FÉDÉRATION DES MÉDECINS RÉSIDENTS DU QUÉBEC

FMRQ
REPRESENTATIONAL STRUCTURE
AND ROLE OF BOARD MEMBERS AND DELEGATES

A Guide for elected representatives

Knowing our past, the better to understand our present and lead us to our future

October 2020

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Introduction

The purpose of this document is to inform resident doctors taking on a role as representatives to their peers of the political and operational structure of the FMRQ and associated legal issues relating to this responsibility.

Mission

The *Fédération des médecins résidents du Québec's* mission is the study, defence and advancement of the economic, social, moral, academic and professional interests of the unions and their members.

The FMRQ is made up of the four resident doctor associations linked to the establishments in the University of Montreal, McGill University, University of Sherbrooke, and Laval University (Quebec City) healthcare networks. It has some 4,000 members, who deliver services to the public in Quebec's healthcare establishments. One quarter of these resident doctors work in family medicine, while the remainder work in one of the some 60 other medical, surgical and laboratory specialties recognized in Quebec.

The FMRQ is responsible for negotiating collective agreements, and ensures that these are complied with in work and training sites.

The FMRQ offers services to its members for academic and university affairs.

The FMRQ offers support with regards to issues relating to resident doctor wellness and physician resource planning.

The FMRQ negotiates a series of financial services and personal insurance for its members.

The FMRQ organizes several events. For more than 20 years, it has been organizing, among other things, FMRQ Career Day, a medical employment fair bringing together representatives from all Quebec healthcare establishments and elsewhere, the Family Medicine Conference, an accredited scientific conference which grows in popularity year by year, as well as other events.

The FMRQ represents its members on more than 40 organizations and 50 committees concerned by the future of Quebec's healthcare system and medical training in Canada. It puts forward there the concerns of the upcoming generation of doctors, as well as the solutions they would like to see implemented with a view to enhancing access to healthcare and the quality of healthcare in Quebec.

The FMRQ issues position statements on any draft statute, regulation or policy that may have an impact on resident doctors' living and work conditions or the quality of their postgraduate education.

The FMRQ has a Board of Directors composed of 10 resident doctors and the executive director, and has 12 or so permanent employees.

FMRQ and its beginnings

1956-1959: AIRM/Association of Interns and Residents of Montreal

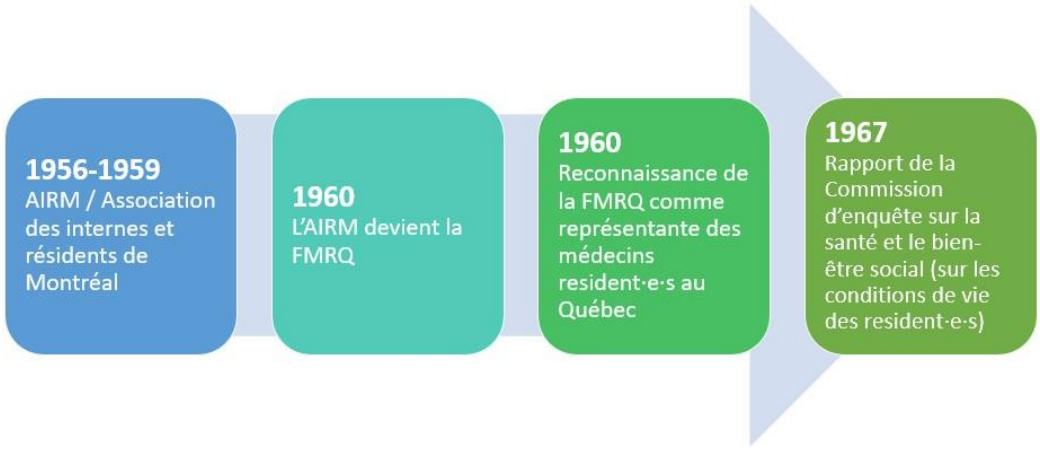
The first grouping of resident doctors took place in the late 1950s under the banner of the AIRM (Association of Interns and Residents of Montreal). Contrary to its name, the AIRM offered services to all resident doctors nationwide.

At that time, regional university associations were beginning to organize themselves.

Resident doctors earned between $50 and $100 per month,and worked 80 to 110 hours a week in hospitals. According to a study conducted at the time, they spent 13% of their time in lectures, presentations and teaching, and 71% on patient care.

