

ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

BETWEEN:

DR. WALEED ALGHAITHY

Applicant/Moving Party

- and -

THE UNIVERSITY OF OTTAWA

Respondent/Responding Party

)  
)  
) *Douglas Christie and Barbara Kulaszka for*  
) *the Applicant*

)  
) *Jamie MacDonald for the Respondent*

)  
) HEARD: September 15, 2011

**DAMBRON J.:**

[1] The applicant, who is a Saudi Arabian national, was a senior medical resident in neurosurgery at the respondent University until he was dismissed in December, 2009 upon the recommendation of the Resident Program Committee. He appealed unsuccessfully through various levels of the internal appeal structure until his dismissal was upheld by the Senate Appeals Committee, the final tribunal in that structure, on January 28, 2011. He then brought an application for judicial review to this Court, alleging that the Senate Appeals Committee's decision was unreasonable, and contrary to the rules of natural justice. He also alleges that the dismissal violated his rights under s. 2(b) of the *Canadian Charter of Rights and Freedoms*.

[2] In support of his application for judicial review, the applicant filed an affidavit providing a narrative account of his residency and additional evidence that was not before the Senate Appeals Committee. The respondent brought a motion to strike out certain paragraphs and exhibits from this affidavit on the basis that the Court, on judicial review, reviews a tribunal's decision on the record, and admits affidavit evidence exceptionally, and only to the extent that it shows jurisdictional error. In response, the applicant brought a motion for: an order granting him leave to amend his Notice of Application and advance a claim for a *Charter* remedy; and an order to admit the affidavit evidence on the basis that it is necessary to provide a full factual background for his constitutional issue, and to support his allegation of bad faith and reasonable apprehension of bias on the part of the respondent. The applicant's motion overlaps and overtakes the respondent's motion. As a result, I will consider only the applicant's motion.

## BACKGROUND

[3] As I have indicated, the applicant was dismissed in December, 2009 upon the recommendation of the Resident Program Committee. The respondent says that the decision to make this recommendation was reached at a meeting on December 2, 2009. Dr. Richard Moulton, Chair of the Division of Neurosurgery, and Dr. Eve Tsai, a professor, were present at the meeting and participated in the vote to recommend dismissal of the applicant. At the time, Dr. Moulton and Dr. Tsai were the subjects of ongoing unprofessional conduct complaints brought by the applicant. In the case of Dr. Tsai, the applicant, together with other medical students, had made a complaint to Dr. Paul Bragg, the Associate Dean of Postgraduate Medical Education. The complaint related to allegations of racial discrimination against medical students of Arabic origin.

[4] On January 28, 2011, the Senate Appeals Committee dismissed the applicant's appeal of his dismissal. It was unanimously of the view that the applicant had engaged in a pattern of conduct that was both unprofessional and disruptive. His unprofessional and disruptive behaviour manifested itself in e-mails critical of the neurosurgery program and its administrators; absenteeism; and disregard for program rules and "an apparent preference for confrontation or insubordination over collaborative and cooperative approaches to resolving differences of opinion."

[5] Shortly after the Senate Appeals Committee decision, an anonymous person calling himself or herself "Neuro Leaks" disclosed e-mails that had passed among Dr. Moulton, Dr. Bragg and Dr. Tsai which dealt with the applicant, and their anger that he had made a complaint of discrimination against Dr. Tsai. The e-mails indicated that after the applicant made this complaint, Dr. Bragg, Dr. Moulton, Dr. Worthington, Dr. Poulin, the Chief of Surgery and Dr. Bradwejn, the Dean of the Faculty of Medicine, decided that the applicant "must be removed" and "fixed," although it was difficult to do this because he was one of the best residents in the Neurosurgery Program.

[6] In one leaked e-mail sent on June 24, 2009, Dr. Bragg provided advice to Dr. Moulton on what evidence would be needed to dismiss or suspend the applicant and what portions of the evaluation policies could be used. Dr. Bragg was one of the persons who played a role in the chain of internal appeals that the applicant pursued after his dismissal.

[7] In the spring of 2011, after the decision of the Senate Appeals Committee, the applicant also obtained a number of documents through a Freedom of Information request to the University. These documents are troubling. By letter dated December 11, 2009, the applicant was told that on December 2, 2009, the Resident Program Committee had failed him on his Neuropathology rotation, and recommended his dismissal from the Program. He was immediately suspended by Dr. Sinclair. During the appeal process, the Program disclosed minutes of the "December 1, 2009" Committee meeting. The minutes only reflect that it was "agreed" to dismiss the applicant from the Program, without any details of the vote. Dr. Moulton and Dr. Tsai participated in the deliberations and decision.

[8] During the appeal process, the Program took the position that the date of the meeting was a typographical error, and should have read "December 2, 2009". Recently, however, a member

of the Committee leaked the minutes of the December 2, 2009 meeting to the applicant. These minutes do not disclose that any decision was taken on December 2, 2009 concerning the applicant.

[9] One of the documents obtained by the applicant through his Freedom of Information request is a copy of an e-mail from Dr. Moulton to Dr. Bragg and Dr. Sinclair sent in the early morning of December 2, 2009, in which Dr. Moulton indicated that the Resident Program Committee met the previous evening and decided to fail the applicant on the Neuropathology Rotation. The e-mail did not mention any discussion about or decision to dismiss the applicant from the Program. A reference was made, however, to a draft of a letter dismissing the applicant.

