



FORM 1.1 – INDIVIDUAL COMPLAINT

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BC Human Rights Tribunal

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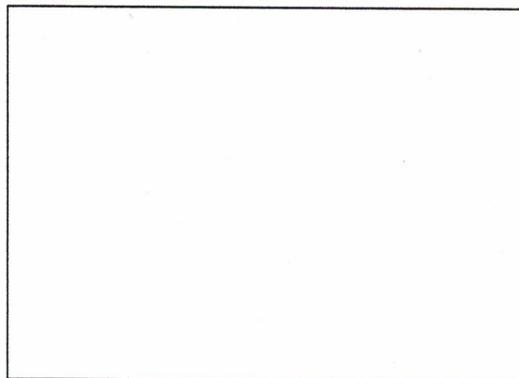
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Tribunal Stamp

GENERAL INSTRUCTIONS

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- Follow the instructions for each step
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Tel: 250-385-1221

www.thelawcentre.ca

YOUR INFORMATION

First Name: Navid	Last Name: Pooyan
Name of lawyer or other person who represents you in this complaint (if applicable):	
Mailing Address: [Redacted]	
[Redacted]	
Province: British Columbia	[Redacted]
<p>Purpose of collecting contact information: The Tribunal uses your contact information to process the complaint and conduct surveys to evaluate and improve its services. The Tribunal will give your mailing address to the other parties for the exchange of information and other documents. Your additional contact information will only be given to the other parties if you agree.</p> <p><input checked="" type="checkbox"/> Check here to tell the Tribunal not to disclose the additional contact information below to the Respondent.</p>	
Tel: ()	Fax: ()
[Redacted]	

Complainant #2

First Name: Farhad

Last Name: Barazandeh Noveyri

[Redacted]

Complainant #3

[Redacted]

Complainant #4

First Name: Shailendra

Last Name: Singh

[Redacted]

Complainant #5

First Name: Vahid

Last Name: Nilforushan

[Redacted]

Step 1: Name the Respondents

All the Respondents

Relationship to Complainants: The complainants must obtain an entry level job as resident physicians (called a residency position) in order to be qualified to be licensed for independent practice as physicians. The respondents are all involved in controlling and administering access to residency positions. The respondents, working together, have created a system of access to residency positions which furthers their own interests and discriminates against Canadian citizens and permanent residents who are international medical graduates (IMGs) such as the complainants. The respondents impose barriers to residency positions upon the complainants and other international medical graduates, which in most cases prevents them from becoming licensed for independent practice in medicine despite establishing knowledge, decision-making ability, and skills equivalent to a graduate of a Canadian medical school. An individual's competence does not determine qualification for entry level jobs as a resident physician in BC nor most of Canada. Access to residency training positions is determined by place of education which for immigrant physicians equates to place of origin with the intention of ensuring that all graduates of Canadian medical schools obtain jobs as resident physicians so they can become fully licensed physicians. This has the effect of excluding graduates of international medical schools. In addition, it has the effect of putting IMGs in a position where the Minister of Health can restrict them to becoming licensed only in underserved disciplines, and can force them to work in regions the Minister of Health directs for two to three years after they are fully licensed.

Respondent 1

Name: Her Majesty the Queen in the right of the Province of British Columbia as represented by the Minister of Health of British Columbia

Relationship to Complainants: The Minister of Health provides funding and arranges for Health authorities to employ resident physicians to provide the practical experience and training during residency training. The Minister of Health, together with the University of British Columbia, makes the rules and policy related to access to residency training which discriminate against and limit the opportunities of citizens and permanent residents of Canada who are international medical graduates (IMGs) including the complainants. In addition to limiting the number and types of residency positions for which IMGs can compete, should an IMG defy the odds and match to a residency position in the small set of positions designated for IMGs, the Minister of Health forces IMGs to sign a contract of indentured servitude called a "return of service agreement". Failure to sign this onerous agreement results in forfeiture of the residency position which results in forfeiture of the ability to be licensed as a physician. Upon completion of residency training and certification, the Minister of Health, relying on this contract which is signed under duress, takes steps to force these IMGs to work where directed

after they become certified and licensed for independent practice. The Minister of Health does not place similar restrictions and obligations on positions designated for graduates of Canadian or American medical schools (CMGs).

Mailing Address: 1001 Douglas St., Victoria, B.C. V8W 9J7

Respondent 2

Name: The University of British Columbia

Relationship to Complainants: The University of British Columbia administers residency training programs mandated by the College of Physicians and Surgeons of British Columbia. The University of British Columbia together with the Minister of Health makes the rules and policy which discriminate against and limit the opportunities of IMGs to access residency training, and hence the medical profession. IMGs are prohibited from competing for residency positions against CMGs, (with the exception of a few positions that are left over after the first iteration) for the purpose of ensuring that virtually all CMGs will receive residency positions and become fully licensed physicians.

Mailing Address: #240-6328 Memorial Road, Vancouver, B.C. V6T 1Z2

Respondent 3

Name: The Association of Faculties of Medicine of Canada

Relationship to Complainants: The Association of Faculties of Medicine of Canada is an association of all the university faculties of medicine in Canada. The Association of Faculties of Medicine of Canada develops policies and directs the individual university faculties of medicine in Canada and the Ministries of Health of the provinces of Canada to adopt rules and policies related to residency training which will ensure that graduates of Canadian medical schools will get residency training positions to enable them to become fully licensed physicians which rules and policies have the effect of excluding most IMGs from becoming fully licensed physicians.

Mailing Address: 2733 Lancaster Road, Suite 100, Ottawa, Ontario, K1B 0A9

Respondent 4

Name: Canadian Resident Matching Service--CARMS

Relationship to Complainants: The Canadian Resident Matching Service operates the process which matches the residency positions available throughout Canada to medical graduates who are citizens and permanent residents of Canada. Residency positions

(entry level jobs to the medical profession) are only available for Canadians through the CaRMS Match. A contract between CaRMS and the Association of Faculties of Medicine of Canada governs the operation of the CaRMS Match. Each province establishes its own rules and criteria which apply to eligibility for residency positions in that province, and sends these to CaRMS which posts them. CaRMS administers the residency positions in British Columbia in accordance with the rules and criteria that the University of British Columbia and the Minister of Health establish. The objective of the rules and criteria that British Columbia to CaRMS for the residency positions in British Columbia are to segregate CMGs and IMGs into separate, unequal streams of competition which discriminate against IMGs so that CMGs will get the residency positions that they require to become fully licensed physicians, and so that IMGs will be limited to becoming physicians in underserved disciplines and will have to work where the Minister directs them to work for a period of two to three years after they become fully licensed.

Mailing Address: 171 Nepean Street, Suite 300, Ottawa, Ontario, K2P 0B4

Respondent 5

The College of Physicians and Surgeons of British Columbia

Relationship to Complainants: The College of Physicians and Surgeons of British Columbia is the regulating authority of the medical profession. The College of Physicians and Surgeons of British Columbia mandates postgraduate training as a prerequisite to full licensure. It sets various requirements that a person must meet to be registered as a resident physician one of which is enrollment in a residency training program through UBC. The College has unlawfully delegated the authority to regulate access to the profession to UBC Faculty of Medicine which has used that position in collaboration with the Minister of Health to further their respective interests by privileging graduates of Canadian medical schools and discriminating against international medical graduates such as the complainants. The College uses and allows the administrators of residency training to use access to residency positions for improper purposes which are not authorized or sanctioned by the legislation which authorizes regulation of the medical profession. The College of Physicians and Surgeons has adopted the discriminatory rules and policies and/or allowed postgraduate medical training to be used to discriminate against and to subjugate international medical graduates such as the complainants, contrary to its legislative mandate and contrary to its responsibility as gatekeeper of the medical profession.