The question of member representation was not always a simple one

The actions of the FMRQ and the regional associations led to jurisdictional disputes between them, while the Quebec government recognized only the FMRQ as the political body responsible for representing resident doctors.



1960: AIRM becomes FMRQ

In 1960, the AIRM tabled a brief on resident doctors' socio-economic status, which it sent to the Minister of Health at the time. The MSSS then recognized the existence of the FMRQ as the representative of resident doctors in Quebec.

March 1970: First collective agreement, incorporation, and grouping together

In 1970, resident doctors organized into a federation by incorporating the FMRQ to group together the following faculty associations:

- SMRM (now AMRM);
- AMRIQ (now AMReQ);
- AIRM (now ARM); and
- AMReS, which would join the FMRQ later that year.

The second collective agreement, signed following a general strike lasting several weeks in December 1972, led to some gains, including a pay increase, healthier call schedules, and the right to participate in scientific activities.

1981-1984: Unionization

In 1981, the FMRQ and affiliated associations applied for accreditation to represent resident doctors under the *Quebec Labour Code* on the grounds that resident doctors are "employees" with the fundamental right to negotiate their work conditions, and not simply "students" subject to universities and the doctors who supervise them.

The Quebec government and the Minister of Health of the time vehemently opposed resident doctors' applications for union accreditation by recognizing the FMRQ as the organization representing resident doctors in the Quebec Health Insurance Law (*Loi sur l'assurance maladie du Québec*).

Following three years of litigation, the courts finally confirmed resident doctors' fundamental right to unionize, confirming that their postgraduate status did not alter the fact that they were also employees within the meaning of the *Labour Code*.

This long drawn-out legal battle for recognition of resident doctors' status as employees would profoundly impact the political and legal organization of the FMRQ and its affiliated associations.

While resident doctors were legally and politically represented by the FMRQ in their relations with the MSSS, the fact that the local associations obtained the status of syndicates (unions) within the meaning of the *Labour Code* made them parties legally empowered to negotiate, and a new power structure was put in place within the FMRQ.

FMRQ today

The four affiliated associations have become, through their union accreditation certificates, unions legally responsible for representing resident doctors-employees in their rights (duty of fair representation, local ratification of collective agreements, entitlement to file grievances, right to strike, etc.).

The FMRQ continues, in point of fact, to provide services directly to resident doctors in their relations with their home universities. And Federation staff act as agents of the associations for services to resident doctors in their relations with employer establishments.

Moreover, the FMRQ continues to play its role as provincial body negotiating with the "employer side"—the MSSS—in conjunction, of course, with the affiliated associations.

This sharing of powers and responsibilities between the four affiliated associations and the FMRQ thus developed in line with the legal and political context, but, legally speaking, these five corporations remain distinct entities, despite their intrinsic links.

Each of the five corporations has its own Board of Directors, rules of operations, and specific interests, although these core interests converge toward those of resident doctors as a whole. The composition of the FMRQ's Board of Directors points to this convergence of interests, with the presence of a voting member from each affiliated association.

Political/decision-making structure

Board of Directors

The Board of Directors is the FMRQ's senior decision-making body. It consists of

A President
A Vice President
A Secretary-Treasurer
Four directors from the affiliated associations
Three directors with sectoral responsibility
An Executive Director, ex officio (non-voting).

Principal powers

- Administer Federation business
- Possess all powers usually held by a Board of directors[1].
- Draw up and propose major policy thrusts
- Adopt Federation's budget
- Hire Executive Director and evaluate his performance
- Approve Federation's strategic action plan
- Mandate Executive Director to ensure operational monitoring

Executive Committee

The Executive Committee is composed of the President, Vice President, Secretary-Treasurer, and Executive Director, who act as required between Board meetings.

Delegates' Assembly (DA)

The Delegates' Assembly is composed of delegates from each association (100 or so in all), but the number of voting delegates varies according to the number of members in each association [1/100 members]); and members of the Board of Directors, who may vote only in the annual elections.

The DA has three powers:

1. It elects the Federation's 10 directors with voting rights
2. It adopts amendments proposed by the Board to the General By-law
3. It appoints independent auditors

Other duties

- It receives financial statements and the budget, and a summary of activities, for information purposes
- It discusses any topic submitted to it by the Board of Directors in order to enrich our reflection with regard to our political orientations.