[10] The foregoing raises the concern that no recommendation for dismissal was ever made by the Committee. The evidence given by Dr. Moulton and Dr. Sinclair during the appeal process does not ameliorate the concern. Dr. Moulton said that the Committee understood that if they failed the applicant, he was automatically dismissed, while Dr. Sinclair said that there were two votes, one for failure of the rotation, and the other for dismissal. It is noteworthy, having regard to Dr. Moulton's evidence in particular, that on September 20, 2010, the Faculty Council considered the applicant's appeal of the decisions to fail him on the Neuropathology Rotation and to dismiss him from the Program. By a vote of 23 to 2, with 1 abstention, the decision to fail the applicant was not upheld. The Council did uphold the dismissal of the applicant.

#### **The Applicant's Affidavit**

[11] The affidavit filed by the applicant is 77 paragraphs long, with 54 exhibits. I will describe its content briefly.

[12] Paragraphs 1 to 3 (including exhibit 1) simply identify the applicant.

[13] Paragraphs 4 to 8 (including exhibits 2 to 9) are descriptive of the Neurosurgery Program and its policies.

[14] Paragraphs 9 to 55 (including exhibits 10 to 37) outline the applicant's problems with the Program prior to his dismissal. In particular: paragraph 12 describes Dr. Tsai's arrival to the Program in 2007, the applicant's view of the treatment she afforded Arabic residents and an informal complaint made by the applicant against Dr. Tsai by the end of 2008; paragraph 25 outlines some of the biased treatment he says was afforded Arabic residents by Dr. Tsai, and a complaint he made about it in March, 2009; paragraph 28 makes reference to a complaint the applicant and other residents made against Dr. Tsai in March, 2009; and paragraph 54 outlines a complaint the applicant made against Dr. Moulton in November, 2009. I note that the fact and nature of the complaints referred to in paragraphs 25, 28 and 54, and supporting exhibits, were before the Senate Appeals Committee and may be found in the Record of Proceedings. The informal complaint mentioned in paragraph 12 was not relied on before the Senate Appeals Committee and is not found in the Record of Proceedings.

[15] Paragraphs 56 to 64 (including exhibits 38 to 44) outline the information gleaned by the applicant from the documents received through his Freedom of Information request as well as from the leaked minutes of the Committee meeting of December 2, 2009 about the "decisions" to

fail him on his Neuropathology rotation and dismiss him from the Program, and place that information into context.

[16] Paragraphs 65 to 66 (including exhibits 45 to 46) outline the results of a Royal College review of the Program's accreditation status.

[17] Paragraphs 67 to 70 (including exhibits 47 to 50) outline the details of the e-mails leaked by "Neuro Leaks" and the University's response to them.

[18] Paragraph 71 (including exhibit 51) outlines the applicant's current training status.

[19] Paragraph 72 identifies the copy of the decision of the Postgraduate Education Committee dated April 28, 2010, shown at exhibit 51, and the copy of a list of documents which were never disclosed to the applicant in the appeal process, included at exhibit 52.

[20] Paragraph 73 to 74 (including exhibit 54) outlines what was disclosed about the responsibilities of the University's legal counsel in the Freedom of Information request.

[21] Paragraphs 75 to 77 outline the applicant's opinion about the propriety of some of the University's actions.

[22] In his original Notice of Application, as part of the grounds for his application, the applicant asserted that his criticism of the Program was protected by the right to freedom of expression in s. 2(b) of the *Charter*, and his dismissal constituted a violation of those rights which could not be justified by s. 1 of the *Charter*. In his motion to amend his Notice of Application, the applicant simply asks to be permitted to add a request for a declaration that his rights under s. 2(b) of the *Charter* were violated in the manner I have just outlined "[i]f necessary."

## ANALYSIS

[23] I will begin with the motion to amend the Notice of Application, and then consider the admissibility of the affidavit.

### **The Proposed Amendment to the Notice of Application**

[24] The allegation that the decision to dismiss the applicant from the program violated his right to freedom of expression in s. 2(b) of the *Charter*, and could not be justified by s. 1 of the *Charter*, was raised in the applicant's original notice of motion, and will be before the panel hearing the application in any event. The amendment he seeks does nothing more than ask that a request for a declaration to this effect be added to his prayer for relief.

[25] In its factum, the respondent opposes this amendment, suggesting that the applicant is raising a *Charter* claim that is independent from the Senate Appeals Committee's decision and will require the admission of extrinsic evidence that the Court would not normally hear, and that will require it to "go far beyond its limited jurisdiction and procedural competence" under the *Judicial Review Procedure Act* ("JPRA"). I do not agree with this submission.

[26] Section s. 2(1) of the JPPRA provides that on an application for judicial review, declaratory relief is available. The declaration sought here is nothing more than a declaration that the very decision properly under review in this application violated the *Charter*. It is not a *Charter* claim independent from the Senate Appeals Committee's decision. If its success depends on extrinsic evidence that this Court finds to be inadmissible, the *Charter* claim will fail. I will consider what additional evidence is admissible on this application momentarily. But I can see no basis to refuse the amendment.

### The Admissibility of the Affidavit

[27] I begin by repeating what was said by Swinton J. about the nature of judicial review in *142445 Ontario Limited v. The International Brotherhood of Electrical Workers, Local 636* (2009), 251 O.A.C. 62 (Div. Ct.) at paras. 10 to 12:

10 An application for judicial review is not an appeal, a trial *de novo* or a rehearing. On judicial review, courts must avoid undue interference with the discharge of duties delegated to administrative bodies by legislatures (*Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at para. 27).

