

**COMMISSION DES DROITS DE LA PERSONNE  
ET DES DROITS DE LA JEUNESSE**

**FILE:** MTL-018303

**INVESTIGATION ON ITS OWN INITIATIVE OF THE COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE**, in accordance with section 71(1) of the Charter of Human Rights and Freedoms

**RESPONDENTS:**

Ministère de la Santé et des Services sociaux -and- Collège des médecins du Québec - and- Université de Montréal -and- Université Laval -and- Université de Sherbrooke -and- McGill University

**PERSONS IN CHARGE OF THE INVESTIGATION**

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**THIS FILE** was examined and decided during the 559<sup>th</sup> session of the Commission des droits de la personne et des droits de la jeunesse held on September 10, 2010.

**RESOLUTION COM-559-5.1.1**

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**Purpose of the investigation**

Through resolution CP-492.2 taken on June 22, 2007, the Commission des droits de la personne et des droits de la jeunesse (hereinafter referred to as the "Commission") decided to undertake an investigation on its own initiative, based on section 71(1) of the Charter of Rights and Freedoms (R.S.Q., c. C-12), for the purposes of reviewing allegations of discrimination in the course of an admission process leading to the postdoctoral training program in medicine.

More specifically, the purpose of the investigation was to verify, for each stage of the process, whether there were elements likely to have a discriminatory impact on the access to the postdoctoral training program in medicine for International Medical Graduates

**IMPORTANT NOTE:**

Translation of the original French document Résolution COM-559-5.1.1, provided for information only.

(hereinafter IMG) who earned their degree outside Canada and the United States, based on race, ethnic or national origin, age and sex.

The Commission's decision to undertake such an investigation was rendered in a context in which, for several years, the number of vacant places in some postdoctoral training programs in medicine was in constant growth. Yet, these programs were identified by the Ministère de la Santé et des Services sociaux as subject to recruitment priority, while there was an increasing number of IMG physicians who were denied access to the postdoctoral training program in medicine, despite the recognition of the equivalence of their degrees by the Collège des médecins.

The increasing number of physicians in Québec trained outside of the country is not without a connection to the immigration and integration policy adopted by the Québec government, which favours the arrival of highly skilled workers. Since 2002, foreign physicians have also been covered by this policy. In 2008, skilled workers represented 59.2 % of all persons who immigrated to Québec<sup>1</sup>. It should be noted that according to the *Act respecting immigration to Québec* (R.S.Q., c. I-0.2), the Ministère de l'Immigration et des Communautés culturelles selects foreign nationals "[...] who will be able to become successfully established in Québec" and who will contribute, among other things, "to the stimulation of its economic development."<sup>2</sup>

Thus, in the spring of 2007, both the government, through the Ministre de la Santé et des Services sociaux, and associations of physicians who earned their degree outside of the country, publicly denounced the fact that unoccupied places were yet to be filled in medical schools despite a significant shortage of physicians. In effect the Minister declared that: [TRANSLATION] "It is surely very difficult for myself and the public to understand why such a high number of physicians are left to fend for themselves when they could be trained as of this year."<sup>3</sup>

For its part, the Coalition of associations of physicians who earned their degrees outside the country publicly accused the universities of discrimination, criticizing their refusal to grant some 174 IMG physicians, who had obtained equivalence of their degrees by the Collège des médecins du Québec, the possibility of accessing the postdoctoral training program in medicine, despite 85 remaining unoccupied spaces for the year 2007. In turn, the medical faculties, through the spokesperson of the Conférence des doyens des facultés de médecine du Québec, replied that they preferred to leave the positions vacant, believing

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<sup>1</sup> Ministère de l'Immigration des communautés culturelles, *Fiches synthèse sur l'immigration au Québec*, 2008.

<sup>2</sup> *Act respecting immigration to Québec*, s. 3.

<sup>3</sup> RIOUX SOUCY, Louise-Maude, "Des médecins laissés sur le carreau," *Le Devoir*, May 2, 2007.

that IMG physicians, who have not been paired, did not possess the [TRANSLATION] "necessary qualifications".<sup>4</sup>

## Conduct of the investigation

The Commission's investigation required the participation and collaboration of different authorities, whether as a party concerned by the allegations of discrimination forming the basis of the investigation, given their practical involvement in the admission process leading to the postdoctoral training program in medicine, both direct and indirect, and the decision rendered in this regard, or as sources of information helpful in the understanding of the issue.