Mailing Address: #300-669 Howe Street, Vancouver, B.C. V6C 0B4

Step 2: Part A. Areas of Discrimination

Respondents 1, 2, 3, 4: Her Majesty the Queen in the right of the Province of British Columbia as represented by the Minister of Health of British Columbia (hereinafter referred to as the “Ministry”), University of British Columbia (hereinafter referred to as “UBC”), the Association of Faculties of Medicine of Canada (hereinafter referred to as “AFMC”), and the Canadian Residency Matching Service (hereinafter referred to as “CaRMS”) have discriminated against the Complainants in the area of:

Section 8, Accommodation, service and facility; and
Section 13, Employment.

Respondent 5: The College of Physicians and Surgeons of British Columbia (hereinafter referred to as the “College”) has discriminated against the Complainants in the area of:

Section 8, Accommodation, service and facility;
Section 13, Employment; and
Section 14, Occupational association.

Step 2: Part B. Grounds of Discrimination

Respondents 1, 2, 3, 4, and 5: Grounds of Discrimination: Place of Origin, Race, Colour, and Age

Details: The respondents, individually and/or acting in consortium with one or more or all of the other respondents regulate and control access to residency positions which are the mandatory entry level jobs to the medical profession. Thus, the respondents individually or acting in consortium with one or more or all of the other respondents regulate and control access to the medical profession.

The College is the only body authorized by legislation to regulate access to the medical profession. It mandates postgraduate medical training called residency training as a pre-requisite to full licensure.

The College recognizes the degrees of most immigrant physicians. However, the College does not recognize the postgraduate medical training of the place of origin of the complainants and of most other countries in the world. The College requires that the complainants obtain residency training positions with UBC as a condition of licensing them as resident physicians. The respondents, acting in consortium, have established a segregated system of access to residency training based on place of education. The system is designed to (a) ensure that Canadian citizens and permanent residents who graduate from medical schools located in Canada are virtually guaranteed residency training positions, and thus full licensure, and (b) to provide the Ministry with an oppressed group of Canadians who have no choice but to work in the disciplines that the Ministry limits them to and to sign onerous return of service contracts. This is to the detriment and exclusion of physicians, who are Canadian citizens or permanent residents, who immigrated from other countries having already

obtained their medical degree and training in their place of origin prior to immigrating to Canada. Physicians who immigrate to Canada have generally obtained their medical degree and training in their country of origin.

Another level of exclusion implemented by the respondents relates to date of graduation with recent graduates being selected over experienced physicians. Just as place of education is a proxy for place of origin, date of graduation is a proxy for age.

Step 3: Respondents' Conduct

1. What did the Respondents do?

Context.

The College is the regulatory authority of access to the medical profession.

The College has four fundamental requirements to be licensed for independent practice in medicine:

- a. A medical degree from a recognized medical school;
- b. Postgraduate medical training in a recognized program;
- c. Examinations and Certification by the applicable national College; and
- d. The College's final review of credentials and character.

This Complaint involves the first two requirements: medical degree and postgraduate medical training.

Medical degree: The College requires a medical degree from a medical school on the WHO/FAIMER (World Health Organization/ Foundation for Advancement of International Medical Education and Research) medical directory lists.

All the Complainants have a medical degree from a medical school on the WHO/FAIMER medical directory list.

Postgraduate medical training. The College requires medical graduates to work as resident physicians for a period of between 2 and 7 years, depending on the medical discipline, to ensure that in addition to their academic degree, they have the necessary practical experience to practice medicine safely before being fully licensed.

The College does not recognize all postgraduate medical training. The College requires a medical graduate to have completed postgraduate medical training in a program or country recognized by the College of Family Physicians of Canada (CFPC) in the case of physicians seeking registration as Family Physicians; or by the Royal College of Physicians and Surgeons of Canada (RCPSC) in the case of physicians seeking registration as specialists.

The CFPC and the RCPSC recognize training programs in Canada and programs in at most 9 other countries. Postgraduate medical training of physicians from all other countries in the world is not recognized by the College.

Thus, with few exceptions, immigrant physicians from most countries must work as resident physicians to be eligible to be licensed for independent practice in Family Medicine or as a specialist by the College.

To work as resident physicians, the College under section 25(2) of its bylaws requires immigrant physicians to be enrolled in a postgraduate medical training program at UBC.

In British Columbia residency training positions are mandated by the College, funded by the Ministry of Health, and administered by the Ministry of Health and UBC.

The qualifications required to apply for a residency physician position at UBC and to be registered as a resident physician by the College depends on who is applying:

- a. For a CMG all that is needed is anticipated graduation before July 1 when residency jobs begin and passing an English fluency examination mandated by the College if the CMG's medical education was in French.
- b. For an international medical graduate who is a foreigner (not a citizen or permanent resident of Canada) with a sponsor from one of the Gulf States who pays the university approximately \$100,000 per year of residency as a fee (called a visa trainee), all that is needed is (a) graduation from a medical school on the WHO/FAIMER list before July 1 when residency jobs begin, plus (b) passing an English fluency examination mandated by the College.

Both the College and the federal government (immigration department) consider medical degrees from schools on the WHO/FAIMER list as "equivalent to that of a Canadian Medical Doctorate (MD (Medical Doctorate))" (Bulletin 230).

- c. For an international medical graduate (IMG) who is a citizen or permanent resident of Canada substantially more is needed: (a) graduation from a medical school on the WHO/FAIMER list before July 1 when residency jobs begin; (b) passing an English fluency examination mandated by the College if (s)he was educated in a country where the language spoken by the public is not English; (c) passing the Medical Council of Canada Qualifying Examination Part 1 (called the MCCQE1) which is designed to demonstrate whether one has the medical knowledge and decision-making ability expected of a graduate of a Canadian medical school; (d) passing the National Assessment Collaboration Objective Structured Clinical Examination (NAC OSCE) which examination is designed to demonstrate that one has the clinical skills expected of a graduate of Canadian medical school ready to enter residency training; and (e) taking the Clinical Assessment Program (called the CAP) which is not a program as the name suggests but an interview of the nature conducted during the CaRMS Match

competition. The CAP is available in limited numbers and was instituted for the purpose of controlling the number of IMGs who are citizens and permanent residents of Canada who can apply for residency positions in British Columbia.

Despite passing two examinations designed to prove equivalency to a graduate of a Canadian medical school, and despite a degree from a school on the FAIMER/WHO list being considered “equivalent to a Canadian Medical Doctorate”, immigrant physicians like the complainants who seek residency positions so they can become licensed for independent practice, face additional discriminatory limitations which prohibit them from competing for Ministry funded residency positions on the basis of competence and which severely limit their opportunities to become licensed physicians with almost zero chance of being licensed for any discipline outside family medicine, general internal medicine, general psychiatry, and general pediatrics as described below.

Doctors Pooyan, Barazandeh Noveyri, [REDACTED] and Nilforushan have already passed the examinations and assessments required of them to demonstrate they have the medical knowledge, decision-making ability, and clinical skills expected of a graduate from a Canadian medical school.

This Complaint relates to systemic discriminatory barriers imposed on physicians who immigrate to Canada from all but a few countries preventing the vast majority of immigrants who are physicians licensed in their country of origin from being licensed to practice medicine in British Columbia.

Background.

Prior to 1993, the first level of postgraduate training was called “interning”. Interning was administered by teaching hospitals. All citizens and permanent residents of Canada who met the College’s standards (recognized degree, English fluency, and Medical Council of Canada Evaluating Examination) were eligible to compete for postgraduate training positions, regardless of whether they were immigrant physicians who graduated medical school in their country of origin or they graduated from a Canadian or American medical school. Immigrant physicians were free to compete for postgraduate positions on the basis of individual knowledge, skills, and character relevant to the practice of medicine. The success of immigrant physicians in competition was reduced by the difficulties they faced obtaining local medical references and by prejudice prevalent against immigrant physicians who trained outside English-Speaking Commonwealth countries.