11 In Ontario, the record for the court on judicial review is prescribed by s. 20 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("SPPA") for tribunals governed by the SPPA and by the common law for tribunals not covered by the SPPA. The SPPA does not apply to proceedings before an arbitrator to whom the *Labour Relations Act*, 1995, S.O. 1995, c. 1, Sch. A applies (see s. 3(2)(d)).

12 Pursuant to s. 20 of the SPPA, the record includes the document commencing the proceeding, the notice of any hearing, any interlocutory orders made by the tribunal, documentary evidence, the transcript (if any) of the oral evidence, and the decision and reasons therefor, when reasons have been given.

[28] Nevertheless, Swinton J. recognized, at para. 14, that in certain circumstances, affidavit evidence is admissible to supplement the record. Those circumstances were succinctly described by the court in *Sierra Club v. Ontario*, 2011 ONSC 4086, [2011] O.J. No. 3071 (Div. Ct.) at paras. 13 to 14:

13 The general rule is that, on an application for judicial review, affidavits containing material that was not before the decision-maker at first instance will not be allowed. The record that goes before the reviewing court should essentially be the material that was before the decision-maker at the time the decision was being made. See e.g.: *Mianowski v. Ontario (Human Rights Commission)*, 2003 CarswellOnt 3671 (Div. Ct.); *Lincoln (County) Board of Education v. Ontario (Information & Privacy Commissioner)* (1994), 76 O.A.C. 235 (Div. Ct.); *Ontario Hydro v. Ontario (Assistant Information & Privacy Commissioner)* (1996), 97 O.A.C. 324 (Div. Ct.).

14 Affidavit evidence is permissible to supplement the record in exceptional circumstances to demonstrate an absence of evidence on an essential point in the decision (which is to say, to demonstrate a jurisdictional error) or to show a breach of natural

justice that cannot be proved by mere reference to the record: *Keeprite Workers' Independent Union v. Keeprite Products Ltd.* (1980), 114 D.L.R. (3d) 162 (Ont. C.A.), at 170.

[29] I would add that as with an allegation of a breach of natural justice, affidavit evidence must also be permissible to supplement the record to demonstrate a validly raised allegation of constitutional error (see *Rafieyan v. Minister of Citizenship and Immigration*, 2007 FC 727, [2007] F.C.J. No. 974 at para. 20). I emphasize that the constitutional issue must be validly raised. The mere labelling an issue as a constitutional one will not of itself open the door to the admission of otherwise inadmissible evidence.

[30] The respondent argues that such affidavit evidence must also satisfy the test for fresh evidence in *R. v. Palmer*, [1980] 1 S.C.R. 759, and finds support for this position in *Ontario Federation of Anglers & Hunters v. Ontario (Ministry of Natural Resources)* (2002), 211 D.L.R. (4th) 741 (Ont. C.A.).

[31] The test for the admission of fresh evidence in *Palmer* is:

- (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases.
- (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
- (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
- (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result (see *Ontario Federation of Anglers & Hunters* at para. 61).

[32] Logically, this test will not always apply to affidavit evidence proffered on judicial review. Where, as here, the issue of natural justice was first raised before the Tribunal whose decision is under review, additional evidence to support that claim will have to meet this test. But where the additional evidence is led in an effort to demonstrate an absence of evidence on an essential point in the decision, or to show a breach of natural justice at the actual hearing before the Tribunal that cannot be proved by mere reference to the record, the fresh evidence test would not apply. At the least, there would be no obligation to demonstrate due diligence.

[33] Finally, I note that this court has recently endorsed the practice of resolving issues about the admissibility of affidavit evidence before a motions judge prior to the hearing before a Divisional Court panel. In *Sierra Club v. Ontario*, the Court stated, at paras. 7 to 8:

7 We are of the view that this motion should have been brought prior to the hearing by the panel, in order to clarify the contents of the record prior to factums being filed. Proceeding in such a manner would have enabled the parties to define the issues for the hearing based upon properly admissible evidence. I note that this was the procedure

followed in the decision of *Hanna v. Ontario (Attorney General)*, 2010 ONSC 4058 (Div. Ct.). If the motion judge is unsure about the relevance of certain material, those issues may be left to be determined by the panel hearing the judicial review.

8 To fail to define the appropriate record for the Court before the hearing encourages the proliferation of collateral issues, as occurred in this application. Filing material by one party inevitably precipitates a response from the opposite party. The consequence of failing to define the record is a proceeding before this court that becomes unnecessarily complicated, expensive and lengthy. For the parties and for the court, the ground is continually shifting, and the core issues may be eclipsed by the procedural issues.

[34] In this case, some paragraphs of the affidavit falls short of the tests, but some do not. I will discuss those paragraphs in groups.

#### **Paragraphs 1 to 3**

[35] These paragraphs do not really meet the test for admissibility, but they form a natural introduction to the affidavit and they are harmless. I admit them into evidence, except that I would exclude the last sentence of paragraph 3 together with exhibit 1, because that exhibit is irrelevant and goes beyond the purpose of an introduction.

#### **Paragraphs 4 to 8**

[36] To the extent that a description of the Neurosurgery Program is necessary for the resolution of this application, it is largely already in the Record of Proceedings. As a result, I do not admit paragraphs 4 to 5, or exhibits 2 to 4. I will admit paragraph 6 and exhibit 5, which are uncontroversial, and provide some background for both the natural justice and constitutional arguments. I will also admit paragraphs 7 to 8 and exhibits 6 to 9 because the respondent takes no objection to their admission.

