

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report #422 of the Academic Appeals Committee
September 19, 2022

To the Academic Board
University of Toronto

Your Committee reports that it held an electronic hearing, conducted by Zoom on Thursday, June 9, 2022, at which the following members were present:

Academic Appeals Committee Members:

Professor Hamish Stewart, Senior Chair
Professor Nhung Tran, Faculty Governor
Mr. Evan Kanter, Student Governor

Hearing Secretary:

Ms. Nadia Bruno, Special Projects Officer, Office of Appeals, Discipline and Faculty Grievances

For the Student Appellant:

Mr. M.N. (the “Student”)

For the School of Graduate Studies:

Ms. Jodi Martin, Paliare Roland Rosenberg Rothstein LLP

Overview

The Student was a Ph.D. candidate in the Institute of Biomaterials and Biomedical Engineering (the Institute) in the Department of Mechanical & Industrial Engineering at the University of Toronto. His doctoral supervisor was Professor Aaron Wheeler. In the Fall 2019 term, while the Student was on medical leave, the Institute removed Professor Wheeler as the Student’s supervisor and offered the Student two options for completing his doctoral dissertation. The Student rejected those options and appealed the Institute’s decision to remove Professor Wheeler as his supervisor to the Department’s Graduate Department Academic Appeals Committee (GDAAC). That appeal was dismissed. The Student appealed further to the Graduate Academic Appeals Board (GAAB). The GAAB dismissed his appeal.

The Student now appeals to your Committee. He asks your Committee to require the Institute to assign Professor Wheeler as his supervisor or, in the alternative, to order a new hearing at the GDAAC.

The appeal is dismissed.

Chronology

The Student enrolled in the Ph.D. program at the Institute in September 2012, under the supervision of Professor Wheeler, and began work in Professor Wheeler's lab. In February 2015, the Student passed his qualifying examination. The next step in his program was to complete a doctoral dissertation, based on his work in the lab.

The Student suffers from a major medical condition and has received a number of medical leaves as accommodations for this condition. It is apparent from the material filed with your Committee and from the Student's oral submissions at the hearing that, between 2015 and 2018, the medical condition adversely affected his work in Professor Wheeler's lab and his progress towards completion of his doctorate.

From the Winter 2018 term onwards, the Student was on a medical leave of absence. He anticipated returning to his research sometime in 2019.

At some point during the Student's medical leave, Professor Wheeler determined that he could no longer serve as the Student's supervisor. The material before your Committee indicates that he had made this decision as early as the Fall 2018 term, and in any event, well before September 2019. Other material before your Committee is consistent with that statement. In his written submissions, the Student recognizes that the decision was made at some point between October 2018 and February 2019.¹

On September 11, 2019, Professor John Davies, the Institute's Associate Director of Graduate Programs, advised the Student by email that when he returned from his medical leave, Professor Wheeler would no longer be his supervisor. The stated reason was not Professor Wheeler's unwillingness to supervise but his lab having "moved on to other research foci" (Appeal Statement, p. 79). This statement was untrue. As SGS concedes at para. 76 of its submissions, "the primary reason ... was [that] Professor Wheeler was no longer prepared, under any circumstance, to continue to supervise [the Student]." The Institute should have told the Student that. As SGS puts it, "the department ... ought to have communicated more candidly with [the Student] regarding the primary reason he could not return to Professor Wheeler's laboratory." Your Committee agrees. The Institute should, as soon as possible once the decision was made, have informed the Student that Professor Wheeler would no longer supervise his doctoral work.

After the Student returned to Toronto, the Institute offered him two options for completing his doctoral dissertation. These options were presented to the Student at two meetings, the first on October 29, 2019, with Professor Davies, and the second on November 28 with Professor Davies and Ms. Candice Stoliker (Coordinator of Student Progress and Support). Following the second meeting, Professor Davies summarized these options in a letter to the Student dated November 28, 2019. Under either option, Professor Davies would serve as the Student's supervisor (School of Graduate Studies Book of Documents [BoD], Tab 23). The Student rejected both options and

¹ "There was a premeditated plan made and executed by the department to enable prof Wheeler to back out of supervisorship that happened during my medical leave in Oct 2018 and Feb 2019." (Appeal Statement, p. 19.)

indicated that he wished to continue his doctoral research under Professor Wheeler's supervision (BoD, Tab 22).

