CITATION: Vervoort et al v. Minister of Health et al, 2025 ONSC 6781
DIVISIONAL COURT FILE NO.: 899/25JR
DATE: 20251203

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: Dominique Vervoort and Black Physicians of Canada, Moving Parties

AND:

Minister of Health and Attorney General of Ontario, Respondents

BEFORE: Justice O'Brien

COUNSEL: *Allan Rock, K.C. and Warda Shazadi Meighen,* Counsel for the Moving Parties/Applicants

S. Zachary Green, Andrea Bolieiro and Sean Kissick, Counsel for the Respondents

HEARD: by videoconference on November 27, 2025

ENDORSEMENT

Overview

[1] Dominique Vervoort has lived in Ontario since July 2021 and became a Canadian permanent resident in July 2025. He graduated from medical school in Belgium in 2018. Since moving to Canada, he has pursued a PhD in Health Systems Research at the University of Toronto.

[2] Until a recent medical diagnosis, Dr. Vervoort intended to participate in the matching process for a medical residency position in Ontario. Together with Black Physicians of Canada, a non-profit public interest organization, he has brought an application for judicial review to challenge the recent Ontario government policy affecting his eligibility for medical residency. The policy changes the eligibility for residency in Ontario of Canadian citizens or permanent residents who graduated from international medical schools.

[3] The Canadian Resident Matching Service (CaRMS) implements a national system for medical graduates to match with medical residency positions. CaRMS involves two rounds or "iterations" of matching applicants with programs each year. Applications for the first iteration of the 2026 process were due on November 27, 2025. Applicants who do not receive a match in the first iteration may compete in the second iteration for any remaining unfilled residency positions. The second iteration of the 2026 match starts in March 2026.

[4] On September 16, 2025, the Assistant Deputy Minister of Health (ADM) wrote to the Deans of Medicine of Ontario's medical schools directing a policy change with respect to eligibility for the first iteration of the CaRMS process. The policy change was publicly announced on October 8, 2025. The change only affects international medical graduates (IMGs), meaning applicants like Dr. Vervoort, who are Canadian citizens or permanent residents and graduated from medical school outside Canada. Pursuant to the change, IMGs will not be eligible to participate in the first iteration of the match unless they attended high school in Ontario for two or more years.[1]

[5] According to the applicants, the problem with the policy change is that by the time of the second iteration, only some specialties remain available for matching, for example family medicine. Dr. Vervoort's specialty is cardiovascular surgery. His evidence is that historically there are no cardiovascular surgery residency spots available beyond the first iteration. The applicants state that 92% of medical residency placements happen in the first iteration. The applicants also raise a concern that the new policy will exacerbate a shortage of family physicians in Ontario and of physicians providing remote and rural care.

[6] The applicants seek judicial review of Ontario's policy. They submit the policy was unreasonable, implemented in a procedurally unfair manner, and violated their rights under sections 6, 15, and 7 of the *Canadian Charter of Rights and Freedoms*.

[7] On this motion they seek a stay of the policy pending the hearing of the application for judicial review. This motion was heard on November 27, 2025, the day the applications for the first iteration of the match were due. At the outset of the hearing, the court issued an order staying the policy on an interim interim basis. In brief reasons provided to the parties on November 27, 2025, the court stated:

> Applications under the CaRMS process were due today at 12 pm EST. The evidence before the court indicated that applications and documents submitted after 12 pm EST today would be time-stamped late and some programs would not review late applications or documents.
>
> The motion raises a matter of public interest with complex questions of jurisdiction and important rights at stake from both sides. The court issued the interim interim order on a temporary basis to preserve rights until the disposition of the motion. The court was concerned that, without an interim interim order, the motion would become moot. It was therefore in the interests of justice to issue the order. The court expects to dispose of the motion in the next few days.

[8] Although the parties have raised a number of issues on the stay motion, the central issue is whether this court has jurisdiction over the application for judicial review. If the court does not have jurisdiction, there is no need to address the other arguments because the court has no authority

[1] The policy includes exemptions that do not apply here if the individual was unable to attend Ontario high school due to a legal guardian's deployment or posting outside Ontario as a member of the Canadian Armed Forces, Canadian Diplomatic Service or Global Affairs Canada.

to order a stay. For the following reasons, I conclude the application falls outside the court's jurisdiction.

Are the applicants entitled to an extension of time to file the application for judicial review?