#### **Paragraphs 9 to 55**

[37] These paragraphs are intended to support the claims of a breach of natural justice and a breach of the *Charter*. But for the most part, these paragraphs rehash evidence that was before the Senate Appeals Committee. To the extent that they add detail to this information, they fall afoul of the rule that extrinsic evidence is only admissible to show a breach of natural justice, or, I would add, a *Charter* breach, that cannot be proved by mere reference to the record.

[38] Moreover, since they relate to a factual issue that was raised before the Committee, these paragraphs must satisfy the *Palmer* test. They clearly do not. I note that paragraphs 12, 25, 28 and 54 make reference to complaints made by the applicant against Dr. Tsai and Dr. Moulton, and are arguably relevant to his natural justice argument, and perhaps even to his *Charter* argument. But, as I have already stated, the fact and nature of the complaints in paragraphs 25, 28 and 54 were before the Senate Appeals Committee, and the applicant is not entitled to rehash or repackage them in an affidavit. The complaint mentioned in paragraph 12 was not before the Senate Appeals Committee, but was known to the applicant and could have been placed before

the Senate Appeals Committee had the applicant chosen to do so. He cannot now add this complaint to the record.

[39] As a result, I do not admit paragraphs 9 to 55 or exhibits 10 to 37.

#### **Paragraphs 56 to 64**

[40] These paragraphs are also intended to support the claims of a breach of natural justice and a breach of the *Charter*. But unlike the previously discussed paragraphs, they outline information that the applicant became aware of only after the Senate Appeals Committee decision, through his Freedom of Information request and from the leaked minutes of the Committee meeting of December 2, 2009. In my view, the information in these paragraphs, and the related exhibits, are relevant, and meet the test for the admission of fresh evidence. While the demonstration that the fourth prong of *Palmer* has been met might be a little frail on the record before me, it must be borne in mind that all of these records were in the possession of the respondent, and kept from the applicant. In these circumstances, some relief from the strict application of the *Palmer* principles should be afforded to the applicant if necessary. Paragraphs 56 to 64 and exhibits 38 to 44 will be admitted.

#### **Paragraphs 65 to 66**

[41] These paragraphs, and exhibits 45 to 46 are irrelevant, and will not be admitted.

#### **Paragraphs 67 to 70**

[42] These paragraphs are also intended to support the claims of a breach of natural justice and a breach of the *Charter*. They outline information that the applicant became aware of after the Senate Appeals Committee decision as a result of the disclosure by "Neuro Leaks." The analysis of paragraphs 56 to 64 applies equally to these paragraphs. Paragraphs 67 to 70 and exhibits 47 to 50 are admissible.

#### **Paragraph 71**

[43] Paragraph 71 and exhibit 51 are irrelevant and will not be admitted.

#### **Paragraph 72**

[44] This paragraph and exhibits 52 to 53 include the decision of the Postgraduate Education Committee dated April 28, 2010, and a list of documents which were never disclosed to the applicant in the appeal process. I am not certain if the decision of the Postgraduate Education Committee dated April 28, 2010 was before the Senate Appeals Committee. If it was, then it ought to be in the Record of Proceedings. If it is in the Record of Proceedings, then exhibit 52 and that part of paragraph 72 referring to it should not be admitted. If the decision is not in the Record of Proceedings, then exhibit 52 and that part of paragraph 72 referring to it should be admitted. The decision is an integral part of the review process, and should be available for consideration by the Court. If it is not part of the Record, it should be.

[45] Exhibit 53, and the part of paragraph 72 that refers to it, are relevant to the claim of a breach of natural justice and possibly to the *Charter* claim, and are admissible.

[46] Paragraph 72, and exhibits 52 to 53, are therefore admissible, subject to the comment I made about the possibility that exhibit 52 is in the Record of Proceedings.

**Paragraphs 73 to 74**

[47] These paragraphs are also intended to support the claims of a breach of natural justice and of the *Charter*, and are admissible because they may do so.

**Paragraphs 75 to 77**

[48] These paragraphs outline the applicant's legal opinions and are not admissible.

**DISPOSITION**

[49] The applicant's motion to amend its Notice of Application is granted, and his motion to admit his own affidavit is granted in part. As a result of the disposition of the applicant's motion, the respondent's motion is moot, and will be marked abandoned. Costs will be reserved to the panel hearing the application.

  
M. DAMBROT J.

RELEASED: OCT 05 2011

CITATION: Alghaithy v. Ottawa University, 2011 ONSC 5879  
DIVISIONAL COURT FILE NO.: 292/11  
DATE: 20111005

ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

BETWEEN:

DR. WALEED ALGHAITHY

Applicant/Moving Party

- and -

THE UNIVERSITY OF OTTAWA

Respondent/ Responding Party

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REASONS FOR JUDGMENT

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DAMBROT J.