[1] [Unofficial translation] "The Board of Directors does not have to take orders from the members' assembly, and such an assembly may not nullify or alter the Board's decisions. (…) In the legal entity, the General Assembly may elect and, in certain cases, remove directors. It may appoint the auditor. It may also ratify or refuse to ratify by-laws submitted to it by the Board. (…) In such matters, it enjoys a degree of sovereignty, but not in administrative decisions." (*Administrateurs de personnes morales sans but lucratif: Le guide de vos droits, devoirs et responsabilités [Directors of not-for-profit corporations: Guide to your rights, duties and responsibilities]*, Paul Martel, Wilson & Lafleur, 4th Ed., 2016, pp. 11-12)

General Assembly

The General Assembly acts in an advisory/informative and mobilizing capacity It brings together resident doctors from the four associations, and is used more for major issues, particularly negotiations, physician resources matters and member wellness.

Sectoral committees

The Board's five sectoral standing committees are the following:

1. Academic Affairs Committee – Specialties (CAP-S)
2. Academic Affairs Committee – Family Medicine (CAP-MF)
3. Union Affairs Committee (CAS)
4. Resident Wellness Committee (CBER)
5. Physician Resource Planning Committee (CPEM)

These committees have the power to make recommendations to the Board. Thus, they gather the information necessary for decision-making, and, at the Board's request, develop the content associated with topics in their area of activity.

Operational Structure

Operationalization of policies and decisions stemming from the political structure falls to the FMRQ's Executive Director.

The Federation's Executive Director is the sole employee reporting to the Board, and the Federation's other employees report to the Executive Director.

This sharing between political administration and operational management can be conveyed as follows.

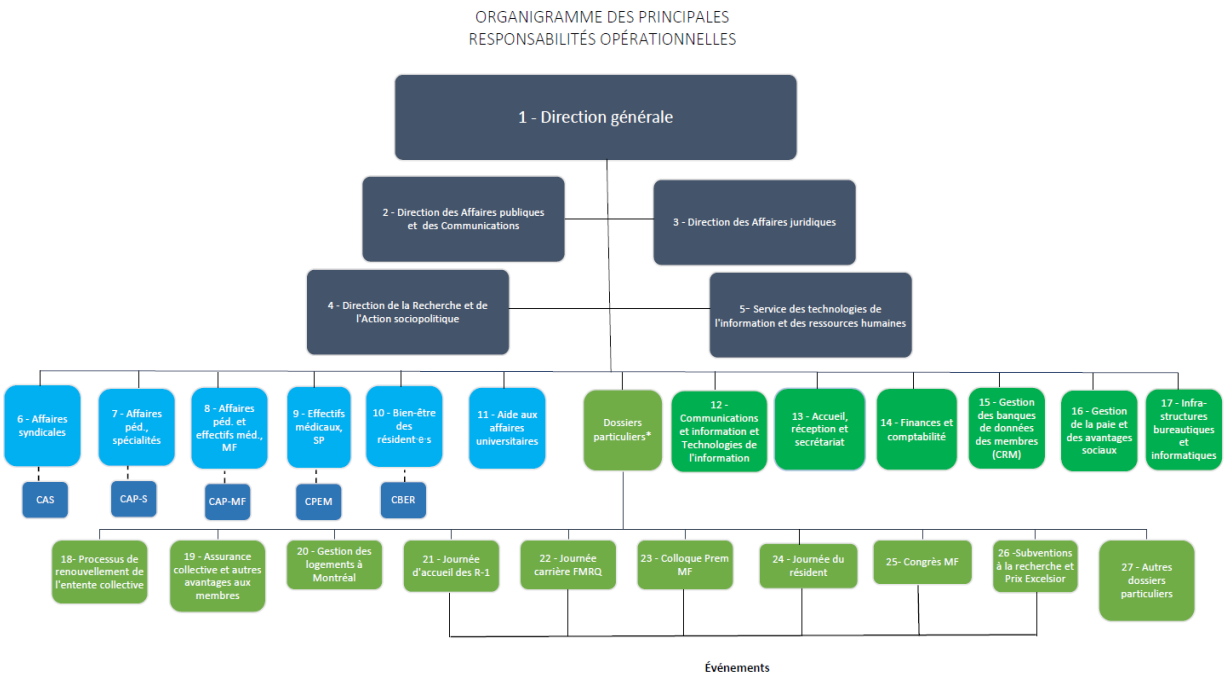
The Board of Directors ensures the smooth operation of the organization, and proposes the main policy thrusts. Board members, through their duties of prudence and diligence, ensure that the objectives they have previously defined are achieved. The Board thus decides **WHAT? WHY? WHEN?** and **HOW MUCH?**