In 1993, interning was abolished across Canada. The College appointed UBC Faculty of Medicine as the only entity in British Columbia which could administer postgraduate medical training. Other provincial and territorial Colleges across Canada, appointed the Faculties of Medicine of provincial universities as the sole administrators of postgraduate medical training as well. Thus, the Faculties of Medicine across Canada

came into a position where they were given by the provincial and territorial Colleges a monopoly over administration of postgraduate medical training.

As soon as the Faculties of Medicine of the universities came into a position where they could select who would have access to residency training positions, they through their association (now called the AFMC) passed a resolution to protect all residency positions in the first iteration of the CaRMS Match for graduates of Canadian and American medical schools. International medical graduates could only compete for the residency positions in the second iteration for positions left unfilled after most Canadian and American medical school graduates had been matched to residency positions in the first iteration. This policy and action:

- a. Excluded the majority of immigrant physicians from a fair opportunity to compete for residency positions, and
- b. amounted to regulation of the profession by unauthorized entities who used their position, not for ensuring competence, but to further their own interests by creating almost insurmountable barriers to immigrant physicians becoming licensed in the medical profession.

The College did nothing to intervene or otherwise address this abuse of position and discrimination against immigrant physicians, nor the barriers imposed on immigrant physicians to licensure and practice in medicine.

In 2006, in a pro-active response to a claim by an immigrant physician challenging his exclusion from all but the residency training positions leftover for the second iteration, the AFMC recommended that some residency training positions be made available in the first iteration to IMGs.

This led to the framework for the current segregated system of access to residency training jobs whereby the graduates of Canadian medical schools are protected from competition against graduates of international medical schools for jobs as resident physicians. The object of the segregation from the university Faculties of Medicine perspective, is to virtually guarantee that graduates of Canadian medical schools obtain residency training jobs which enables them to become fully licensed in the medical profession. This objective is explicitly set out in the AFMC Resolution which is posted on the CaRMS website under the eligibility for the CaRMS Match section.

As some graduates of Canadian medical schools did not get residency training positions despite the protections and privileges they were afforded, in 2018, the AFMC began initiatives urging others involved in postgraduate medical education to find ways to ensure that every graduate of a Canadian medical school received a residency training job so they could become licensed. The measures taken by the respondents individually or collaboratively to increase barriers to international medical graduates beginning with the 2018 CaRMS Match have resulted in greater reduction of access to residency positions and increased harm to immigrant physicians.

Description of the segregated system of access to residency training in British Columbia.

Access to entry level jobs in medicine, i.e., residency positions, are segregated by place of education into two streams: (a) the CMG Stream, and (b) the IMG Stream.

“CMG” stands for Canadian Medical Graduate but is a misnomer in that it excludes Canadians who graduated from medical schools outside of Canada or the United States, and includes Canadians who graduated from medical schools located in the United States excluding osteopathic medical schools.

“IMG” stands for International Medical Graduate and includes all graduates of medical schools located outside of Canada or the United States but includes graduates of osteopathic medical schools in the United States. Almost all, if not all, immigrant physicians are IMGs.

CMGs must compete in the CMG Stream in the first iteration. IMGs must compete in the IMG Stream in the first iteration. In British Columbia, after the first iteration, the unfilled positions from both streams go into the second iteration where both CMGs and IMGs are allowed to compete for any of the unfilled positions.

Since the AFMC initiatives in 2018 to further reduce the number of CMGs who do not match to a residency position, Alberta, Manitoba, and Ontario have extended the segregation of CMGs and IMGs into the second iteration, not allowing IMGs to compete against CMGs for positions left over from the CMG stream.

British Columbia did not adopt the continued segregation into the second iteration. The second iteration in British Columbia in recent years has not been much of an opportunity for IMGs. One IMG has matched in the second iteration in British Columbia in 2017 and none matched in the 2018 and the 2019 Match. The reason is not transparent.

The two streams offer vastly different opportunities. A comparison of the CMG Stream designated for CMGs and IMG Stream designated for IMGs follows.

CMG Stream first iteration 2020

1. Eligibility for first iteration of CMG Stream:
 - i. Must be poised to be or be a graduate of a Canadian or American medical school which is LCME accredited;
 - ii. Must have no prior residency training in Canada or the USA;
 - iii. Must be a citizen or permanent resident of Canada;
 - iv. CMGs do not have to take the MCCQE1 until after the CaRMS Match where they have secured their residency positions. CMGs do not have to take the NAC OSCE at any time. CMGs only have to take English fluency examinations if they were educated in the French language in Quebec.

2. Positions Available in CMG Stream:
 - i. 294 residency positions in BC. (BC educates a maximum of 288 students each year so there are more residency positions in the CMG Stream in British Columbia than there are medical students expected to graduate.)
 - ii. Positions are available in all the fundamental specialties (also called base specialties) which allows a CMG to have the opportunity to become any one of the more than 70 medical disciplines (including sub-specialties) recognized by the College.
 - iii. Positions in the CMG Stream are not associated with “return of service agreements”. CMGs have the opportunity to access sub-specialization training, and to practice if, when, and where they choose.

IMG Stream first iteration 2020

3. Eligibility for the first iteration in the IMG Stream
 - i. Must be poised to be or be a graduate of a medical school on the FAIMER/WHO list of recognized international medical schools;
 - ii. Must have no prior residency training in Canada or the USA;
 - iii. Must be a citizen or permanent resident of Canada;
 - iv. Must pass the MCCQE1 (Medical Council of Canada Qualifying Examination Part 1) which in the words of the Medical Council of Canada is designed to establish that a medical graduate has “the critical medical knowledge and clinical decision-making ability of a candidate at a level expected of a medical student who is completing his or her medical degree in Canada”.
Without an exceptional score in the MCCQE1, IMGs will generally not be invited for an interview ending any prospect of obtaining a residency position.
[By contrast CMGs take the MCCQE1 after the CaRMS Match is over and after their residency positions are secured. Approximately 140 CMGs fail the MCCQE1 each year. Despite failure, CMGs are allowed to keep their residency positions and are free to work as resident physicians. CMGs are only required to pass this MCCQE1 before they can be licensed for independent practice.];
 - v. Must pass the NAC OSCE (National Assessment Collaboration Objective Structured Clinical Examination) which in the words of the Medical Council of Canada is “designed to evaluate an IMG’s clinical skill at the level of a Canadian medical graduate entering postgraduate training.”
Without an exceptional score in the NAC OSCE, IMGs will generally not get an interview and will be eliminated from competition.
[CMGs do not take this examination.];
 - vi. Must get access to one of the limited number of CAPs (clinical assessment program). This is a half day “assessment” in the form of an interview which is akin to interviews in the CaRMS Match process. The CAP was implemented, effective the 2018 CaRMS Match, for the

purpose of reducing the number of IMGs who can apply to British Columbia. There are only 300 CAP positions available for more than 1000 qualified IMGs who typically applied to British Columbia who have passed the MCCQE1 and NAC OSCE with half of those positions being protected for residents of British Columbia.

[By contrast, there are no restrictions on the number of CMGs who can apply to British Columbia for residency positions. CMGs from any province are free to compete in any province for residency positions without restriction.];

- vii. Must pass an English fluency examination called the IELTS if the medical school from which they graduated is located in a country where the primary language of the public is not English, even if the language of instruction was English. This examination must be re-taken each 2 years;
- viii. If an IMG matches to a residency position in British Columbia (s)he must sign effectively an indentured servitude contract called a “return of service agreement”. Failure to sign the agreement, will result in forfeiture of the residency position. The contract requires that within 3 months of becoming fully licensed, an IMG must work for a specified time (2 or 3 years) in a clinic in a community identified by the Ministry. IMGs are not allowed to set up an independent practice in the community identified for their return of service.