RELEASED: October 5, 2011

-----Original Message-----

From: Upton, Rodney

Sent: Sat 2/19/2011 12:07 PM

To: [president@uottawa.ca](mailto:president@uottawa.ca); Jones, Cameron; [allan.rock@uottawa.ca](mailto:allan.rock@uottawa.ca); Tsai, Eve; Moulton, Richard; Sinclair, John; Kitts, Stacey; Benoit, Brien G.; [francois.houle@uottawa.ca](mailto:francois.houle@uottawa.ca); Nemer, Mona; Leach, Carol; MacIsaac, Sarah; Agbi, Charles; [louis.demelo@uottawa.ca](mailto:louis.demelo@uottawa.ca); [victor.simon@uottawa.ca](mailto:victor.simon@uottawa.ca); [diane.davidson@uottawa.ca](mailto:diane.davidson@uottawa.ca); Marciniak, Jennifer; [cmackenna@ottawahospital.on.ca](mailto:cmackenna@ottawahospital.on.ca); Mercer, Moira; [jbradwejn@uottawa.ca](mailto:jbradwejn@uottawa.ca); [alewkowicz@uottawa.ca](mailto:alewkowicz@uottawa.ca); [clague@uottawa.ca](mailto:clague@uottawa.ca); [gslater@uottawa.ca](mailto:gslater@uottawa.ca); [akassam@ottawahospital.on.ca](mailto:akassam@ottawahospital.on.ca); [dprudhommes@uottawa.ca](mailto:dprudhommes@uottawa.ca); [sgrammond@uottawa.ca](mailto:sgrammond@uottawa.ca); 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Cc: Worthington, J.R.; Makris, Jim  
Subject: Confidential emails from Neuro Leaks

On behalf of Dr Worthington and the Ottawa Hospital I have been asked to send you this email.

You will have received today one or more emails from "(NEURO LEAKS [[neuroleaks@gmail.com](mailto:neuroleaks@gmail.com)])"

These emails contain confidential information that should not have been distributed.

Please delete these emails.

The University and TOH are working to block any further such breaches.

Thank you for your assistance,

Dr. Jim Worthington

Senior Vice-President, Medical Affairs, Quality, and Patient Safety

The Ottawa Hospital

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Email: [jrworthington@ottawahospital.on.ca](mailto:jrworthington@ottawahospital.on.ca) <<mailto:jrworthington@ottawahospital.on.ca>>

Message Sent by

Rodney Upton

Manager, IS Client Services

IS Technology Services

The Ottawa Hospital

613-798-5555 x14571

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Avis de confidentialité – Ce courriel, y compris ses pièces jointes, s’adresse au destinataire uniquement et pourrait contenir des renseignements confidentiels. Si vous n’êtes pas le bon destinataire, il est strictement interdit de lire, d’utiliser, de divulguer, de copier ou de diffuser ce courriel ou son contenu, en partie ou en entier. Si vous avez reçu ce courriel par erreur, veuillez en informer immédiatement l’expéditeur ou le bureau de la Protection des renseignements personnels ([info.privee@hopitalottawa.on.ca](mailto:info.privee@hopitalottawa.on.ca)), puis effacez le courriel ainsi que les pièces jointes et toute autre copie. Merci.

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----- Forwarded Message -----

**From:** NEURO LEAKS <[neuroleaks@gmail.com](mailto:neuroleaks@gmail.com)>

**To:** [adam.sachs@rogers.com](mailto:adam.sachs@rogers.com); [dr-najeeb@dr.com](mailto:dr-najeeb@dr.com); [icote068@uottawa.ca](mailto:icote068@uottawa.ca); [Dr\\_Agila@yahoo.ca](mailto:Dr_Agila@yahoo.ca); [evgueni.kouznetsov@usherbrooke.ca](mailto:evgueni.kouznetsov@usherbrooke.ca); [ekouz047@uottawa.ca](mailto:ekouz047@uottawa.ca); [mbafa037@uottawa.ca](mailto:mbafa037@uottawa.ca); [mfs13@duke.edu](mailto:mfs13@duke.edu); [toikhlass@hotmail.com](mailto:toikhlass@hotmail.com); [wa\\_elgad04@yahoo.ca](mailto:wa_elgad04@yahoo.ca); [alkherayf@hotmail.com](mailto:alkherayf@hotmail.com); [syuh071@uottawa.ca](mailto:syuh071@uottawa.ca); [a\\_s\\_s\\_al@yahoo.com](mailto:a_s_s_al@yahoo.com)

**Sent:** Sun, February 20, 2011 4:00:41 AM

**Subject:** NEURO LEAKS - BEAUTIFUL 2

**BCC: PUBLIC**

**From:** Paul Bragg [mailto:[pbragg@uottawa.ca](mailto:pbragg@uottawa.ca)]

**Sent:** Wed 6/24/2009 9:48 AM

**To:** Moulton, Richard

**Subject:** RE: Strictly Personal and Confidential

Hi Rick;

I have reviewed your draft letter regarding Dr. Al Ghaithy and have the following comments and thoughts for your consideration;

Paragraph 1: do you have any written evidence from the number of residents and faculty which could indicate their dismay? If there is any written documentation that this will be disclosable keeping in mind that residents' identification would need to be redacted. The same does not hold true for staff physicians.

Paragraph 3: are there minutes documenting the discussion? If so it would be helpful if they provide the evidence upon which the division reached its conclusions.

Paragraph 5: I would recommend that this paragraph be deleted as it does not place any bearing upon the evidence leading to your decision.

Paragraph 6: I have added the relevant sections of our evaluation policy below. This you can only recommend an immediate suspension of this should be based on the detriment to patient care. It may be relevant to put more weight on the evidence of the e-mail from John Sinclair around Dr. Al Ghaithy and his unprofessional interaction with Dr. Tsai in not supervising her patients or completing the relevant discharge summaries. Any other issues regarding patient care would be most applicable here.

Paragraph 7: it is incorrect to state that there is a right to appeal your recommendation for suspension. The policy states that if my investigation should support a suspension then the matter will be referred to the evaluation subcommittee. Any decision that they would render would be appealable.

I have also highlighted the sentence beginning "serious problems with professional...." as another avenue of consideration of how the program may wish to deal with Dr. Al Ghaithy's professional conduct.