[9] There is a preliminary issue regarding the timeliness of the application for judicial review. The ADM's letter was sent on September 16, 2025 and the policy was posted on the CaRMS website on October 8, 2025. Under s. 5(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 (JRPA), an application for judicial review must be made no longer than 30 days after the date the decision was made. Subsection 5(2) permits the court to extend the time for making an application for judicial review. The applicants filed their notice of application on November 18, 2025. The application raises complex issues about a matter of public interest. The respondents do not take any position on the request for an extension of time. In all the circumstances, I grant an extension of time for the filing of the application.

Does the application for judicial review fall within the court's jurisdiction?

[10] The central issue to be determined on the stay motion is whether the application falls within the court's jurisdiction under the JRPA. A second, related, question is whether the inclusion of the *Charter* allegations changes my conclusion that the application is outside the jurisdiction of this court.

Jurisdiction under the JRPA

[11] The jurisdiction of the Divisional Court is limited to those matters conferred by statute: *Daneshvar v. Her Majesty the Queen in Right of Ontario*, 2021 ONSC 3186, at para. 29. The JRPA sets out the Court's jurisdiction over applications for judicial review. Subsection 2(1) provides the two possible sources of jurisdiction as follows:

> 2(1) On an application by way of originating notice, which may be styled "Notice of Application for Judicial Review", the court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:
>
> 1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.
>
> 2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power.

[12] The applicants' notice of application seeks two primary remedies: (1) declarations, such as that the policy was unreasonable, breached procedural fairness, and violated their *Charter* rights; and (2) *certiorari*, meaning an order quashing the policy. Declarations are available under s. 2(1)2 and *certiorari* is available under s. 2(1)1.

[13] The applicants first submit the application falls within s. 2(1)2 because it is in relation to the exercise of a "statutory power." A "statutory power" is defined in s. 1 of the JRPA to mean a power or right conferred by statute

> (a) to make any regulation, rule, by-law or order, or to give any other direction having force as subordinate legislation.
>
> (b) to exercise a statutory power of decision,
>
> (c) to require any person or party to do or to refrain from doing any act or thing that, but for such requirement, such person or party would not be required by law to do or to refrain from doing,
>
> (d) to do any act or thing that would, but for such power or right, be a breach of the legal rights of any person or party.

[14] The problem with the applicants' request for declaratory relief under s. 2(1)2 is they have not been able to identify any particular statutory power. They trace the Minister's statutory authority through two statutes, the *Ministry of Health and Long-Term Care Act*, R.S.O. 1990, c. M. 26 (the MOHLTCA) and the *People's Health Care Act, 2019*, S.O. 2019, c. 5. The MOHLTCA authorizes the Minister of Health and Long-Term Care to enter into funding and other agreements. It also permits the Minister to delegate her powers under that act. The *People's Health Care Act, 2019* established Ontario Health as a public health agency. It generally provides a model for integrated public health delivery and a funding scheme for Ontario Health.

[15] However, the exercise of a statutory power must be more specific. It is not a question of generally acting within the bounds of statutory authority. As this court stated about s. 2(1)2 in *Danshevar*, at para. 30:

> This provision does not give the Court broad powers to make declarations about government action, including desired government action. Rather, this provision limits the Court's power to grant declaratory relief to circumstances where the government or public body has exercised, refuses to exercise or proposes to exercise a statutory power.

[16] The applicants have not shown that the making of the policy constituted the exercise of a "statutory power." The ADM's letter does not rely on any statutory power authorizing the government to make the decision and the respondents state no statutory power is relied on to make it. The applicants have not been able to identify any specific statutory power used to make the decision.

[17] The only statutory power the applicants have identified that could be the source of the Minister's authority is s. 20(1) of the *People's Health Care Act, 2019*. Subsection 20(1) empowers the Minister to issue certain types of binding directives. It provides:

> **20**(1) Where the Minister considers it to be in the public interest to do so, the Minister may issue directives to any or all of the following:
>
> 1. The Agency.
>
> 2. A person or entity that receives funding from the Agency under section 21.

[18] This provision does not apply to the issuance of the policy in this case. First, Ontario says the ADM did not rely on the provision and the September 16 letter does not refer to the provision. Second, although the September 16 letter states it is providing a "direction," it does not use the word "directive." The applicants have not pointed to any material that refers to the policy as a directive.

[19] Third, subsection 20(6) requires that directives under s. 20 be published on a website. The applicants have not been able to point to any publication of the September 16 letter.