The terms of the return of service agreement combined with the rules and practice of selection for fellowships for sub-specialty training prevent an IMG physician from becoming a sub-specialist.

In the event of failure to work where the Ministry directs, the IMG must pay an onerous penalty or “damages” in the following sums if (s)he signed the contract in 2017 as Dr. Pooyan did:

- Family Medicine--\$229,073
- Internal Medicine--\$458,169
- Pediatrics—\$458,169
- Psychiatry--\$572,717

If (s)he signed the contract in 2018 or subsequently the penalty is even more onerous:

- Family Medicine-- \$480,375
- Internal Medicine--\$835,085
- Pediatrics--\$796,085
- Psychiatry--\$897,581.

These sums include paying back wages and benefits received under the collective agreement for working up to 80 hours per week; paying one year’s wages of a licensed physician; paying the cost of training another IMG; and other alleged “damages” including a claim that should

the IMG not work as directed, obtain a billing number and practice in British Columbia “in breach of this Agreement” that any MSP billings in relation to those health services, will give rise to further damages.

4. Positions Available in the IMG Stream

- i. 58 residency positions in BC for typically approximately 1000 IMG applicants before the mandatory CAP.
- ii. Of the 58 positions, 52 residency positions are in Family Medicine; 1 residency position is in pediatrics; 2 residency positions are in psychiatry; and 3 residency positions in internal medicine. Thus, out of the 29 base specialties available to CMGs, IMGs have the opportunity to access only 4.
- iii. Because of the restrictions imposed on IMG positions, and the combination of return of service contract obligations and the timing and policy for applications to sub-specialize, IMGs have no realistic opportunity to access sub-specialization. This excludes immigrant physicians from all but 4 of the more than 70 College recognized medical disciplines.
- iv. All IMG Stream positions are associated with return of service contracts.

National Data

Although each province sets its own eligibility criteria to participate in the CaRMS Match and determines the number of positions and type of positions, the CaRMS Match is national. Canadian citizens and permanent residents can only obtain a residency position by going through the CaRMS Match, although some CMGs who do not match, get residency positions after the Match. Only between 40% and 60% of the medical students UBC graduates, stay in British Columbia to do residency training in any given year.

A comparison of the opportunities available to IMGs versus graduates of Canadian medical schools at the national level follows.

In the 2020 CaRMS Match there were more residency positions in Canada than there were graduates of Canadian medical schools in the CMG Stream. There were 3011 Canadian school—same and prior year-- graduates competing for 3072 positions. This is an increase of 52 residency positions available to CMGs compared to 2019. In addition, there were 60 graduates from American schools competing in this stream.

In the 2020 CaRMS Match there were far fewer residency positions in the IMG Stream in Canada than there were IMG applicants. There were 1822 IMG applicants who had passed the MCCQE1 and NAC OSCE and thus proved they had the medical knowledge, decision-making ability and clinical skills expected of a graduate of a Canadian medical school. There were 325 positions allocated to the IMG Stream in all of Canada. This was a reduction of one position compared to 2019.

While CMGs under the segregated system can compete as of right for any position available in the CMG Stream in any province, IMGs cannot. Some provinces will only

allow IMGs who are resident in that province to compete for residency positions in that province. Some provinces, like BC, impose an extra “assessment” to limit the number of IMGs who can apply, by making the assessment mandatory but only making a limited number of assessments available so that the majority of IMGs, even though they have passed the MCCQE1 and NAC OSCE proving equivalence, cannot get access to the assessment and thus cannot “qualify” for the CaRMS Match for residency positions offered in BC. Some universities require an elective to have been taken in their school to be eligible for residency positions at their university. To be eligible for electives in Canada, one has to be a medical student, which immigrant physicians are not. Further, unless one has demonstrated an interest via participation and experience in the discipline applied for, it is unlikely one’s application will be considered. As a result, the actual number of positions an immigrant physician actually has open to him/her in all of Canada is a very small fraction of 325.

Most residency positions available to international medical school graduates in Canada are in Family Medicine. The specialty positions available in the IMG Stream in most provinces are generally in internal medicine and psychiatry. The high paying disciplines like ophthalmology, dermatology, and surgery are not generally available to international medical school graduates.

The Match rate of CMGs and IMGs to residency jobs is substantially different. Of the 1822 IMG applicants across Canada, 1404 (77%) did not match to a residency position after the Match was finished in 2020. The vast majority of physicians who immigrate from countries, other than 9 countries where the national colleges recognize their postgraduate training, never become licensed physicians in Canada due to the government-created and endorsed discrimination against IMGs.

Of 2882 current year graduates of Canadian medical school applicants across Canada only 25 (0.9%) were did not match to a residency position after the Match was finished in 2020. All UBC current year graduates matched to a residency position after the Match was finished in 2020. Of all graduates of Canadian medical school applicants (current year and prior year), 56 (1.9%) did not match to a residency position after the second iteration in 2020. CaRMS reports that ultimately more than 99% of CMGs match to residency positions such that less than 1% of CMGs fail to become fully licensed physicians.

Doctors Barazandeh Noveyri, [REDACTED] and Nilforushan have repeatedly applied for residency training positions, but have not been able to overcome the discriminatory barriers. Doctor Singh who is a general surgeon with a sub-specialty in oncology from India, has not applied to CaRMS to date as the costs are significant and he has no realistic chance of matching to a residency position in surgery under the current system.

Dr. Pooyan did match to a residency position in Family Medicine (which is a two- or three-year program) in 2017. CMGs have the opportunity to take a third year to increase their knowledge in a particular field. IMGs are denied this opportunity. Dr. Pooyan's goal, had he not been thwarted because he is an IMG, would have been to obtain a year of enhanced training in Emergency Medicine or Sports Medicine.

The effect of the segregated two-stream system is to prevent IMGs from competing against CMGs for the majority of residency training jobs on the basis of skills, knowledge, and characteristics relevant to working as a resident physician and to all but guarantee that CMGs, even those who fail the MCCQE1, the right to obtain residency training and become fully licensed practitioners, and conversely to ensure that the vast majority of immigrant physicians do not get residency positions and never become licensed to practice medicine. The immigrant physicians who do obtain residency training positions, are restricted to practice in the general medical disciplines. This is unauthorized discrimination, a restraint of trade, and oppressive.

Return of Service Contracts

Return of Service Contracts are effectively contracts of indentured servitude.

The opportunity to access education, training, and professional entry level training jobs are social benefits, services, and/or opportunities provided by the government of British Columbia to all its citizens. The respondents have created a system which entitles Canadian citizens and permanent residents who graduated from Canadian and American medical schools, "free" entry to residency training positions which are entry level jobs to the medical profession. However, it is not "free" for Canadian citizens and permanent residents who graduated from medical schools outside these two countries which means it is not "free" for immigrant physicians like the complainants who almost inevitably graduated from medical school and trained in their country of origin. The system created by the respondents allows the Ministry to impose a "debt" or "opportunity cost" upon physicians who are Canadian citizens and permanent residents who immigrated to Canada if they overcome the barriers outlined above and match to a residency position which provides the practical work experience and training necessary to become licensed for independent practice in medicine. The only way that this "debt" or "opportunity cost" can be paid is if the immigrant physician who has matched to a residency position signs a "return of service" contract.