On a separate note, I have not been able to reach John Sinclair for the past two weeks. There is a very important time urgency to his responding to the remediation request of Dr. Agila. There is a rapidly increasing risk of this appeal will be upheld based on a failure of due process. Thus Dr. Agila would be reinstated to the training program. I do appreciate that considerable effort is required and it is very distracting from the many other duties of clinicians but the legal system takes a very dim view of inadequate processes.

The procedures outlined below provide for an explicit transparent series of steps that need to be taken when evaluating a resident who encounters significant difficulties. The procedures are intended to provide a graded response to residents with difficulties. The vast majority of residents will not encounter significant problems in training - in fact the challenge to evaluation will be to help them develop beyond their satisfactory levels of competence. For a few residents with difficulties, they need to be reassured that they are dealt with fairly. The following procedures allow for close monitoring of residents with difficulties, a period of remediation where needed, followed by a period of probation if required. However these steps need to be individualized. Circumstances may exist in which it may not be appropriate to place a resident in a remediation program prior to probation for example. Serious problems with professional conduct and attitude may justify probation or dismissal as an initial step.

It is important to emphasize that a supervisor or a Program Director can recommend an immediate suspension from clinical responsibility of a resident if it is deemed that patient care is at risk. In this circumstance, the Postgraduate Dean should be notified immediately by the resident's Program Director. In this case, the Postgraduate Dean, in consultation with the affected resident and Program Director, will make an inquiry of the situation and recommendation on how to proceed. This recommendation should occur within 1 (one) month of notification, during which time the resident will be suspended from the program. Following this, the Postgraduate Evaluation Sub-Committee should be asked to review the file.

Yours,

Paul

Paul Bragg MD FRCPC  
Associate Dean, Postgraduate Medical Education  
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451 chemin Smyth Road, pièce/Room 2115  
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<http://www.medicine.uottawa.ca/postgraduate/>  
Cell: 613 862-8867

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**From:** Moulton, Richard [mailto:[rimoulton@Ottawahospital.on.ca](mailto:rimoulton@Ottawahospital.on.ca)]  
**Sent:** Tuesday, June 23, 2009 10:27 AM  
**To:** Bragg, Paul; Bragg, Paul; Worthington, J.R.  
**Subject:** Strictly Personal and Confidential

Gentlemen:

Here is the draft letter for review as previously discussed.

Rick

----- Forwarded Message -----

**From:** NEURO LEAKS <[neuroleaks@gmail.com](mailto:neuroleaks@gmail.com)>

**To:** [adam.sachs@rogers.com](mailto:adam.sachs@rogers.com); [dr-najeeb@dr.com](mailto:dr-najeeb@dr.com); [icote068@uottawa.ca](mailto:icote068@uottawa.ca); [Dr\\_Agila@yahoo.ca](mailto:Dr_Agila@yahoo.ca); [evgueni.kouznetsov@usherbrooke.ca](mailto:evgueni.kouznetsov@usherbrooke.ca); [ekouz047@uottawa.ca](mailto:ekouz047@uottawa.ca); [mbafa037@uottawa.ca](mailto:mbafa037@uottawa.ca); [mfs13@duke.edu](mailto:mfs13@duke.edu); [toikhlass@hotmail.com](mailto:toikhlass@hotmail.com); [wa\\_elgad04@yahoo.ca](mailto:wa_elgad04@yahoo.ca); [alkherayf@hotmail.com](mailto:alkherayf@hotmail.com); [syuh071@uottawa.ca](mailto:syuh071@uottawa.ca); [a\\_s\\_s\\_al@yahoo.com](mailto:a_s_s_al@yahoo.com)

**Sent:** Sun, February 20, 2011 3:58:16 AM

**Subject:** NEURO LEAKS - BEAUTIFUL 3

**BCC:** PUBLIC

**From:** Worthington, J.R.

**Sent:** Sat 7/11/2009 1:43 PM

**To:** Moulton, Richard; Bragg, Paul

**Subject:** Re: Re: Incident-Academic Day

Rick

By all means we can discuss on monday, I am also very concerned.

Jim

-----Original Message-----

From: Moulton, Richard

To: Bragg, Paul; Worthington, J.R.

Sent: Sat Jul 11 13:17:49 2009

Subject: FW: Re: Incident-Academic Day

Gentlemen:

This is the latest missive I've received. I will meet with Eve to clarify with what was said, but this was in a room full of residents and with one other faculty member present during a teaching session. Presumably she asked a hypothetical clinical question during a rounds case presentation. I will meet with the resident involved (Al-Ali) on Monday to elicit whether anything improper was said, but to my mind this is getting perilously close to the line or frankly crosses over into harassment of Dr. Tsai and I would like to inform the resident if that is the case. More generally and philosophically muzzling the faculty goes directly against the presumed mission of the university which is the free exchange of teaching and ideas. This guy is Al-Ghaithy's roommate/understudy, and I'm not prepared to pussyfoot around with him for 3 or 4 years like we did with Al-Ghaithy. I'd like to be able to bring and tell this fellow that if he doesn't like the faculty or the program that he should resign effective immediately and find himself another program.

I'm meeting with Al-Ghaithy Monday afternoon to deliver his list of conditions for completion of his residency, and I'd like to be able to tackle this ongoing behaviour with something a little more substantial than 'please don't do this anymore'. This guy is a real destructive force within the program.

If the complaint against Eve is dismissed there are going to have to be some significant consequences for the involved

parties (dismissal/suspension) or we are going to be facing this ad infinitum.