The Student appealed to the GDAAC, which recommended that the Chair of the Department dismiss the Student's appeal, and the Chair did so (BoD, Tabs 26 and 27). The Student appealed to the Graduate Academic Appeals Board (GAAB). On February 22, 2021, the GAAB dismissed his appeal (BoD, Tab 30).

The Student appeals to your Committee. As noted above, the primary remedy he seeks is an order allowing him to complete his Ph.D. under Professor Wheeler's supervision in Professor Wheeler's lab. In the alternative, he seeks an order requiring a new hearing at the GDAAC.

Procedural aspects of the appeal

The appeal was originally scheduled to be heard in February 2022. Shortly before the scheduled hearing of the appeal, the Student sought to add to the record before your Committee a document of 151 pages, consisting of 22 pages of summary and commentary followed by 129 pages of emails obtained by the Student pursuant to a freedom of information request. The Senior Chair refused to allow the record to be supplemented so close to the date of the hearing. The hearing was later rescheduled to June 2022. The Senior Chair then permitted the Student to add these materials to the record. The SGS did not file any material in response.

At the hearing, an issue arose concerning what happened at a meeting of October 29, 2019, between the Student and Professor Davies. In his appeal materials, the Student states that Professor Davies appeared "surprised" by something that was said at this meeting and urged your Committee to draw certain inferences from that surprise. Professor Davies was present at the hearing of the appeal and made a statement to your Committee in which he said that he was indeed surprised but offered a different explanation for his surprise than the one the Student urged your Committee to infer. The Student then sought leave to cross-examine Professor Davies. The Chair refused to permit this cross-examination on the ground that Professor Davies was not a witness; that is, Professor Davies was not under oath and had not been examined in chief; therefore, there was no testimony on which he could be cross-examined. In retrospect, the Chair's view is that he should not have allowed Professor Davies to make his statement. In any event, the reasons why Professor Davies appeared surprised during this meeting are irrelevant to the determination of this appeal.

The relevant policy

There is no doubt that the relationship between a supervisor and a doctoral student is an extremely important one for both parties. For the student, a good supervisory relationship is essential to the completion of the doctoral degree and often continues to be significant in the student's professional life after the degree is earned. From the faculty member's perspective, supervising doctoral students is intellectually rewarding in its own right and, particularly in science, medicine, and engineering, can be indispensable to the supervisor's own research

program. The student-supervisor relationship requires trust and confidence, clear communication, intellectual compatibility, and sometimes forbearance, from both the student and the faculty member.

Accordingly, the University's Graduate Supervision Guidelines contemplate that the supervisory relationship will be a continuing one (BoD, p. 005):

The student-supervisor relationship is critical to a student's success in graduate school and should be established early in a student's program and, barring graduate unit policies or unanticipated circumstances, remain intact until the student has successfully submitted and defended their thesis.

Divisional decisions to assign, remove, and/or replace a doctoral student's supervisor are "application[s] of academic regulations and requirements" (AAC Terms of Reference, section 2.1). If a division were to make an unreasonable decision about these matters, your Committee could provide a student with a remedy, provided that remedy lay within its jurisdiction.

The Student's grounds of appeal

The Primary Remedy Sought

The Student's written and oral submissions were directed primarily at persuading your Committee that it should order the Institute to require Professor Wheeler to resume (or to continue)² supervising his doctoral research. The Student's submissions might be framed as arguing that it was unreasonable for the Institute to conclude that continued supervision by Professor Wheeler was no longer possible.