Immigrant physicians who seek to become licensed in their profession in British Columbia are vulnerable. If they are fortunate enough to match to a residency position, they have no reasonable alternative but to sign the return of service contract: they either sign the agreement or forfeit their residency position. Forfeiting their residency position means they have to forfeit becoming licensed in their profession in which they were trained in their country of origin.

There is no legitimate consideration provided by the Ministry for the obligations imposed under the return of service contract on the physician. The Ministry coerces signatures on these return of service contracts by exploiting its power position and the vulnerable situation of immigrant physicians like Dr. Pooyan. Dr. Pooyan signed the return of service contract under duress. He signed because the alternative was to be deprived of the profession for which he was educated, trained, and practiced in his country of origin. The imposition of the return of service contract upon IMGs and the terms of the contract are unconscionable, contrary to public policy including an illegal work-around the provisions of the Employment Standards Act, and amount to a restraint of trade.

Residency training positions are not a continuation of academic education. They are jobs. Resident physicians are an integral and necessary part of the provision of health care services in British Columbia. Resident physicians work up to 80 hours per week. Their compensation for this work is determined by a negotiation process between the Health Employers Association of BC and the Professional Association of Residents of British Columbia which culminates in a collective agreement.

The premise of imposing the return of service contracts on IMGs, according to UBC and the Ministry is to provide physicians to underserved communities in British Columbia. The return of service contract provides that within three months of becoming certified the physician must secure employment with a clinic on the list the Ministry provides to the IMG.

The list Dr. Pooyan was provided did not include the community of Coquitlam where he and his wife live. The communities to which Dr. Pooyan was sent were not underserved, especially in comparison to Coquitlam. In Coquitlam there are at least 30 unfilled family physician positions. There are 5,324 unattached patients in Coquitlam itself and 42,310 unattached patients in the TriCities and New Westminster area. The shortage by average physician to population ratio is 1:1400. None of the places on the list Dr. Pooyan was given by the Ministry had such a shortage, with Chetwynd having a population of 3100 with 4 family physicians currently registered in this town with the College, a ratio of 1:775; and with Williams Lake having a population of 8100 and 28 family physicians registered in this town with the College, a ratio of 1:289.

The Ministry does not allow a physician to set up his own clinic in the community identified on the list he is provided. The percentage of Dr. Pooyan's billings demanded by the clinics on the Ministry's list were higher than average. This combined with the physician to population ration raised questions of whether Dr. Pooyan could make sufficient income to meet his financial obligations if he worked where directed by the Ministry.

After Dr. Pooyan was provided his list, he advised the Ministry of the hardship that these limitations would cause him. In October, 2019 Dr. Pooyan put in writing his request to work in Coquitlam and the basis for his request. The request was denied without reasons being provided. On November 7, 2019, the Ministry declared Dr. Pooyan to be in breach of the return of service contract and demanded damages in the sum of

\$247,716 which includes repayment of the wages and benefits that Dr. Pooyan received under the collective agreement for working as a resident physician providing medical services to British Columbians.

The year after Dr. Pooyan began residency training the Ministry increased damages for failing to work as directed to \$480,375 plus additional damages should the physician work in British Columbia and bill for health services he provides through MSP.

The damages claimed by the Ministry do not reflect damages that it sustained. As a result of Dr. Pooyan not working at a clinic on the Ministry's list, the Ministry sustained no damages. Dr. Pooyan was paid what was determined reasonable compensation for working in an entry level job which compensation was determined through a negotiation process between the Health Employers Association of British Columbia and the Union which represents Resident Physicians of BC. The "damages" set out in the contract are a penalty imposed for the purpose of, or alternatively have the effect of, subjugating and oppressing a class of Canadians which has been historically, and continues to be marginalized and negatively stereotyped, to work where and under what conditions the Ministry directs.

The respondents have created a system where effectively an indentured servitude contract is a condition imposed on a vulnerable sector of society for the opportunity to access education, training, and entry level employment. The same opportunity is provided to other British Columbians and Canadians as of right. This system discriminates against immigrant physicians on the place of origin. It is also contrary to the most fundamental principles of justice, administrative law, Charter values, and international treaties to which Canada is a signatory.

Non-transparent Barriers and Factors that Disproportionately Disadvantage the Applications of Immigrant Physicians

Clinical Assessment Program (CAP). For several years prior to 2018, the Clinical Assessment Program ("CAP") was an optional program available to IMGs who sought an opportunity to gain Canadian clinical and hospital experience which would be evaluated by a Canadian physician. This program was to help IMGs overcome the disadvantage that they faced in the CaRMS process due to their lack of Canadian medical experience. By 2015 the CAP involved one week of orientation and four weeks of rotating through offices, clinics, and hospital departments during which time IMGs who elected to take the CAP program were evaluated by a Canadian physician. The evaluating physicians would provide reports of the IMG's performance which would be sent to CaRMS and would be available to the residency selection committee. Between 2015 and 2017 there were typically, approximately 1000 IMG applicants for residency positions in British Columbia. Of these, 10% or less took the CAP.

Effective the 2018 CaRMS Match, the Clinical Assessment Program stopped being a program but the name did not change. It changed from a four-week program to a half day set of interviews. It also stopped being optional and became a mandatory eligibility

requirement for a residency position in British Columbia. The stated purpose of the change was twofold: (a) to reduce the number of IMGs who could apply for residency positions in British Columbia, and (b) because the 4-week program was said to challenge sustainability. To give effect to the goal of reducing the number of IMGs who could apply, only 200 CAPs were made available in 2018, 300 in 2019 and 2020. The effect of this is to bar approximately 70% to 80% of IMGs, who have proven through examinations that they have the medical knowledge, decision-making ability, and clinical skills expected of a graduate of a Canadian medical school, from being able to compete for residency positions in British Columbia. There are approximately twice as many CMGs who apply for residency positions in British Columbia as IMGs, but no steps have been taken to reduce the number of CMG applicants.

The last evaluation of the CAP by UBC's Evaluation Studies Unit was dated August 3, 2016. The Evaluation Report found that half of the IMG CAP assessors and leadership favoured a longer assessment period of 3 months although it was recognized that lengthening the program would put a stress on assessor resources. As site directors and preceptors were unable to differentiate between IMGs who had completed the clinical assessment process and those who had not, it was determined that the factors used to select candidates for IMG-BC residency positions required further study to determine their individual effectiveness to predict how well IMGs will perform in both residency and in rural practice. None of the recommendations of the evaluation report were implemented. This is likely because the CAP was implemented as a palatable tool to create a non-transparent barrier to eliminate the majority of qualified IMGs from applying for residency positions in British Columbia rather than for genuine assessment. For example:

- A. the CAP is redundant. There is no research, study, or other evidence that demonstrates that the CAP assesses anything that is not already assessed by the two national examinations: MCCQE1 (or MCCEE) and the NAC OSCE. Further, the CAP is an MMI interview which is the assessment tool used by the selection committee for applicants going through the CaRMS process;
- B. the CAP has not been trialed for reliability, validity, or efficacy;
- C. the selection criteria for the CAP has changed regularly, as has the scoring of the CAP;
- D. the results of the CAP are used inconsistently for selection for interviews and residency positions;
- E. an assessor sleeping through the assessment, as occurred when Dr. [REDACTED] was assessed, is not considered a sufficient basis to question the validity of the CAP assessment of the individual;
- F. at least 70% of IMGs who have proven they have the medical knowledge, decision-making ability, and clinical skills of a graduate from a Canadian medical

school are not able to access the CAP and hence are automatically eliminated from competing for residency positions in British Columbia.

The CAP is used as a tool to perpetuate further discrimination which has the effect of disproportionately disadvantaging the applications of immigrant physicians such as the complainants.

The criteria for selection of IMGs through the CaRMS process also disproportionately disadvantages the applications of immigrant physicians such as the complainants.