Jim perhaps we can review if this contravenes the hospital harassment policy on the tail end of our other meeting Monday AM.

Rick

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From: waleed alghaithy [<mailto:wal199@yahoo.com>]  
Sent: Fri 10/07/2009 3:46 PM  
To: [jbradwej@uottawa.ca](mailto:jbradwej@uottawa.ca)  
Cc: [lisa.stone@uottawa.ca](mailto:lisa.stone@uottawa.ca); Moulton, Richard; [a\\_s\\_s\\_al@yahoo.com](mailto:a_s_s_al@yahoo.com); [Dr\\_Agila@yahoo.ca](mailto:Dr_Agila@yahoo.ca); [wa\\_elg\\_ad04@yahoo.ca](mailto:wa_elg_ad04@yahoo.ca)  
Subject: Fw: Re: Incident-Academic Day

Dear Dr. Bradwejn,

I am writing this e-mail to your attention with the confidence in your immediate interventions with regard to that matter.

As you know, a full detailed group complaint against Dr. Eve Tsai "the faculty member" was submitted to your office by the complainant neurosurgery residents "the residents". Those complaints are currently being investigated. However, despite the seriousness of those complaints, It is obvious that the faculty member is expressing a challenging manner toward any regulations in that regard..

Today (July 10th 2009) during the academic day, a supposedly learning environment dedicated mainly for the resident, Dr. Eve Tsai directly questioned Dr. AbdulAziz Al-Ali.

It is with no doubt that such a challenging behavior reflect the lack of adherence to any regulations in that regard. In addition, such a challenging manner unveil the possibility of unjustified support to the faculty member.

Finally, I would like to re-enforce the fact that the residents and since submitting their complaint against the faculty member encountered numerous incidents of retaliations. The complainant neurosurgery residents maintain the right of seeking justice in that regard when deems appropriate and necessary.

W AlGhaithy  
Complainant Neurosurgery Residents Representative

----- Forwarded Message -----

**From:** NEURO LEAKS <[neuroleaks@gmail.com](mailto:neuroleaks@gmail.com)>

**To:** [adam.sachs@rogers.com](mailto:adam.sachs@rogers.com); [dr-najeeb@dr.com](mailto:dr-najeeb@dr.com); [icote068@uottawa.ca](mailto:icote068@uottawa.ca); [Dr\\_Agila@yahoo.ca](mailto:Dr_Agila@yahoo.ca); [evgueni.kouznetsov@usherbrooke.ca](mailto:evgueni.kouznetsov@usherbrooke.ca); [ekouz047@uottawa.ca](mailto:ekouz047@uottawa.ca); [mbafa037@uottawa.ca](mailto:mbafa037@uottawa.ca); [mfs13@duke.edu](mailto:mfs13@duke.edu); [toikhlass@hotmail.com](mailto:toikhlass@hotmail.com); [wa\\_elgad04@yahoo.ca](mailto:wa_elgad04@yahoo.ca); [alkherayf@hotmail.com](mailto:alkherayf@hotmail.com); [syuh071@uottawa.ca](mailto:syuh071@uottawa.ca); [a\\_s\\_s\\_al@yahoo.com](mailto:a_s_s_al@yahoo.com)

**Sent:** Sun, February 20, 2011 3:55:23 AM

**Subject:** NEURO LEAKS - BEAUTIFUL 4

**BCC:** PUBLIC

**From:** Moulton, Richard

**Sent:** Thu 7/23/2009 5:49 PM

**To:** 'Paul Bragg'

**Subject:** RE: Dr. Al Ghaithy

Hi Paul:

I told Al-Ghaithy I would support his application to write the exam, I didn't promise him I could deliver. Herewith my support.

The training requirements are somewhat contradictory/arcane and have been kept deliberately so by the national specialty committee. Basically the core elements of the training are 36 months of neurosurgery, and 3 months each of neurology, neuropathology, and neuroradiology = 45 months. The previous training requirements used to include a 12 month internship and a year of non-neurosurgical surgery specified as such, giving a total of 69 months (i.e. 3 months short of 6 years). When the new core surgical training program of 2 years was designed after the abolition of the internship it rolled up the old internship and the non-neurosurgical training into a first 2 year block whose purpose is to teach the core principles of surgery, but no longer specified 12 months of non-neurosurgical training or in fact any particular training requirements. Programs have been inserting 6 months of neurosurgical training into that block and occasionally some of the other neuroscience blocks thereby gaining 9-12 months of funded research or elective time. CARMS stream residents have typically used this to pad their CV's with some research and/or elective time to increase their marketability in the academic job market, or used some of it to double count against certain types of fellowships (e.g. critical care or interventional neuroradiology). We also use it occasionally with weaker candidates to build up their neurosurgical experience. The uses are so diverse that in my mind it really doesn't necessarily add substantially to the core clinical knowledge necessary to become a competent general neurosurgical consultant (or more on a more philistine level, to pass the specialty exam).

It doesn't make that much sense to me to force someone with no interest or aptitude in research to do the extra time. Further elective time in neurosurgery isn't necessary for Al-Ghaithy to reach the level of knowledge to function as a competent consultant (either cognitively or technically), and that was my basis for supporting his 'shortened' period of training.

FYI the national specialty committee will probably approve an extension to the required amount of neurosurgical training to 42 months in the very near future, and will do so without lengthening the overall training program by carving 6 more months of designated neurosurgery time out of that same ambiguous time allocation.

