ontario and is completing her medical degree in the United States. Ms. Soogoor explains in her affidavit that under the old policy, she would have applied broadly for residency positions across Canada because of the competition for Ontario positions. When she learned about the New Policy she understood that there would be fewer people competing for the Ontario IMG positions, as a result of which she focused her applications on family medicine programs in Ontario and tailored her personal statement specifically to Ontario programs. As a result of her assumption that the New Policy was in place, she applied to positions in Ontario but to none in other provinces. According to her affidavit, Ms. Soogoor's strategy would have been different had she known that the old policy would remain in place.

[76] In an effort to accommodate candidates in Ms. Soogoor's position, I explored with counsel on December 1 whether I had the ability to extend the time by which IMG applicants for residency positions outside of Ontario could submit their applications in the event I granted the injunction. As a result of those discussions it appeared that it would be advisable to hear

evidence from representatives of CaRMS, the Council of Ontario Faculties of Medicine and the Association of Faculties of Medicine of Canada on that issue. I therefore continued the hearing on Thursday, December 4, 2025 to hear evidence from those organizations.

[77] Jeff Nesbitt, the Chief Executive Officer of CaRMS, testified that his organization could accommodate extended application deadlines from a technical perspective but that decisions about deadlines were really made by the medical faculties because it was their staff who had to review applications under tight timelines. The directional evidence from the representatives of Ontario and National Medical Faculties was that extended timelines would increase time pressure on Medical Faculties to review applications.

[78] Counsel for the Respondents and the Association of Faculties of Medicine of Canada argued that while I might have jurisdiction to order CaRMS to extend the date to accept applications for positions outside of Ontario, I had no jurisdiction to order Faculties outside of Ontario to review or accept those applications.. The noted that no one from those other Faculties of Medicine was before the court. In response to that, CaRMS indicated that it would be reluctant to accept applications and fees from candidates without an assurance that Medical Faculties would actually review the applications.

[79] I considered whether it would be advisable to direct CaRMS to accept applications for residencies to other provinces until the deadline of December 8, 2025 at 5 PM and to invite medical schools in other provinces to review those applications rather than ordering them to do so. I have decided not to do so.

[80] The announcement of the New Policy after invitations to apply for residencies were open and the subsequent proceedings have caused considerable confusion. The deadline for applications was initially November 27, 2025. The Divisional Court extended that deadline for Ontario IMG's until December 4 at 5 PM. On December 1 I stayed enforcement of the New Policy until I released reasons on the interlocutory motion. The Divisional Court then held that it had no jurisdiction to entertain the application. While it may not be unduly complex for lawyers to follow those timelines, non-lawyers would find the toing and froing confusing. In addition, extending timelines creates logistical issues. The court must communicate its direction; the government must then direct CaRMS and Medical Faculties to do certain things. CaRMS and the Medical Faculties must then communicate those new timelines to candidates. Candidates must then submit applications. All of that is complex enough. Further complexity would be added if the court invited faculties of medicine outside of Ontario to accept further applications. Those Faculties would have to decide what to do, perhaps with the benefit of legal advice. Different

faculties may have different answers to the invitation. Each faculty would then need to communicate its individual decision to the candidate pool. All of this would be an invitation to further uncertainty and confusion.

[81] I have decided to take the simpler route and extend the timeline for applications only for Ontario IMG candidates.

[82] If there are candidates who limited their applications to Ontario residencies because they viewed their chances of matching under the New Policy to be so much greater that they no longer needed to apply for positions outside of Ontario, that is a decision and a risk assessment that they made. Excluding oneself voluntarily from potential matches is always a risky proposition; especially where, as here, the number of candidates exceeds the number of positions. Although I regret any potential harm or inconvenience that such candidates may suffer, those consequences are the product of the candidate's own risk analysis. Courts cannot protect people from their own decisions, other than in limited circumstances that do not apply here. Courts can, however, protect people from consequences that are imposed on them when the imposition and the consequences are contrary to law.

[83] There was some discussion at the continued hearing on December 4 about the date to which I should extend the application deadline if I were inclined to grant the injunction. At one point Applicants' counsel sought an extension

until 5 PM on December 8, 2025; at another point, he sought an extension until 5 PM on December 5, 2025.

[84] In my dispositive ruling, I granted the injunction and extended the deadline to apply for Ontario IMG positions to 5 PM on December 8, 2025.

[85] I chose the later date because of the logistical concerns outlined in paragraph 80 above. The dispositive ruling was released to counsel at 3:07 PM on December 4, 2025. The stages of sequential communication needed to put the ruling into effect made me concerned that requiring all of that to be done within a little over 24 hours would be too tight and would potentially risk people falling through the cracks. An extension until 5 PM on December 8 would diminish the chance of anyone falling through the cracks.

[86] Although I appreciate that my ruling may put greater pressure on Faculties of Medicine to review applications in a slightly shorter time frame, the evidence did appear clear that applications were not reviewed in a single sitting in any event and that nothing precluded Faculties of Medicine from reviewing immediately the applications of both CMG's and those IMGs that had completed two years of high school Ontario. As a result, I would expect the additional applications delivered between the dispositive ruling and 5 PM on December 8 to reflect a smaller number of applications than the Faculties were already able to review.

Conclusion and Nature of the Order

[87] As a result of the foregoing, I grant the application for an interlocutory order to restrain the application of the New Policy until the disposition of this application or further order of the court.

[88] In addition, I extend the deadline for the application of IMG residencies in Ontario to 5 PM on Monday, December 8, 2025.

[89] Given that the application still needs to proceed in a timely manner, I will make myself available for a case conference to set a timetable and obtain hearing dates in the event counsel are unable to arrive at a timetable themselves. Counsel are free to contact me if and when they require assistance.

[90] In closing I wish to thank all counsel, affiants and *viva voce* witnesses for their assistance in this matter. I appreciate that all were working under tight timelines and stressful circumstances. All acquitted themselves admirably.

Date: December 8, 2025

Koehnen J.