The postdoctoral training is defined in section 4 of the *Regulation respecting the terms and conditions for the issuance of the permit and of the specialist's certificates by the Collège des médecins du Québec* (c. M-9, r. 20):

4. The postdoctoral training for which the duration and the content are set out in Schedule I consists of a series of training periods served in training sites as a part of a university program approved by the board of directors, in accordance with the terms and conditions of this approval.

Postdoctoral training is considered complete in the opinion of the committee where the resident, according to all training reports, possesses the required professional knowledge and skills to practice medicine autonomously.

Four medical faculties from Québec universities are among the authorities participating in the investigation, namely Université de Montréal, Université Laval, Université de Sherbrooke and McGill University which are in charge of training physicians and provide postdoctoral training in medicine, which is the central element of this investigation, as well as the Ministère de la Santé et des Services sociaux, which sees to the proper general administration of the health system and social services in Québec.

Special emphasis should be given to the role of the Medical Workforce Department, in the Ministère de la Santé et des Services sociaux, which is responsible for "ensuring the ongoing review of the methodology and planning process of the medical workforce, for distributing adequately this workforce across the territory, for defining the directions and objectives of non-negotiated incentives offered to physicians and circulate their contents to various stakeholders"<sup>5</sup>. This ministerial department also plays a significant role in

<sup>4</sup> RIOUX SOUCY, Louise-Maude, "Des médecins laissés sur le carreau," *Le Devoir*, May 3, 2007. [Online] <http://www.ledevoir.com/politique/quebec/141907/non-a-couillard> (page consulted on September 23, 2010).

<sup>5</sup> *Les services de santé et médecine universitaire*, revised on May 19, 2004, sent to the Commission on August 25, 2009.

determining the number of positions available in the postdoctoral training programs provided by Québec medical faculties. Such a number is determined annually by decree under the Act respecting health services and social services (R.S.Q., c. S 4-2).

Among the authorities with the status of parties to the investigation, is the Collège des médecins du Québec, which is responsible, among other things, for evaluating the credentials and training of candidates who wish to practice their profession in Québec, and ensuring that “the competence of a candidate with a medical degree from outside Canada and the United States matches that required of medical graduates in Québec for purposes of providing quality medical services to the Quebec population”.<sup>6</sup>

The information gathered during the Commission’s investigation first of all allowed it to define the numerous steps that IMG physicians must overcome to obtain recognition of the equivalence of their degrees from the Collège des médecins du Québec and meet the requirements to apply for a postdoctoral university training program. It also enabled a review of the procedures and practices surrounding the process of admission to postdoctoral training as well as the impact, if any, of such procedures and practices on the IMG physicians.

With respect to the latter aspect, the Commission’s investigation has focused more specifically on the process to which the candidates of the 2007 group, including both the IMG physicians and the physicians who earned a degree from a medical school in Québec, have been subjected in order to be admitted in six postdoctoral university training programs identified by decree as requiring priority recruitment, namely family medicine, internal medicine, psychiatry, radiation oncology, anatomical pathology and anesthesiology, and for which admission requests came from IMG physicians in a significant proportion.

The Commission has therefore collected various quantitative data illustrating the situation of IMG physicians in 2007, compared to physicians with a degree awarded by a Québec medical faculty, with respect to their eligibility for the six programs, also taking into account different variables including age, place of birth and place of training. The Commission has also taken note of the records of many candidates from the 2007 cohort, for both groups, and analyzed the applicable selection criteria, and the weight allocated to these criteria as well as evaluation tools designed and used for this purpose.

Despite the special attention given to the data of the 2007 cohort, the situation surrounding the access of IMG physicians to postdoctoral medical training was viewed from an evolving perspective, so that, taking an interest in the period between the years 2002 and 2009,

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<sup>6</sup> <http://www.cmq.org>> (page consulted on September 23, 2010).

gave rise to the consultation of a large quantity of documents and to meetings with a significant number of representatives of the concerned authorities.

## **Main findings of the investigation**

According to the Commission, the whole of the evidence collected during the investigation revealed the existence of a substantive problem affecting IMG physicians' access to postdoctoral medical training in Québec. These problems, which to this day do not appear to have been resolved, relate to the following main findings:

### **An important under-representation of IMG physicians**

Each year, the government annually decrees its *Politique des inscriptions dans les programmes de formation médicale postdoctorale* (policy on registrations in postdoctoral training programs in medicine) in order to establish the number of resident positions for postdoctoral training programs in medicine. For the 2007 academic year, a government decree set this number at 720, of which 420 were in specialized medicine and 300 positions in family medicine. Moreover, the decree subjected several programs to recruitment priority, among others, family medicine, internal medicine, psychiatry, radiation oncology, anatomical pathology and anesthesiology. These six programs have been specifically targeted by the Commission for the purposes of its investigation.