The Chair of your Committee is of the view that your Committee has no jurisdiction to make an order that would effectively require a particular faculty member to serve as a particular student's doctoral supervisor or that would require a particular faculty member to accept a particular student into their lab. In their capacities as teachers, scholars, or researchers, individual faculty members are not parties to proceedings before your Committee. The orders of your Committee are directed to divisions of the University, where they are acted upon by faculty and staff acting in administrative roles (*e.g.*, program director, associate dean, assistant dean, department chair, graduate co-ordinator, etc.). Your Committee cannot tell an individual faculty member how to conduct their research program.

Your Committee would not order the remedy sought by the Student in this case even if it had jurisdiction to do so. It is obvious that Professor Wheeler is unwilling to supervise the Student. On the other hand, the Student is, apparently, willing to be supervised by Professor Wheeler. In his appeal statement, the Student says "my supervisor is a wonderful person and I have had an amicable relationship with him" (p. 12). Your Committee found this surprising. During the

² At the hearing of the appeal, the Student sought to persuade your Committee that the remedy he sought was a "continuation" of Professor Wheeler's supervision, rather than a "resumption" of his supervision. His argument was that if the Institute's decision was set aside, it would be as if Professor Wheeler had never ceased being his supervisor. There is a certain remedial logic to this argument. However, for the purposes of this appeal, nothing turns on whether the remedy sought should be characterized as a continuation or a resumption of supervision.

hearing of the appeal, the Student described Professor Wheeler in very harsh terms. He submitted that during 2018 and 2019, Professor Wheeler and others had abused their power and had acted “like a pack of thieves in the night”; he also submitted that Professor Wheeler’s March 2020 statement was full of “frivolous and false accusations,” “malicious slanders,” and “vile statements.” Your Committee rejects this characterization of the March 2020 statement, which your Committee reads as an anguished, honest, and reflective account of Professor Wheeler’s personal and professional experience as the Student’s supervisor. There is no possibility that that there could be an effective supervisory relationship between Professor Wheeler and the Student.

The Student makes five principal submissions in support of his position that the Institute’s decision was an unreasonable application of SGS’s policy concerning doctoral supervision. He submits that (1) an email of August 4, 2016, constituted a contract between him and Professor Wheeler, requiring Professor Wheeler to continue as his supervisor; (2) as of November 2017, he was only three months away from completing his dissertation; (3) Professor Wheeler would have been obliged to continue supervising him if he had returned to Toronto as of May 2019; (4) the options offered by the Institute are not feasible; and (5) continued supervision by Professor Wheeler is required by the University’s duty to accommodate the Student’s disability.

1. What was the effect of the email of August 4, 2016?

The Student submits that Professor Wheeler told him that “I could stay for the maximum allowed time of 10 years for the PhD, as long as I didn’t need funding from him ... after year 5” (Student’s Appeal Statement, p. 9). This submission is based on an email that Professor Wheeler sent to the Student on August 4, 2016, summarizing his concerns about the Student’s progress. The material portions of this email read as follows:

- (1) PhD students who graduate from my lab typically write a dissertation that includes four chapters describing new contributions. At this point, you have written one (the “chemostat”).
- (2) As I have note many times before, I am worried about your progress. You are far, far behind where my other PhD students have been at this stage.
- (3) As I understand it, at U of T, PhDs can last for up to 10 years. As far as I am concerned, you can take that whole duration if you want.
- (4) But if you opt for #3, I cannot afford to pay you during that time. As I understand it, the last month that I am obligated to pay you is December, 2017. After that point, your pay will be cut substantially (perhaps to zero) depending on what I have.

The Student submits that this email is a binding commitment from Professor Wheeler, indeed that it constitutes a contract between himself and Professor Wheeler to the effect that Professor Wheeler would continue as his supervisor. Again, the implication is that it was unreasonable for the Institute to remove Professor Wheeler in the face of this commitment.

SGS submits that only the Ontario Superior Court of Justice can answer the question whether the email is a contract, and that in any event it is not a contract (SGS Submissions, paras. 52 and 19).

The GAAB concluded that it had no jurisdiction to determine whether the email was a contract and no jurisdiction to give any contractual remedies.