Date of graduation. Date since last practiced. One factor used in the CAP process and in the selection process for residency positions is date of graduation. In addition, time elapsed since candidates studied or practiced is also considered. These criteria are often decisive during the process. The date of graduation criterion can become unsurmountable to older and more experienced immigrant physicians. But even the time elapsed since practice is disproportionately disadvantageous to immigrant physicians as the immigration process and meeting the requirements of application such as studying for, taking the national examinations, and receiving the results of the examinations which are designed to demonstrate substantial equivalency takes time. The limited access to the CAP where immigrant physicians have to apply repeatedly because of the limited number of assessments works to further disadvantage immigrant physicians.

Rural practice. Another factor weighted in the CAP and selection process for IMGs is suitability for rural practice. The selection criteria pigeon-hole IMGs for rural practice, the geographic regions which are considered undesirable by CMGs and practicing physicians and thus underserved.

Family Medicine. Another factor that has a disproportionate disadvantage on immigrant physicians who are trained in any discipline but family medicine in the selection process is that almost all (52 out of 58—90%) residency positions for IMGs in British Columbia are in family medicine. Selection criteria strongly favours those candidates who have demonstrated a “genuine” interest in family medicine. Thus, physicians who have specialized, subspecialized, and demonstrated themselves as exceptional in a field outside of family medicine, have little to no opportunity to access residency training and hence licensure in their field. Their best chance of getting a residency position is in family medicine but they are unlikely to be accepted as having a genuine interest in family medicine considering their certification and practice in their place of origin.

Clinical Experience in Canada. Clinical experience in Canada is a screening tool on file review. Immigrant physicians are disproportionately disadvantaged by this criterion.

Selection criteria and evaluation tools. The selection criteria and evaluation tools including the CAP used by UBC have not been validated; that is, they have not been subjected to a process evaluating the essential character of the skills they are supposed to evaluate, and to confirm or reject the real predictive value to which they are associated despite a call to do so in the IMG Clinical Assessment Program Policy.

Failure to validate such criteria and tools paves the way for subjectivity and prejudice, which is often unconscious.

Prejudice against IMGs. There are wide-spread prejudices and reservations about IMGs. Medical degrees recognized as equivalent by the College and the federal government are not considered equivalent in respect to qualification to practice as a resident physician if one is a Canadian citizen or permanent resident. Passing exams designed to demonstrate one has the knowledge, decision-making ability, and clinical skills expected of a graduate of a Canadian medical school is not enough due to a negative pre-disposition towards IMGs. This creates a disproportionate disadvantage to immigrant physicians.

Authority. The CAP was designed by UBC and approved by the Ministry and imposed by agreement of both. Neither of these bodies has legislative or other authority to mandate standards and assessments for postgraduate medical training and access to the medical profession. The College which is the only body authorized to set standards in the regulation of the medical profession, had no role in mandating, designing, or implementing the CAP. The Complainants challenge the authority, purpose, validity, reliability, and efficacy of the IMG CAP.

Indeed, the Ministry and UBC have no authority, outside what is provided by the College, to administer residency training. Nor do they have authority to set standards and eligibility criteria for resident physicians. Nor do they have legitimate authority to discriminate against one sector of society for the benefit of another.

Summary

The respondents, acting outside and/or without legislative or other legal authority, have collaborated to discriminate against international medical graduates in general, and immigrant physicians like the complainants in particular.

Each of the respondents has played a role in discriminating against the complainants.

The respondents have discriminated against each of the complainants by imposing unfair barriers as set out above upon each of the respondents to entering residency training and hence the medical profession which is the profession for which they were trained in their country of origin.

During residency training discrimination continued. Dr. Pooyan and other IMGs were/are treated differently and provided different opportunities than are provided to CMGs during training.

After residency training is over and Dr. Pooyan and other IMGs are certified and licensed to practice medicine, they continue to face discrimination for two or three years when their rights to practice medicine are controlled and limited by the Ministry.

What is the adverse impact on you?

Dr. Vahid Nilforushan was born and educated in Iran. He graduated from medical school in 1994. He is certified as an anesthesiologist in Iran. He was considered accomplished in his field in Iran when he immigrated to British Columbia in 2010. Since then he has been trying to overcome the continuing discriminatory barriers as outlined above to become licensed in medicine. Dr. Nilforushan wanted to become licensed in anesthesiology. The province of British Columbia does not allow immigrant physicians to access the residency training positions it offers in anesthesiology in this province. Because the College requires residency training before one can be licensed in anesthesiology, and there are no residency positions available in anesthesiology to international medical graduates in British Columbia, Dr. Nilforushan has been excluded from becoming licensed as an anesthesiologist without regard to his education, training, skills, and abilities. Dr. Nilforushan aspired to sub-specialize but fellowship training is also barred by the respondents' discriminatory conduct. Recognizing that his only chance of becoming a physician requires him to train as a family physician, Dr. Nilforushan applied to family medicine repeatedly. His applications were rejected in favor of those who had lower scores and less Canadian clinical experience. He experienced a lack of transparency, accountability, responsiveness, and fairness in the assessment and selection process. Non-transparent barriers that he faced included date of graduation and age, lack of experience in community-based family medicine, and experience which could not support a "genuine interest" in family medicine. Dr. Nilforushan describes his inability to become licensed to practice his profession as a loss of identity and reputation, and has deprived him of the fulfillment and sense of accomplishment that practicing his profession provided in his life. He and his family have suffered tremendous social, emotional, and financial hardship due to the discrimination Dr. Nilforushan faced since immigrating to British Columbia.

Dr. Shailendra Singh was born and educated in India. He is a certified general surgeon in India. He is certified as a sub-specialist in onco-surgery in India. This is surgery involving cancers. Dr. Singh immigrated to British Columbia in 2017 but due to the discrimination that immigrant physicians face in access to resident physician jobs due to his place of origin and his age as reflected by his medical degree, he cannot become licensed to work as a general surgeon. This is because IMGs are denied the opportunity to access residency training positions in surgery in British Columbia. Nor is he able to be licensed as a sub-specialist in surgical oncology or any other sub-specialty he wants to pursue. Dr. Singh maintains that being a surgeon and practicing surgery is an integral part of who he is. He describes his situation as someone who is placed in jail and can only watch as others practice and do what he is not allowed to do. Dr. Singh cannot pursue the profession in which he is trained and experienced in British Columbia. Nor can he realistically pursue residency training in Family Medicine because of the non-transparent barriers such as date of graduation, a lack of experience and "genuine interest" in family medicine. He and his family have suffered social, emotional, and financial hardship due to the discrimination Dr. Singh has faced.

██████████ was born and educated ██████████ is certified as a family medicine physician in ██████████. She immigrated to British Columbia, Canada in 2011 shortly after becoming certified and licensed in ██████████. She sought to have her credentials recognized in British Columbia so she could be licensed and work in the occupation in which she was educated and trained. ██████████ has not been able to overcome the systemic discriminatory barriers outlined above to access family medicine. Throughout the process, she feels that she has been marginalized and treated with disrespect. She provides an example. Although the CAP is mandatory for an IMG to apply for a job as a resident physician, Dr. ██████████ was repeatedly denied access to the CAP. Her curriculum vitae and information were not considered in denying her for the two applications she made to obtain a CAP assessment for the 2018 and 2019 Match years. The selection criteria changed from year to year. This year (for the 2020 Match year), Dr. ██████████ curriculum vitae was considered and she was allowed to take the CAP assessment. A number of the questions in the assessment were unrelated to medicine. During Station 9 of the CAP, the assessor slept: he had his head resting on his chin, his eyes closed, and was snoring for the majority of the time that he was tasked with assessing Dr. ██████████ performance. Dr. ██████████ immediately filed an incident report and requested that this station be disregarded in her score. The request was denied despite the repercussions it had to Dr. ██████████ career. Dr. ██████████ was marked poorly on that Station. The denial of access to the CAP and the unfair administration of the CAP has the effect of delaying Dr. ██████████ as she is disadvantaged by the aging of her medical degree. Dr. ██████████ describes practicing medicine as her life. Despite repeated and continuing applications through the CaRMS Match for the small quota of family medicine positions IMGs are allowed to apply to in British Columbia, Dr. ██████████ has been unable to overcome the barriers she faces as an IMG to obtain a residency position. She has suffered emotionally, socially, and financially as a result of the discrimination she has faced.