According to information obtained during the investigation, it appears that a calculation of the number of positions available in postdoctoral training programs is made so that all graduates of Québec medical faculties have the opportunity to complete their medical training in Québec. To this number, 65 positions are added for IMG physicians, taking into account the number of IMG physicians admitted to the postdoctoral training in previous years as well as the school's accommodation capacity.

The investigation also revealed that, despite the determination of a number of positions for postdoctoral medical training, many positions remained vacant after the matching process of Québec universities. This number has shown consistent growth since 2004 for all of the programs, and in a more sustained way for the program of family medicine, except for the year 2008-2009. Thus, the data collected by the Commission for the year 2007 indicates that 85 positions remained vacant in the four universities targeted by the investigation, 62 of which were in family medicine.

In addition, the investigation revealed that despite this situation of vacant positions, a large number of IMG physicians were not admitted to the postdoctoral training compared to physicians who earned a degree from a Québec medical school. In this regard, it appears from the information collected during the investigation that for 2007, all physicians who earned a degree from a Québec medical school, generally, received an offer of admission at one point or another during the process, while, for all of the universities, approximately one third of IMG physicians who had obtained an equivalence from the Collège des médecins were admitted. In other words, two thirds of IMG physicians have been excluded during this process.

Furthermore, with respect to the six programs in the sample group examined by the Commission, it appears that out of 650 requests for admission made by IMG physicians in 2007, 30 were accepted in 2007, which represents a 4.6 % rate of admission, while in the case of physicians who earned a degree from a Québec medical school, this percentage amounted to 22.2 %. More precisely, it was noted that in the case of family medicine, 20.3 % of requests for admission made by physicians who earned a degree from a Québec medical school were selected in 2007, while the proportion amounted to 3.7 % for IMG physicians.

Similarly, the following data provided by CaRMS (Canadian Resident Matching Service) was noted with regards to the percentage of IMG physicians admitted to postdoctoral medical training in 2006, 2007, 2008 and 2009, compared with the number of places occupied in residence, for each of the universities targeted by the investigation. Thus:

<b>Proportion of international medical graduates admitted in residence in comparison with the number of places occupied in residence</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Université Laval	5.33	7.83	10.76	7.00
Université de Sherbrooke	6.30	10.45	5.16	5.88
Université de Montréal	9.76	7.62	7.08	5.04
McGill University	8.89	8.87	16.77	10.43

It appears from this same data provided by CaRMS that for all of the Québec and Canadian universities, the proportion of IMG physicians admitted in 2006, 2007, 2008 and 2009 compared to the number of occupied places in residence was particularly low in Québec compared to other provinces.

This situation, in the opinion of the Commission, illustrates an important under-representation of IMG physicians in access to postdoctoral training in medicine, based on a ground for discrimination prohibited by the Charter of Rights and Freedoms, namely ethnic or national origin.

In this regard, the analysis of data collected by the Commission establishes a clear relationship between the ethnic origin of the candidate and his or her choice of place of training, considering that in almost every case, the candidates undertake medical training within the geographical areas of their birth.

### **A process that includes obstacles for IMG physicians**

The process for admission to the postdoctoral training program in medicine administered by universities first provides for a pre-selection based on the file in order to select candidates who will be summoned for an interview. This interview is held in the presence of a selection committee which then makes a list of the candidates selected based on their rank. A first round of matching between universities will be done from this list, taking into account the ranking of candidates and their choice of program. Eventually, a second round, and sometimes a third round will be conducted to fill the positions that were not filled during the first round.

Several elements of this process have caught the attention of the Commission in that they constitute obstacles that have a disproportionate exclusionary effect on IMG physicians. Indeed, although it is generally agreed that universities have a broad discretion in determining the criteria for admission to the postdoctoral training program in medicine, and in the implementation and evaluation of such criteria during the assessment of candidates, it remains, however, that this discretion must be exercised without discrimination at any stage of the process. Thus:

- **The factor related to the time elapsed since a candidate's practice or studies**

The investigation revealed that the time elapsed since a candidate's practice or studies is a decisive factor during the selection process leading to postdoctoral training in medicine for all four universities concerned.