According to section 3.1.4 of its Terms of Reference, the Chair of your Committee has the power to “determine all questions of law.” Whether a contract exists and how it should be interpreted are questions of law. It is therefore arguable that if the existence and meaning of a contract was for some reason relevant to the determination of an issue that was properly before your Committee, your Chair would have the jurisdiction to decide those issues. However, even if that were to happen, the Chair agrees with the Institute that, like the GAAB, your Committee has no jurisdiction to give any remedies for breach of contract. Its remedial jurisdiction is limited to providing remedies for unreasonable applications of academic regulations and requirements (AAC Terms of Reference, section 2.1).

In any event, the Chair of your Committee finds that the email is not a binding commitment by Professor Wheeler to continue serving as the Student’s supervisor, much less a contract between Professor Wheeler and the Student. It is simply a statement to the effect that, as of 2016, Professor Wheeler had no objection to the Student’s taking whatever time was necessary, within the 10-year period, to complete his Ph.D. Whether the Student could indeed take so much time would of course not be for Professor Wheeler alone to decide, as it would also depend on the input of the other members of the supervisory committee and the graduate coordinator.

The statements in Professor Wheeler’s email of August 4, 2016, do not render the Institute’s decision to remove him as the Student’s supervisor unreasonable.

2. Was the Student three months away from completing his doctorate?

The Student says that he had been told in November 2017 that “my progress was sufficient to letting me graduate after 3 more months of work” (Appeal Statement, p. 9), the implication being that the Institute’s decision to remove Professor Wheeler as supervisor was unreasonable because it prevented him from doing those three months of work in Professor Wheeler’s lab.

This submission is based on a report of a meeting of the Student’s supervisory committee, held on November 27, 2017. After evaluating the Student’s progress in some specific areas, the report states that the “earliest reasonable program completion date” is August 2018. It then goes on to say (BoD, p. 035):

While some progress has been made the student still lags behind where he should be after 5 years of research. The committee remains concerned about the lack of progress and are worried about completion.

We recommend:

- 1) supervisor and student to define a 3 month plan with milestones
- 2) monthly progress reports sent to all committee members
- 3) progress meeting in 1st week of March.

The committee thinks it is unlikely that the student will complete unless the above milestones are met.

The Student’s submission misconstrues this report. The report does not say that the Student can complete his Ph.D. within three months; to the contrary, it states that the earliest reasonable time

for completion of the Ph.D. is 10 months. The three-month plan was not a timeline for completion; it was a prerequisite to the Student's progress towards completion. (See also email from Professor Wheeler to Rhonda Marley, December 17, 2017, Latest FIPPAs, Tab 16.)

There is nothing in the supervisory report of November 2017 that casts any doubt on the reasonableness of the Institute's decision in November 2019.

3. Would Professor Wheeler have continued to supervise the Student had he returned earlier to Toronto?

In his written and oral submissions, the Student repeatedly asserted that if he had returned to Toronto by May 2019, Professor Wheeler would have been obliged to continue supervising him. This submission overlaps with the first and second. The implication is that it was unreasonable for the Institute to find, when the Student did return only a few months later, that Professor Wheeler's continued supervision was no longer possible.

This submission is supported principally by an email, dated October 1, 2018, from Professor Wheeler to Professor Elie Sone, who at that time was serving as the Institute's Associate Director of Graduate Programs. The critical portion of the email reads as follows (Latest FIPPAs, p. 33):

...remember [the Student]? A quick recap – he took his second medical leave earlier this year – it was to last between ~March-August [2018]. You and I discussed the matter, and we agreed that if (A) [the Student] managed to return to Toronto before the end of the leave, I would be obligated again to try again to get him through the program with a PhD at that time. But we also discussed the possibility of (B) [the Student] returning to Toronto at some point after the agreed-upon terms of the medical leave, in which case I would tell SGS that I have moved on and am not able to support his second try at obtaining a PhD.

Does the above match your memory? At any rate, I have been assuming that we were firmly in regime (B), given that August [2018] came and went without me hearing from [the Student]. But last week, he sent me an email He suggests that he wants to "extend" his leave and that he would like to return to Toronto to continue his work in 2019.