Dr. Farhad Barazandeh Noveyri was born and educated in Iran. Dr. Barazandeh Noveyri is certified as a specialist in internal medicine with a sub-specialty in gastrointestinal medicine in Iran. He immigrated to British Columbia, Canada in 2012 and sought to have his credentials recognized in British Columbia so he could resume his career. Dr. Barazandeh Noveyri has applied repeatedly to the CaRMS Match for the two or three positions in internal medicine which IMGs are allowed to apply to in British Columbia. He has not been able to overcome the systemic discrimination he faces because of his place of origin. His year of graduation and age also disadvantage him in the process. Even if he is able to overcome the barriers to obtain an internal medicine position available to IMGs, these positions restrict him to “general” internal medicine in his fourth year. He is not free to take the sub-specialty of his choice in fourth year. Because he is an IMG, if he is able to overcome the barriers and obtain a position as a resident physician in internal medicine, to keep this position he has no alternative but to sign a return of service contract which obligates him to work where directed by the Ministry for a period of three years. As a result of the restriction of only being eligible to take the “general” program in fourth year, the obligations under the return of service

contracts, and the rules and/or policy to only accept applicants for sub-specialization programs directly out of residency training, Dr. Barazandeh Noveyri is unable to pursue sub-specialization training and hence cannot be licensed to practice as a sub-specialist. Practicing medicine is so important to Dr. Barazandeh Noveyri that he commutes to Iran to work in his field for periods of time each year.

Dr. Navid Pooyan was born and educated in Iran. He is certified as a family medicine physician in Iran. He immigrated to British Columbia, Canada in 2015 seeking to become licensed and work as a family physician. He was fortunate to overcome the discriminatory barriers that he faced to match to a residency position in British Columbia. However, after he matched, he had no choice but to sign a return of service contract or his residency training job would be forfeited and he would not be able to become licensed to practice medicine. He signed the contract under duress. After certification for independent practice, Dr. Pooyan was not able to work in the clinics in the regions that were made available to him in the Ministry's list due to his personal situation. The Ministry refused to allow Dr. Pooyan to work in the underserved region of Coquitlam. The Ministry declared Dr. Pooyan in breach of the contract. Dr. Pooyan maintains that the contract is null and void because it was forced on him contrary to his rights protected by the Human Rights Code and for other reasons set out above. Dr. Pooyan is fulfilled by service to his community and wants to do what he can to serve. He does not consider allowing himself to be unfairly treated and exploited as a service to his community, his province, or his country.

In summary the adverse impact on Doctors Nilforushan, Singh, [REDACTED] and Barazandeh Norveyri include:

- a. denial of the social benefit of access to a service provided by the province namely, a fair opportunity to access the education and training opportunities available in this province, namely residency training which is a necessary pre-condition to become licensed to practice medicine in British Columbia;
- b. denial of the service of licensure which is free of discrimination;
- c. denial of access to entry level employment in the field of medicine;
- d. denial of the opportunity to access further sub-specialization training in the field of medicine;
- e. being prevented from access to entry level employment and ultimately being able to work in the profession in which they are educated, trained, and experienced;
- f. being forced into effective indentured servitude with consequential costs and loss of freedom should they be able to overcome the unfair barriers they face in obtaining a residency position;
- g. having to incur the cost and time of applying for and taking examinations and assessments that are not required of CMGs or foreigners (mostly from Saudi Arabia and other oil rich Gulf States) who are IMGs who train/work as resident physicians in British Columbia under a work visa;
- h. financial hardship including excessive and unnecessary costs of examinations/assessments and past and future income;
- i. Emotional and mental distress;

- j. Loss of dignity;
- k. Disillusionment and loss of confidence as a result of being in a country which is reputed as free and egalitarian but which denies immigrant physicians the opportunity to compete for entry level jobs on the basis of their knowledge, skills, character, and other attributes relevant to the position and denies them the opportunity to further advance through sub-specialization training. .

The adverse impact on Dr. Pooyan includes:

- a. having to overcome significant barriers not placed before CMGs including incurring the cost and time of applying for and taking examinations and assessments which are not required of CMGs or other international medical graduates who are foreigners;
- b. after matching to a residency position, being forced to sign a contract of indentured servitude, with the alternative being forfeiting the residency position he matched to and being unable to be licensed as a physician;
- c. the adverse impact of the contract of indentured servitude include:
 - i. Loss of freedom to choose where he lives and works;
 - ii. Costs related to working where the Ministry directs provides less revenue and requires Dr. Pooyan to pay the cost of maintaining two households;
 - iii. Being forced to live away from his wife, family, and friends which has the effect of being unable to fulfill familial and community support and commitments, and losing his support system;
 - iv. Interference with his most fundamental personal needs including having children. This is more difficult for Dr. Pooyan and his wife compared to many due to complications including age;
 - v. Being prevented from establishing his own practice which has negative relationship building and financial consequences; and
 - vi. Being denied the ability to practice in a community which best aligns with his culture and language skills which include fluency in Farsi. Coquitlam has the largest Farsi-speaking community in British Columbia. If allowed to practice in Coquitlam Dr. Pooyan can be part of fulfilling the Canadian objective of meeting the needs and providing better service to a minority community. Williams Lake and Chetwynd have minimal, if any, Farsi-speaking population;
- d. Being denied the opportunity to take an additional year of training for enhanced skills in sports medicine or emergency medicine;
- e. Loss of dignity.

How was each ground of discrimination a factor in the adverse impact?

Because the complainants are immigrant physicians, they were educated and trained in their country of origin.

The systemic discrimination is based on where they were educated and hence where they are from. The systemic discrimination described above has the effect of preventing the vast majority of immigrant physicians from all but a few countries becoming licensed to work in the profession in which they are educated, trained, and experienced from which all the adverse impacts described above flow. It is demeaning not to be able to work in the profession for which you feel you were born and which fulfills you, despite having passed all the examinations to demonstrate that you have the knowledge, decision-making ability, and skills expected of a graduate of a Canadian medical school, just because you came from the wrong country. It is demeaning if you are able to overcome the barriers placed before you because of your place origin, and then have to sign a contract which takes away your freedom to live and practice medicine where and how you choose. It is demeaning to have your year of graduation, age, and experience held against you.

Step 4: Part A—Time to File Complaint

1. Did all the conduct you say is discrimination happen in the last one year?

Yes, in the case of all the Applicants the discrimination is ongoing. The demand for payment by the Ministry of Dr. Pooyan occurred November 7, 2019.

2. For each Respondent, is all the conduct related or similar?

The discriminatory conduct for each respondent is related. Each respondent plays a different role in the creation and implementation of the systemic discrimination but the system requires the cooperation and coordination of all the respondents.

The College is the only one legally authorized to mandate postgraduate medical training and to determine the qualifications necessary to work as a resident physician. The College gave UBC a monopoly to run postgraduate medical training including residency training programs.