Although it was stated during the investigation that this factor applied as much to physicians with a degree from a Québec medical school as to IMG physicians, it appeared that from all of the information gathered, the application of this criterion and its qualifying

impact could only affect IMG physicians, given the duration of the process of immigration and of the delay inherent in obtaining the equivalence from the Collège des médecins du Québec, a period during which the latter do not have a work permit or significant contact with medical practice. This is particularly evident given that physicians with a degree from a Québec medical school generally registered for postdoctoral training after having obtained their medical degree.

Thus, the analysis of data obtained during the investigation for the 2007 group shows, in the case of IMG physicians, an average distance from practice and education of approximately four years, while this constitutes an exceptional situation for physicians with a degree from a Québec medical school.

In the opinion of the Commission, the application of such a criterion, without considering other factors, means to disproportionately disregard the application of IMG physicians to the postdoctoral training in medicine.

- **Familiarity and knowledge of medical practice in Québec**

Knowledge of Québec's health system and how it functions are also elements taken into account in the selection process leading to postdoctoral training in medicine.

While it may appear that knowledge of the medical practice in Québec may be relevant in the context of such a process, information gathered during the investigation indicated that taking into account this perspective, and the expectations arising therefrom for directors of programs, are likely to disadvantage IMG physicians as opposed to physicians with a degree from a Québec medical school. The latter have had the opportunity, during their doctorate studies in medicine, to familiarize themselves with the workings of the Québec health system, while the former have yet to have access to medical practice in Québec.

In this regard, we note a policy statement adopted in February 2006 by the Conseil Interprofessionnel du Québec, which stated that:

The practice of a profession involves more than the utilization of theoretical knowledge in a given performance setting. It is also an act imbued with cultural aspects and rooted in the values and choices of the surrounding society in terms of rights, client relationship, organization services and technological platform.<sup>7</sup>

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<sup>7</sup> Conseil Interprofessionnel du Québec, *Principles for the recognition of equivalence of credentials and training acquired outside Québec*, February 2006, p. 8.



Moreover, as appropriately expressed by authors Marie-Thérèse Chicha and Éric Charest, [TRANSLATION] “these cultural aspects can only be acquired in practice: hospitals, engineering firms, law firms which [...] are not easily open to immigrants.”<sup>8</sup>

In sum, taking into account knowledge of medical practice in Québec during the process leading to the postdoctoral medical training has the effect of disproportionately disregarding applications from IMG physicians, who evidently lack such practice due to the particular path they followed, as opposed to physicians with a degree from a Québec medical school.

- **Reservations about applications from IMG physicians**

During the Commission’s investigation, university representatives have related that there were difficulties, in the case of IMG physicians, with the assessment of several aspects of the application file, particularly with respect to information concerning a previous practice outside of Québec. In the representatives’ opinions, these issues cause problems in the comparison of applications, namely between IMG physicians and physicians with a degree from a Québec medical school, or even between two IMG physicians due to disparities between medical schools outside of Québec. These situations, if left unresolved, can only disadvantage IMG physicians during the selection process.

Moreover, university representatives have argued that there were certain apprehensions toward IMG physicians regarding their ability to pass the postdoctoral training in medicine. Such apprehensions have been referred to despite the fact that IMG physicians candidates to the postdoctoral training, have all obtained a formal recognition of the equivalence of their degree by the Collège des médecins in accordance with the *Regulation respecting the terms and conditions for the issuance of the permit and specialist’s certificates by the Collège des médecins du Québec*.

In this regard, it must be emphasized that the equivalence as granted by the Collège des médecins, which is based on serious and prudent standards, clearly establishes that “a diploma issued by an educational institution situated outside Québec certifies that the candidate’s level of knowledge and clinical experience is equivalent to that of a holder of a diploma with a degree in medicine.”<sup>9</sup> Thus, although IMG physicians have obtained the recognition of the equivalence by the Collège des médecins, a condition necessary to be

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<sup>8</sup> Marie-Thérèse Chicha and Éric Charest. *L’intégration des immigrants sur le marché du travail à Montréal: politiques et enjeux*, Choix IRPP, vol. 14, no 2, March 2008, p. 11.