The email continues with some questions for Professor Sone, concluding with the following: "... even if SGS decides to grant the leave, can I stick with position (B)?" Professor Sone's reply to this question was "My advice would be to have [the Student] ... apply for an extension to his leave (with documentation) and consider informing him of option (B) if he seeks another extension in May [2019], but I will leave it to you and [Professor Davies] to decide."

Contrary to the Student's submission, this email does not show that, on October 1, 2018, Professor Wheeler felt obliged (much less that he was obliged) to continue supervising him. To the contrary, it shows that Professor Wheeler was seeking advice that would support "option (B)", that is, not supervising the Student.

In an email of February 24, 2019, Professor Wheeler told Professor Davies: "My plans remain the same (i.e., to not accept [the Student] as a student again)" (Appeal Statement, p. 350). In an email of May 15, 2019, to Professor Davies and another person, Professor Wheeler again made it

clear that he would not be willing to supervise the Student on his return from medical leave but would be willing “to assist him in finding a different supervisor and project-plan.” Thus, it clear from the material before your Committee, including the material submitted by the Student, that Professor Wheeler had decided well before May 2019 not to continue supervising the Student. Moreover, there is no basis for the Student’s submission that Professor Wheeler would have been obliged to accept him back in the lab if he had returned in May 2019. Your Committee therefore rejects this submission.

In any event, the question of what would have happened if the Student had returned to Toronto in May 2019 is of marginal relevance. The issue before your Committee is not what would have happened if the Student had returned to Toronto sooner. It is whether, given what had happened up to that point, the Institute’s decision of November 2019 was reasonable. The possibility, if it is one, that the Student’s relationship with Professor Wheeler might have unfolded differently if the Student had returned in May 2019 does not make the decision of November 2019 unreasonable.

4. Are the options offered by the Institute feasible?

In his written and oral submissions, the Student repeatedly emphasized the impossibility of completing his work without access to Professor Wheeler’s lab. The Student may well be correct in saying that it would be difficult or impossible to complete the specific projects he was engaged in while working in Professor Wheeler’s lab. But that is not the issue before your Committee. The issue is, rather, whether the options proposed for completion of the degree were reasonable, given that the Student no longer had access to Professor Wheeler’s lab. To be reasonable, those options must be feasible. The GDAAC found that they were (BoD, p. 065). That finding involved, among other things, expertise in biomechanical engineering, which the GDAAC had but your Committee lacks. Your Committee defers to the GDAAC’s assessment that the proposed options are feasible. Your Committee also notes the Institute’s commitment to facilitate the loan and transfer of materials relevant to the Student’s project from Professor Wheeler’s lab to the Student for use at another lab in the Institute (SGS Submissions, paras. 72 and 74).

5. Is Continued Supervision by Professor Wheeler a Required Accommodation?

There is no dispute between the parties that the Student has suffered from a serious medical condition that has impeded his academic progress and that the University has a duty under the *Human Rights Code*, R.S.O. 1990, c.H.9 (the *Code*) to accommodate that disability to the point of undue hardship.

In his written submissions, the Student submits that his rights under the *Code* were violated when he was removed from Professor Wheeler’s lab. Specifically, he says: “My mental health was in fact a reason for my removal from the lab, that amounts to an infringement on my Mental health rights/discrimination based on Mental health and will hence amount to a violation of the Ontario Human Rights Code ...” (Statement of Appeal, p. 21). At the hearing, the main point of the Student’s submissions on this point was that the only possible accommodation for his disability is renewed supervision by Professor Wheeler.

The Human Rights Tribunal and the Superior Court of Justice have an expansive remedial jurisdiction under the *Code* (see ss. 45.2, 45.3, 46.1). In contrast, your Committee's remedial jurisdiction under the *Code* is limited by its general remedial jurisdiction, that is, to providing remedies for unreasonable applications of academic regulations and requirements. Your Committee can determine whether a particular application of academic regulations and requirements complied with s. 17 of the *Code* and, if it did not, make an order within its jurisdiction that would reasonably accommodate a student's disability (see, for example, Report 409). Since your Chair has concluded that requiring Professor Wheeler to continue supervising the Student is not a remedy that can be granted by your Committee, it cannot be a remedy for any violation of the *Code*, if there was one.