UBC, working with the Ministry of Health which funds residency training positions, uses the monopoly given to it by the College to act as regulator of the medical profession including determining which sectors of society are preferred and worthy of full licensure. UBC, a creature of statute, does not have any legislative power to run or make rules or policies related to postgraduate medical training including access to residency training. Nevertheless, the College has illegally delegated and/or fettered its powers, and turned a blind eye (ignoring its legislative and gatekeeper duties to the profession and the public) when UBC and the Ministry working together implemented regulatory policies for purposes outside those authorized by the legislation which empowers regulation of the medical profession.

When interning was abolished, all the provincial and territorial Colleges gave university Faculties of Medicine a monopoly over postgraduate medical training programs. Thus, the university Faculties of Medicine of Canada got into a position where they, rather

than the hospitals, were selecting which graduates could advance to residency training. Through their association, the AFMC, the universities determined that graduates of Canadian medical schools should be assured licensure by institutionalizing a system which protected Ministry funded residency positions for their graduates. Initially, graduates who were citizens and permanent residents were only allowed to compete for residency positions left over after CMGs had their first round of competition. When pressure was exerted that this system was discriminatory and unjust, the AFMC recommended a segregated system where IMGs would be given access to a small number of residency positions.

The Ministry took this opportunity to limit IMGs to the general disciplines of medicine which are underserved and to mandate return of service contracts to IMG Stream residency positions. This works well for the Ministry as this discrimination of a marginalized sector of society enabled the Ministry to create and access a pool of vulnerable physicians who would have no choice but to work in underserved disciplines and regions if they wanted to become licensed to practice their profession.

3. For each Respondent, if there are gaps between the conduct, can you explain them?

The conduct of the respondents in creating and implementing systemic institutionalized discrimination against IMGs in general, and immigrant physicians from most countries in particular, is consistent and continuous. Dr. Pooyan was the only one able to overcome the front end of the discrimination but has continued to experience discrimination.

Step 4: Part B—TRIBUNAL MAY ACCEPT LATE COMPLAINTS.

The Complaint is filed within one year of the discriminating conduct.

Step 5: Other Related Proceedings

There are no other related proceedings. The Complaint is filed within one year of the discriminating conduct.

Step 6: Remedies.

INDIVIDUAL RELIEF for Complainants 2-5, Drs. Vahid Nilforushan, Shailendra Singh, [REDACTED] and Farhad Barazandeh

1. Compensation for past and future income loss;
2. Compensation for money spent on examinations and evaluations imposed on IMGs but not visa trainees nor CMGs;
3. Compensation for injury to dignity, feelings, and self-respect;

4. A direction to the respondents that these Complainants are eligible to compete for all residency positions in the CaRMS Match on the same conditions as CMGs.
5. A direction that the Ministry provide funding for residency positions for these complainants outside the Match, that UBC enrolls the complainants in postgraduate training and provides a letter to the College requesting registration, and the College registers the complainants as resident physicians under section 2-25 of the College bylaws.

INDIVIDUAL RELIEF for Complainant 1, Dr. Navid Pooyan

1. A declaration that the contract which Dr. Navid Pooyan was forced to sign as a condition of access to residency training is null and void ab initio and unenforceable;
2. Compensation for money spent on examinations and evaluations other than the MCCQE1 and MCCQE2; and
3. Compensation for injury to dignity, feelings, and self-respect.

SYSTEMIC RELIEF

1. A statement that the current system of access to residency training is discriminatory and contrary to the Human Rights Code;
2. A direction that the current policy of segregating access to residency training by place of education stop and that all postgraduate training positions currently funded by the Ministry of Health of British Columbia which are currently protected for graduates of Canadian and American medical schools in the CaRMS Match become open to competition in the CaRMS Match to all citizens and permanent residents of Canada on the same conditions for all;
3. An order that the respondents direct CaRMS that the eligibility criteria for positions funded by the Ministry of Health of British Columbia, which are currently protected for graduates of Canadian and American medical schools in the CMG Stream without examination, are from this point forward to be open to competition in the CaRMS Match to all CMGs and IMGs alike upon taking and passing the MCCQE1 before the CaRMS Match;
4. A direction that the respondents in general and the College in particular, consider whether the NAC OSCE is required as a pre-requisite to determine whether a graduate has the necessary clinical skills to work as a resident physician to compete for residency positions funded by the Ministry of Health, and if it is necessary, then it is to be imposed on IMGs and CMGs alike and to be taken in the same time frame;

5. A declaration that the CAP was imposed for an improper discriminatory purpose and is not to be imposed as a condition of eligibility to compete for residency positions in British Columbia for the CaRMS Match;
6. In the alternative, an order that if the CAP is to be used to screen applicants for residency positions funded by the Ministry of Health in British Columbia in the CaRMS Match, it is to be available to all applicants who seek to apply, and is to be imposed on CMGs and IMGs alike and to be taken in the same time frame;
7. An order that the current policy of the Ministry of Health forcing international medical graduates to sign return of service contracts as a condition of entering residency training stop immediately;
8. A declaration that all return of service contracts imposed upon IMGs as a condition of entering residency training are null and void and unenforceable;
9. A direction for oversight in the residency selection process to protect against non-transparent processes which continue to protect residency training positions for CMGs to the detriment of IMGs including representation on all committees and inclusion in all meeting where decisions are made that affect IMGs; and
10. Education for all persons in decision-making positions to bring awareness and sensitization of unconscious biases and prejudices including harms caused IMGs by the long-standing institutionalization of discrimination and prejudice against IMGs; and
11. Other systemic remedies.

WHAT HAPPENS NEXT?

After the Tribunal has reviewed your complaint, it will tell you one of the following:

- the complaint form is complete, the Tribunal will accept it for filing, and a copy will be sent to the Respondent(s)
- the complaint form is incomplete and the Tribunal will ask you for further information by a certain date
- the complaint is deferred pending the outcome of other proceedings
- the complaint cannot be accepted for filing because:
 - the complaint is not covered by the BC *Human Rights Code* (it may be covered by the *Canadian Human Rights Act*)
 - the complaint does not set out enough information to support a complaint of discrimination under the BC *Human Rights Code*
 - the complaint was filed late and the Tribunal has decided not to accept it.

PROTECTION FROM RETALIATION

After a complaint is filed, a complainant, anyone named in a complaint, a witness or anyone who assists in a complaint is protected from retaliation for their involvement in the complaint. You must show:

- a complaint was filed with the Tribunal;
- the person who retaliated knew about the complaint; and
- it is reasonable to conclude that the person intended to retaliate against someone because of their involvement in the complaint.

As of May 14, 2015, the *Code* also protects you from retaliation because someone thought you might make a complaint, be named in a complaint, or give evidence or assist in a complaint.

If you or someone else has been retaliated against, complete a Retaliation Complaint Form available on our website under Forms.

HELP FILING YOUR COMPLAINT

For assistance with filing your complaint contact:

BC Human Rights Clinic
300 - 1140 W Pender Street
Vancouver BC V6E 4G1
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PRIVACY NOTICE

The Tribunal collects personal information to process complaints filed under the *Human Rights Code* and to conduct surveys to evaluate and improve its services under s. 59.1 of the *Administrative Tribunals Act*.

The personal information in this form may be disclosed to members of the public. This is because the Tribunal's process is public:

- The Tribunal publishes most decisions on its website.
- The Tribunal publishes a hearing schedule (list of upcoming hearings) with the parties' names and the area(s) and ground(s) of a complaint.
- After a complaint is on the hearing schedule, the public has access to information, including the complaint and response forms (except contact information).
- Hearings are open to the public.

You can ask the Tribunal to limit the information it makes public. However, the Tribunal will only do so if it decides that your privacy interests outweigh the public interest in access to the Tribunal's proceedings.

For more information, contact the Tribunal Registrar at the address or phone number at the top of this form.



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