<sup>9</sup> *Regulation respecting the terms and conditions for the issuance of the permit and specialist’s certificates by the Collège des médecins du Québec*, D-339-2006, 2006 G. O. 2, 1191, s. 2, 3.

admitted to the postdoctoral training in medicine, it appears from the investigation that the value of this recognition, however formal, would be questioned during the selection process.

According to the investigation, it appears that, in 2007, apprehensions toward the ability to succeed of IMG physicians has led the universities to limit the number of spaces allocated to them in the postdoctoral training program in family medicine. According to certain university representatives, this limitation would be justified by the need to dedicate additional educational resources.

It is in this specific context that the Commission proceeded to examine the data provided by the universities on the average duration of the postdoctoral medical training as well as the number of failures, dropouts and exclusions for the duration of the program in order to compare the situation of IMG physicians to that of physicians with a degree from a Québec medical school. However, according to the Commission, the data analysis has not permitted, for methodological reasons related to, among others things, the impossibility to generalize due to the small number of IMG physicians and the lack of information of a qualitative nature, to substantiate the apprehensions raised by university representatives toward the ability to succeed of IMG physicians during postdoctoral training in medicine.

The Commission believes that negative perceptions toward IMG physicians, because their academic and clinical profile is different from that of physicians with a degree from a Québec medical school, and despite the formal recognition of the equivalence by the Collège des médecins, constitute obstacles that disproportionately disadvantage the latter during the process leading to the postdoctoral training program in medicine.

- **Non-validated selection criteria and evaluation tools**

The applicable selection criteria, the weight allocated to these criteria as well as the evaluation tools designed and used for that purpose, were examined during the Commission's investigation into the admission process for candidates of the 2007 cohort, for each of the sampling programs retained; namely, family medicine, internal medicine, psychiatry, radiation oncology, anatomical pathology and anesthesiology.

The investigation revealed that evaluation tools have not been standardized for all of these programs, any more than the weight given to the various selection criteria. It was particularly noted, in family medicine, that despite the establishment of a common selection process for francophone universities, the same response from a candidate can be assigned different values from one university to another and even from one assessor to another. It was also noted, still in family medicine, that in the interview guidelines for assessors, some

suggested questions concerning evaluation issues differed between IMG physicians and physicians with a degree from a Québec medical school. In addition, it appeared that the formulation of some of these questions reflected a negative perception toward IMG physicians, particularly regarding their ability to succeed.

Moreover, the use of identical evaluation tools in several postdoctoral training programs for both IMG physicians and physicians with a degree from a Québec medical school, leads to questioning the relevance or validity of such tools to assess IMG candidates, to the extent that the path they have followed includes characteristics and notable differences compared to graduates from Québec medical schools. For instance, the investigation has revealed that even though university representatives claim that they do not penalize IMG physicians when they cannot produce the same documents as physicians with a degree from a Québec medical school in support of their applications, no equivalent grade is granted to them to compensate for the difference, which can only disadvantage them in the ranking process.

In sum, the investigation shows that the selection criteria and evaluation tools used by universities 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<sup>10</sup>. However, according to the Commission, failure to validate such criteria and tools paves the way for subjectivity and prejudice, often unconscious. This results in disregarding IMG applications considering, among other things, the different path they have followed compared to physicians with a degree from a Québec medical faculty. Also, it appears that failure to consider this different path and important elements arising therefrom, disadvantages IMG physicians and contributes to their exclusion.

### **Unequal information regarding the programs and the process of admission**

With respect to the 2007 cohort, the Commission's investigation has revealed that at the time of their application for admission to postdoctoral training in medicine, the IMG physicians had access to less information than physicians with a degree from a Québec medical school had. Indeed, it appeared that the latter had been invited a few months prior to registration to an information session organized by the medical faculties, while the former only had access to information available on the Web sites of the universities and of CaRMS.

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<sup>10</sup> *Commission des droits de la personne et des droits de la jeunesse v. Gaz métropolitain inc.*, 2008 QCTDP 24, par. 433.

As for the admission process itself, it appears from the investigation that certain information was not brought to the attention of IMG physicians, including the importance given to the factor of distance from practice and education as well as the consideration of specific criteria, such as the result obtained in the Medical Council of Canada exam, in the case of a postdoctoral training program in psychiatry.

It was also noted during the investigation that IMG physicians had to apply to a multitude of sources to obtain the necessary information, each of them only providing the information pertaining to its own institution, without really providing the candidates with an overall perspective of the process.