The FMRQ's Executive Director ensures follow-up on and execution of Board decisions by literally "directing": he decides on the means (chooses the path) with the resources placed at his disposal to attain the goals determined by the Board (toward the destination chosen by the Board) within a timeframe also determined by the Board. The Executive Director thus decides **HOW? BY WHOM?** and **BY WHICH MEANS?**

It is very important for this sharing of actual responsibilities to be clear and properly understood within the organization—not only in order to be effective, of course, but also so as to be able to separate "who did what" from "who was responsible for what," in the event of incidents involving the organization's liability.

FMRQ's Staff/Main Activity Sectors and Issues

- Direction générale/ Executive Directorate
- Direction des Communications et des Affaires publiques/Communications and Public Affairs
- Direction des Affaires juridiques/ Legal Affairs
- Direction de la Recherche et de l'Action sociopolitique/ Research and Sociopolitical Action
- Service des technologies de l'information et des ressources humaines/Information Technology and Human Resources
- Secteur des Affaires syndicales/ Union Affairs
- Secteur des Affaires pédagogiques – Spécialités/ Academic Affairs – Specialties
- Secteur des Affaires pédagogiques et des Effectifs médicaux – Médecine de famille/ Academic Affairs and Physician Resources – Family Medicine
- Secteur des effectifs médicaux en spécialité/Physician Resources in Specialties
- Secteur du Bien-être des résidents/Resident doctor wellness
- Secteur de l'Aide aux Affaires universitaires/Assistance for University Affairs
- Secteur des Services administratifs/Administration



Delegates' representative role in defending resident doctors

If resident doctors need information, they can of course refer to their delegates, as is usual. On the other hand, if the resident doctor is experiencing a difficulty involving issues of a legal nature (if a right is at issue), the delegate has to be able to identify it and act accordingly. The delegates' role is to provide information and act as a conduit between the associations, the Federation, and members.

This role comes with legal responsibilities whose scope must be well understood. Resident doctors' dual status (students pursuing postgraduate education in medical faculties / employees within the meaning of the *Labour Code* delivering professional services in healthcare establishments) implies a complex legal environment.

If resident doctors have difficulties associated with their work conditions, their rights contained in the collective agreement, or in their relations with healthcare establishments, their effective recourse for trying to obtain satisfaction is the grievance.

This grievance is the Association's responsibility, in that the Association can decide whether or not to file the case with an arbitration board. But, before proceeding, the opinion of the competent individuals in the Federation will be required, since, barring exceptional cases, it is the Federation which will handle the defence of the case, and take on the costs entailed.

For that reason, it is not advisable for a delegate or an officer of an association or the Federation to express views on a case's validity or chances of success. In all cases, members have to be referred to the individuals with the expertise to do so or request an opinion in that regard.

If resident doctors are experiencing difficulties with their university or faculty (thus as postgraduates rather than employees), the same advice to use caution applies, but even more so, since the ultimate remedies, after exhausting internal university recourse, lie with the civil courts (rather than arbitration or labour boards), and the decision to institute proceedings lies with the resident doctors. The associations therefore have no role to play on the legal front in these cases, and representation will be provided by the Federation, if it considers that appropriate following analysis in each case. In that situation, it is even more important for delegates or officers to refer cases to the Federation, since the timeframe for acting is often very short (e.g., 30 days to contest a university's final decision). Also, in case of academic difficulties, health problems, or difficulties finding a position, resident doctors will sometimes prefer to talk with a Federation employee rather than a colleague, for confidentiality purposes.

Problems with collective agreement or establishment?

- Union Affairs take on the file
  - Ultimate recourse: grievance
  - Recourse belonging to Association, but services provided by Federation

Problem with university, accreditation body (CFPC, RCPSC, MCC or CMQ)?

- University, Academic or Union Affairs are involved in the case
  - Ultimate recourse before civil courts
  - Recourse belonging to resident doctors concerned, and services provided by FMRQ, depending on case analysis

Duties that come with delegates' representative role

Acting as a member of the Board of an incorporated association or Federation involves legal issues which may be summarized as follows.[2] It should be noted that delegates, even when not formally Board members, have essentially the same duties when they act as representatives (agents) of their association or the Federation.

