Decisions by Hospital Committees Can Be Reviewed by the Courts

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The Divisional Court has held that decisions of hospital committees can be subject to judicial review by the courts. If committee decisions are not reasonable, or if the process they follow is not procedurally fair, the courts can intervene.

The applicants in *Asa et al. v. University Health Network*1 were researchers and authors in the field of endocrine oncology. They had been engaged in clinical practice and medical research at the respondent hospital (the "Hospital") for many years. Their research was widely-published. The Hospital had a research policy which defined "research misconduct" as including falsification, fabrication and material non-compliance with accepted standards and regulations. The policy also set out a 2-step process for addressing allegations of research misconduct: 1) an inquiry is launched to determine if there are "reasonable grounds to proceed to an investigation"; and 2) if there are sufficient grounds to proceed, a formal investigation committee is formed. According to the policy, decisions of the investigation committee could be appealed to the CEO of the hospital.

The Hospital received a complaint involving certain papers written by the applicants. The Hospital determined that the allegations had enough merit to launch a formal investigation. The Hospital informed the applicant researchers that an investigation committee of three scientists would be investigating the allegations of research misconduct. In the course of the investigation, the applicants had an opportunity to make oral and written submissions, and to respond to the committee's draft report. Although there was no formal oral hearing, the applicants were represented by a lawyer throughout the investigation.

After a 22-month investigation, the committee released a final report. It found, among other things, that the applicants had committed research misconduct. They found that the applicants had falsified data, fabricated data, and had not complied with accepted standards. The committee decided that in light of the extent and duration of the policy violations, the applicants' research activities would be suspended.

The applicants appealed to the hospital's CEO. The CEO upheld the committee's decision.

The applicants went to court. They filed an application for judicial review.

One of the threshold issues was whether or not the decision was even subject to review by the courts. The Hospital argued that the courts had no oversight over this type of decision. The court disagreed. It held that the decision was of a sufficient public character to be reviewable by the courts. The standard the court would apply in reviewing the decision was whether the decision was reasonable. In other words, although the court would afford some deference and discretion to the hospital, it has the power to intervene if the decision was not reasonable. In addition, the court held that the process followed by the court must be procedurally fair and that the court can intervene if the process is not fair.

In the result, the court found that part of the decision was reasonable, but other parts were not. Although it was reasonable to find that there had been material non-compliance with certain research standards, it was unreasonable to find that there had been falsification and fabrication. The evidence before the committee did not support that conclusion. The court quashed that part of the decision, and sent the matter back to the Hospital committee to reconsider what sanction would be appropriate in light of the more limited findings.

With respect to the issue of procedural fairness, the court found that the applicants were awarded the procedural fairness to which they were entitled. A formal hearing was not required as the applicants were given appropriate opportunities to respond.

This case is important for hospitals. It cautions that internal committee decisions of hospitals can be reviewed by the courts. It is critical to ensure that when committees are making decisions, their processes are procedurally fair, and their decisions are reasonable.

1 *Asa et al. v. University Health Network*, 2016 ONSC 439

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