According to the Commission, this situation is likely to disadvantage IMG physicians with respect to their understanding of the process leading to postdoctoral training in medicine, in comparison to physicians with a degree from a Québec medical school.

### **Lack of adequate support measures**

The Fédération des médecins résidents du Québec (FMRQ) has publicly acknowledged that IMG physicians were disadvantaged with regards to postdoctoral training in medicine. Thus, in a press release issued on September 5, 2007, the president of the FMRQ stated that year after year, IMG physicians undertaking postdoctoral medical training in Quebec [TRANSLATION] “must manage, in record time, Québec’s medical culture.” He added that the latter, [TRANSLATION] “must not only be subjected to inhuman pressure related to a strained health care system, [...] but must also compete, without preparation, with their colleagues, who have obtained a degree in medicine in Québec and who have mastered our health care system.” He concluded that this type of situation created [TRANSLATION] “an imbalance which disadvantages IMG physicians.”

During the Commission’s investigation, university representatives said they were aware that IMG physicians needed particular supervision during the first months of their residence. A six-month supervision period was mentioned in one case, eighteen months in another case. Moreover, several deplored the lack of an [TRANSLATION] “immersion training”, stressing that, in their opinion, the Ontario system favoured IMG physicians by providing them with reserved spaces and some assistance. Others mentioned that welcoming IMG physicians as observers in hospitals could enable them to maintain contact with the medical practice when they are in the process of immigration and in the process of obtaining recognition for their degree.

However, in spite of these observations, and the fact that certain initiatives have been put in place, it appears that IMG physicians still do not benefit from adequate support

measures in order to help them succeed during the postdoctoral training program in medicine. According to the Commission, setting up such support measures would help to overcome the pitfalls that disadvantage IMG physicians on their path, compared to physicians with a degree from a Québec medical school.

## Recommendations

CONSIDERING that the Commission des droits de la personne et des droits de la jeunesse shall promote and uphold, by every appropriate measure, the principles contained in the *Charter of Human Rights and Freedoms*; (R.S.Q., c.C-12);

CONSIDERING that, among the responsibilities listed under section 71 of the *Charter*, the Commission shall, in particular, investigate on its own initiative or following receipt of a complaint, any situation which “appears to the Commission to be either a case of discrimination within the meaning of sections 10 to 19, [...] or a violation of the right of aged or handicapped persons against exploitation enunciated in the first paragraph of section 48”;

CONSIDERING that through resolution CP-492.2 taken on June 22, 2007, the Commission decided to undertake an investigation on its own initiative, based on section 71(1) of the *Charter*, for the purposes of reviewing allegations of discrimination in the course of an admission process leading to the postdoctoral training program in medicine with respect to IMG physicians;

CONSIDERING sections 10 and 12 of the *Charter* which read as follows:

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

12. No one may, through discrimination, refuse to make a juridical act concerning goods or services ordinarily offered to the public.

CONSIDERING that section 10 of the *Charter* establishes the right to full and equal recognition and exercise of human rights and freedoms, including the right provided for in section 12 to not suffer discrimination in the conclusion of a juridical act concerning goods or services ordinarily offered to the public;

CONSIDERING that the services offered by a university have been considered by the courts<sup>11</sup> as [TRANSLATION] “services offered to the public” in accordance with section 12;

CONSIDERING that discrimination exists, within the meaning of section 10 of the *Charter*, when a distinction, exclusion or preference based on a prohibited ground has the effect of nullifying or impairing the right of a person to be treated in full and equal recognition and to exercise its rights and freedoms;

CONSIDERING that systemic discrimination has been defined by the Human Rights Tribunal as [TRANSLATION] “the cumulative effects of disproportionate exclusion resulting from the combined impact of attitudes marked by often unconscious biases and stereotypes, and policies and practices generally adopted without taking into consideration the characteristics of the members of groups contemplated by the prohibition of discrimination”<sup>12</sup>;

CONSIDERING that evidence in matters of systemic discrimination [TRANSLATION] “rests essentially on a set of facts, such as institutional policies, decision-making procedures, behaviours and attitudes that, in an often apparently unconscious and innocuous way, have and maintain, when combined, disproportionately exclusionary effects on members of groups contemplated by the prohibition of discrimination [...]”<sup>13</sup>;

CONSIDERING that the Human Rights Tribunal has also stressed that systemic discrimination is not restricted to the work environment, but that it [TRANSLATION] “may manifest itself in areas of public service, education, housing, or any other area or location, both at the levels of individual and institutional practices”<sup>14</sup>;

CONSIDERING, in this case, that the Commission’s investigation has revealed, with respect to IMG physicians, the existence of various procedures and practices that disadvantage them in the process of admission to the postdoctoral training program in medicine, including, among other matters, the use of selection criteria and non-validated evaluation tools, the application of criteria that were not adapted to the particular path they have followed, the impact of which turns out to be eliminatory, as well as the lack of adequate support measures to favor their success;

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<sup>11</sup> *University of British Columbia v. Berg*, [1993] 2 S.C. R. 353.