[20] Finally, s. 20(1) does not apply on its terms. It addresses directives to the "Agency," which is Ontario Health and to "a person or entity that receives funding from the Agency under section 21." Section 21 authorizes funding to "a health service provider or integrated delivery system in respect of health services that the provider or system provides." The recipients of the letter were the Deans of Medicine of Ontario's medical schools. They do not fall within this provision.

[21] The applicants' submission that the ADM's letter was within a "concrete statutory legal framework" is not sufficient. They have not identified the exercise of a specific statutory power and, therefore, s. 2(1)2 does not apply.

[22] The applicants' second argument is that the court has jurisdiction under s. 2(1)1 of the JRPA. The applicants are seeking an order in the nature of *certiorari*, to have the policy quashed. While the court is authorized to order *certiorari* under s. 2(1)1, after careful review, I accept the respondents' submission that such an order cannot be made against the Crown in these circumstances.

[23] There is limited jurisprudence addressing this issue, but the restriction on orders for *certiorari* against the Crown arises from fundamental principles of administrative law. The authority of the court to issue administrative orders against the Crown arises where the court is exercising supervision over a statutory function. This can be either because the Crown is exercising a statutory power or because the remedy is sought against a "delegate" of the Crown, such as an administrative decision-maker. Absent those circumstances, the court cannot exercise authority by *certiorari* against the Crown or its agent: *Minister of Finance of British Columbia v. The King*, 1935 CanLII 351,]1935] SCR 278; *Carrier-Sekani Tribal Council v. Canada (Minister of Environment),* 1992 CanLII 14388 (FCA), [1992] 3 FC 316, at p. 331; *Lang v. British Columbia (Superintendent of Motor Vehicles)*, 2005 BCCA 244, at para. 22; *Ontario Public Service Employees Union v. Ontario (Attorney General)*, [1995] CanLII 10637 (ON SC), (1995), 26 O.R. (3d) 740.

[24] In this case, the Minister was neither acting pursuant to a specific statutory power, nor was she a delegated decision maker. The applicants have not pointed the court to any authority where *certiorari* was granted against the Crown in these circumstances. I conclude that the remedy of *certiorari* is not available.

Alleged Charter Violations

[25] I also agree with the respondents that the inclusion of *Charter* arguments does not give the court broader jurisdiction. As stated by this court recently in *Apitipi Anicinapek Nation v. Ontario*, 2025 ONSC 5033, at para. 17, "the Divisional Court's status as a Branch of the Superior Court does not transform its substantive jurisdiction to include the broad inherent jurisdiction of a Superior Court judge."

[26] *Apitipi* involved an application for judicial review to challenge a decision of the Minister of Natural Resources in connection with a water management plan. The applicant sought administrative law remedies, such as an order quashing the Minister's decision as unreasonable and not in compliance with the Crown's duty to consult. The applicant also sought a declaration that the relevant legislation, regulations and policies were unconstitutional as inconsistent with s. 35 of the *Constitution Act, 1982*.

[27] A panel of this court concluded that, although there was jurisdiction to challenge the Minister's decision on administrative law grounds in Divisional Court, the constitutional challenge plainly fell outside the court's jurisdiction. It therefore transferred the constitutional challenge to the Superior Court.

[28] The applicants submit *Apitipi* is distinguishable because the focus there was on the inability to challenge abstract government inaction. I disagree. While there is a specific policy at issue in the current case, that does not change that there is no jurisdiction, as derived from the JRPA, to review that policy. The *Charter* challenge cannot expand jurisdiction that does not exist from the outset.

[29] In this case there appears to be no need to transfer the constitutional challenge to the Superior Court because, following a case conference in this court on November 24, 2025, counsel for the applicants filed an application in the Superior Court under r. 14.05 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194. The application was brought on behalf of different applicants but challenges the same policy on the same constitutional grounds and relies on much of the same evidence. A motion in the r. 14.05 application was scheduled before the Superior Court on December 1, 2025.

Disposition

[30] Given my conclusion that the Divisional Court does not have jurisdiction over the application for judicial review, the court has no authority to grant a stay motion. I therefore do not need to address the remaining arguments on the motion. The motion is dismissed and the interim interim stay I granted is lifted. No party requested costs of the motion and none are ordered.

[31] I was not asked to make an order quashing the application. By January 9, 2026, the applicants are asked to advise the court whether they are seeking to continue to pursue the application. If they are not, they are asked to file a notice of abandonment.

O'Brien J.

Released: December 3, 2025