Rick

-----Original Message-----

**From:** Paul Bragg [mailto:[pbragg@uottawa.ca](mailto:pbragg@uottawa.ca)]

**Sent:** Thursday, July 23, 2009 3:43 PM

**To:** Moulton, Richard

**Cc:** Sinclair, John

**Subject:** Dr. Al Ghaithy

Hi Rick;

I cannot find any correspondence from you supporting this issue. Nor do I understand how a year can be overlooked even if it is electives and research. I only see three months of these in the training description anyway. I will need your help in enhancing my education.

Cheers,

Paul

Hello Dr. Bragg,

I made an inquiry for my application for the Royal College Specialty Exam 2010. They are awaiting the response from the Postgraduate Office and they advised me to check with the Postgraduate office accordingly.

As per my inquiry from Dr. Moulton, I was advised that the Program already wrote to the Postgraduate Office in support of me sitting for the 2010 Royal College Specialty Exam, and my papers are due for the Postgraduate Committee for approval.

Can you advise me about the latest updates in that regard.

Best Regards,

W AlGhaithy

## **Specialty Training Requirements in Neurosurgery**

These specialty training requirements apply to those who began training on or after 1 June 1994.

Six years of approved training. This period must include:

1. Two years of core training in surgery (please see the Objectives attached to this document).
2. Three years of approved resident training in neurosurgery including one year of senior residency, in a fully approved program providing progressively increasing responsibility for patient care: up to six months of this period may be spent in pediatric neurosurgery;
3. One year of training that must include:
  - a. three months of residency in neurology;
  - b. three months of residency in neuropathology;
  - c. three months of residency in neuroimaging;and that may include:

- d. further approved resident training in neurosurgery: (additional training in pediatric neurosurgery may be included under this section);
- e. clinical or basic research in a department approved by the College;
- f. full-time study of basic sciences in a department approved by the College;
- g. other approved training or research, relevant to the objectives of the specialty and acceptable to the director of the training program, at a hospital or university centre in Canada or abroad.

----- Forwarded Message -----

**From:** NEURO LEAKS <[neuroleaks@gmail.com](mailto:neuroleaks@gmail.com)>

**To:** [adam.sachs@rogers.com](mailto:adam.sachs@rogers.com); [dr-najeeb@dr.com](mailto:dr-najeeb@dr.com); [icote068@uottawa.ca](mailto:icote068@uottawa.ca); [Dr\\_Agila@yahoo.ca](mailto:Dr_Agila@yahoo.ca); [evgueni.kouznetsov@usherbrooke.ca](mailto:evgueni.kouznetsov@usherbrooke.ca); [ekouz047@uottawa.ca](mailto:ekouz047@uottawa.ca); [mbafa037@uottawa.ca](mailto:mbafa037@uottawa.ca); [mfs13@duke.edu](mailto:mfs13@duke.edu); [toikhlass@hotmail.com](mailto:toikhlass@hotmail.com); [wa\\_elgad04@yahoo.ca](mailto:wa_elgad04@yahoo.ca); [alkherayf@hotmail.com](mailto:alkherayf@hotmail.com); [syuh071@uottawa.ca](mailto:syuh071@uottawa.ca); [a\\_s\\_s\\_al@yahoo.com](mailto:a_s_s_al@yahoo.com)

**Sent:** Sun, February 20, 2011 3:52:15 AM

**Subject:** NEURO LEAKS - BEAUTIFUL 5

**BCC: PUBLIC**

**From:** Moulton, Richard [mailto:[rimoulton@Ottawahospital.on.ca](mailto:rimoulton@Ottawahospital.on.ca)]

**Sent:** October 3, 2009 10:14 PM

**To:** Tsai, Eve

**Subject:** Strictly Confidential

Eve,

It is uncertain whether Al-Ghaithy et al. would take this matter further to an external body such as the Human Rights Tribunal. However, I can predict with certainty that fixing Al-Ghaithy would deter the others from doing so. I have had discussions with the Dean and Chief of Surgery and the consensus is that Al-Ghaithy must be removed. Over the last few months I have been working closely with Dr. Worthington and Dr. Bragg, and let me assure you that we are not that far. You have to appreciate here that we are dealing with a strong resident and probably the best we have, at least from an academic perspective. This together with his popularity among the residents made some of the conventional methods unsuccessful.

At the end of the day the University will not sacrifice one of its faculty members for the sake of few disgruntled out-funded residents, and I doubt it very much that the other complainants would prosecute you outside the campus in a process that is naturally protracted and financially draining.

Rick

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**From:** Tsai, Eve [mailto:[etsai@Ottawahospital.on.ca](mailto:etsai@Ottawahospital.on.ca)]

**Sent:** October 3, 2009 6:58 PM

**To:** Moulton, Richard

**Subject:** RE: Procedure

What do you think? This is troubling as we won't have the same privileges that we had in the university. Things like AlFasi's letter/role would be easily exposed by an outside body. There are of course other things to worry about. I am really concerned about this.

---

**From:** Baril, Francois [mailto:[Francois.Baril@gowlings.com](mailto:Francois.Baril@gowlings.com)]

**Sent:** Fri 10/2/2009 4:47 PM

**To:** Tsai, Eve

**Subject:** RE: Procedure

[REDACTED]

FB

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**From:** Tsai, Eve [mailto:[etsai@Ottawahospital.on.ca](mailto:etsai@Ottawahospital.on.ca)]

**Sent:** October 2, 2009 4:46 PM

**To:** Baril, Francois

**Subject:** RE: Procedure

[REDACTED]