<sup>12</sup> *Commission des droits de la personne et des droits de la jeunesse v. Gaz métropolitain inc.*, 2008 QCTDP 24, par. 36.

<sup>13</sup> *Idem*, par. 67.

<sup>14</sup> *Commission des droits de la personne et des droits de la jeunesse v. Commission scolaire des Phares*, 2009 QCTDP 19, par. 352.

CONSIDERING that the investigation also revealed, based on the data on file, the existence of an important under-representation of IMG physicians in accessing the postdoctoral training program in medicine, in comparison to physicians with a degree from a Québec medical school;

CONSIDERING that, in the opinion of the Commission, there is reason to conclude that all of these various procedures and practices, when combined with each other, produce and maintain disproportionate effects of exclusion toward IMG physicians on the grounds of a discrimination prohibited by the *Charter*, namely their ethnic origin;

CONSIDERING that, in the opinion of the Commission, this situation is contrary to the provisions of the Charter and that it must be corrected;

FOR THESE REASONS, and considering its duty to promote and uphold the principles contained in the *Charter*, the Commission recommends the following:

- **To the universities**

THAT the universities undertake to revise the process and selection criteria currently in force so that IMG physicians have real access to the postdoctoral training program in medicine;

THAT the universities, to this end, set up a validation process for the criteria and selection tools so as to ensure that applications of IMG physicians are assessed objectively according to the qualities and skills required to access the postdoctoral training program;

THAT the universities, taking into account the situation and the specific needs of IMG physicians, undertake to develop a support program, in the form of information sessions, preparatory internships or any other appropriate resource, to promote a better knowledge of medical practice in Québec, particularly with respect to the legal, ethical, organizational, socio-cultural, pharmacological and other aspects of the practice;

THAT the universities ensure that, teachers and others who deal with IMG physicians are made aware of their professional reality and culture;

THAT the universities periodically report to the government regarding the measures established with the purpose of promoting the integration of IMG physicians into the postdoctoral training program and by specifying the new practices developed to this effect.

- **To the Ministère de la Santé et des Services sociaux**

THAT the Ministère de la Santé et des Services sociaux take all the means and measures necessary to ensure that the number of positions determined for the postdoctoral training program in medicine is respected by the universities and that all positions thus determined be filled;

THAT the Ministère de la Santé et des Services sociaux make the issue of IMG physicians a priority in order to ensure and promote the implementation of measures and programs with the purpose of improving the latter's integration into the system leading to obtaining a permit to practice, in collaboration with the Collège des médecins du Québec and universities.

- **To the Collège des médecins du Québec**

THAT the Collège des médecins du Québec ensure that the universities give full recognition to the equivalence of degrees obtained by IMG physicians, in accordance with section 28 of the *Regulation respecting the terms and conditions for the issuance of the permit and specialist's certificates by the Collège des médecins du Québec*.

- **To all respondents**

THAT the respondents take the necessary means to ensure the conservation of data concerning the follow-up of candidates who have applied for the postdoctoral training program, for both IMG physicians as well as physicians with a degree from a Québec medical faculty and that this data be available to the public on an annual basis;

THAT the respondents establish a centralized and reliable information system in order to give IMG physicians access to all of the information on admission and the selection process for the postdoctoral training program, the various steps involved throughout this process, and the resources available to them in order to facilitate access;

THAT the respondents collaborate among themselves to develop a proposal for a preparatory training course or supervision period of six months' duration, and any other suitable support measures aimed at providing better access to postdoctoral training in medicine for all IMG physicians who have obtained their equivalence from the Collège des médecins du Québec.

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**COM-559-5.1.1**

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Resolution adopted unanimously by the members of the Commission des droits de la personne et des droits de la jeunesse who participated in the discussion and decision during their 559<sup>th</sup> session held on September 10, 2010.