Act with prudence and diligence

This relates to the notion of the duty to act as a "reasonable person," to "inform oneself before taking action so one's decisions are enlightened, to minimize the risk of errors" and not to take on a mandate beyond one's purview.

Examples:

- Perform obligations within established timeframe;
- Provide accurate, transparent information;
- Not act or place oneself in a conflict of interest;
- Confine oneself to duties for which one was named;
- Comply with applicable rules and prior decisions unless they are changed.

[2] Several sources of law come into play here, such as the Professional Syndicates Act, FMRQ General By-law, Civil Code of Quebec, Quebec Labour Code, etc.

Delegates are not required to demonstrate abilities they do not possess, or to know everything. But, when necessary, it is incumbent on them to delegate certain acts to competent individuals or to seek advice before taking action.

It is generally agreed by the courts that compliance with the rules of good governance by the executives of an organization is implicitly included in the legal obligation to act with prudence and diligence. Providing members with quality services, in an equitable manner, is also implicit in that obligation.

Since elected representatives have mandates of limited duration, and resident doctor status is by definition time-limited, respect for continuity of services over time is an important issue at the FMRQ. Delivery of services to members could not be changed each year without the risk of exposing the Federation to liability, since the issues dealt with are generally engaged in over a longer time frame than the duration of elected representatives' mandates. It is therefore their responsibility to ensure continuity, by making enlightened decisions taking into account past decisions, the current context, and the organization's present and future interests.

This in no way limits the right, or even sometimes the duty, of Board members to change how things are done and the order of priorities to reflect legitimate interests or political will. But when they do so, they are required to do so in accordance with good governance practices and in compliance with the principle of prudence and diligence, which notably includes the obligation of ensuring equitable treatment of the issue for the member and acting reasonably.

Act with honesty and loyalty

Board members have to carry out their duties in the sole interest of the organization, without taking into account the interest of any other person or group. They must not defend the interests of the group of members to whom they owe their election. Clearly, if by defending the interest of that group they are also acting in the best interest of the organization, there is nothing against that. Nor may they bring into consideration their own personal interests or those of their family, friends, a political party, etc. Delegates who are not Board members should govern themselves according to the same ethical standards.

Board members or delegates have to declare any interest they have in an undertaking or association likely to place them in a conflict of interest or appearance of conflict of interest in the performance of their mandate as elected representatives.

Appendices

FMRQ Political partners

- Medical Federations (FMSQ, FMOQ, FMEQ)
- Quebec's Faculties of Medicine (BCI)
- Le ministère de la Santé et des Services sociaux
- La Régie de l'assurance maladie du Québec
- Le Collège des médecins du Québec
- Medical Colleges (RCSPC, CFPC)
- Resident doctor associations from Canada (RDoC, PHOs), the USA and elsewhere
- Other healthcare network unions (FIQ, CSN, FTQ, etc.)
- Quebec Physicians' Health Program

Main acronyms

AFMC	Association of Faculties of Medicine of Canada
BCI	*Bureau de coopération interuniversitaire*
CARMS	Canadian Resident Matching Service
CÉMA	Comité des études médicales et de l'agrément
CFMS	Canadian Federation of Medical Students
CFPC	The College of Family Physicians of Canada
CMQ	*Le Collège des médecins du Québec*
CQMF	*Le Collège québécois des médecins de famille*
CSN	Confédération des syndicats nationaux
CVDFM	*Conférence des vice-doyens aux études médicales postdoctorales des facultés de médecine*
DARSSS	*Direction des assurances du réseau de la santé et des services sociaux*
FMEQ	*La Fédération médicale étudiante du Québec*
FIQ	*Fédération interprofessionnelle de la santé du Québec*
FMOQ	*La Fédération des médecins omnipraticiens du Québec*
FMRAC	Federation of Medical Regulatory Authorities of Canada
FMSQ	*La Fédération des médecins spécialistes du Québec*
FTQ	*Fédération des travailleuses et des travailleurs du Québec*

MCC	Medical Council of Canada
MSSS	*Le ministère de la Santé et des Services sociaux*
PHOs	Professional Housestaff Organizations
QPHP	Quebec Physicians' Health Program
RAMQ	*Régie de l'assurance maladie du Québec*
RCPSC	Royal College of Physicians and Surgeons of Canada
RDOC	Resident Doctors of Canada

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