As to whether there was any violation of the Student's rights under the *Code*, your Committee is divided.

One member of your Committee is concerned that the Student's removal from Professor Wheeler's lab may indeed have been an act of discrimination on the ground of disability, as defined in s. 10(a) of the *Code*, contrary to ss. 1 and 9 of the *Code*, for the following reason. In this member's view, it was not fair to judge the Student's performance in the lab during a period of time when his medical condition was extremely disabling; in this member's view, that judgment should only have been made at a time when the Student's condition was well-controlled with medication and other therapy. In this member's view, the decision to remove the Student from Professor Wheeler's lab, which was communicated to the Student at the conclusion of the Student's medical treatment and leave, may have been discriminatory since it was based on the Student's pre-treatment performance.

The other two members of your Committee are not persuaded that the Student's removal from Professor Wheeler's lab was an instance of discrimination contrary to the *Code*. These two members are inclined to see the Student's removal from the lab as a situation where s. 17(1) of the *Code* applies. That section, read together with ss. 17(2) and (3), provides that where a person has been reasonably accommodated but nevertheless "is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability," there is no infringement of the person's right under the *Code*. During the period leading up to the Student's departure from Toronto in late 2018, the Student was provided with extensive accommodations. In particular, the Student's medical leaves and Professor Wheeler's extraordinary efforts, documented both in his statement of March 2020 and in the material submitted by the Student (see particularly Latest FIPPAs, Tab 15), to ensure that the Student's work in his lab was conducted safely and to keep the Student on the path to completion of his Ph.D., were significant accommodations. Despite those accommodations, the Student was unable to function effectively in Professor Wheeler's lab.

In any event, all three members of your Committee agree that, given the impossibility of continued supervision by Professor Wheeler, the offer of alternative paths to the completion of the Student's Ph.D. that the Institute offered to the Student in Professor Davies's letter of November 28, 2019, was a reasonable accommodation for the Student's disability.

The Alternative Remedy

In the alternative, the Student submits that the GDAAC process was flawed and that your Committee should order a new hearing at the GDAAC. This submission was not the main focus of the Student's oral arguments to your Committee, but it was fully argued in his written submissions and was fully canvassed at the hearing before the GAAB. Your Committee adopts the reasons of the GAAB for rejecting this submission (BoD, p. 078):

Regarding the GDAAC's decision, [the Student] submits that there were three procedural flaws. First, there was a delay, as the decision took 5 months instead of the 2 months prescribed by the SGS General Regulations, Section 10. Second, [the Student] also points to the absence of a student representative in the GDAAC's meeting. Third, [the Student] submits that he was not immediately provided with a copy of the GDAAC report, as required by SGS GDAAC Guidelines, section 23. The GAAB agrees that the manner in which the GDAAC decision was handled was not in full compliance with the procedural requirements of SGS Regulations and Guidelines. However, the GAAB has also considered that procedural guarantees must be proportional to the nature of the decision being made and the impact on the appellant. Therefore, these guarantees are heightened when the decision is non-discretionary and also has a significant impact on the student's ability to continue their studies (e.g. expulsion). This is not the case here.

Moreover, none of these procedural flaws are so significant as to provide grounds to invalidate the decision. The delay in the GDAAC meeting, as [the Student] himself acknowledges, may have been associated with the fact that the University was dealing with an unprecedented global pandemic in early 2020, and was shifting from in-person to virtual operations. As to the lack of a student representative at the GDAAC meeting, [the Student] correctly points to the fact that the committee does require one graduate student member (SGS GDAAC Guidelines, section 11(a)). However, the same section of the Guidelines also indicates that the quorum for a meeting is three members, including the Chair. Therefore, the absence of the student representative at the meeting does not render the GDAAC meeting or its recommendations invalid. Finally, [the Student] should have received the GDAAC report with recommendations immediately after the meeting. The delay in providing him with the report, however, was compensated with an extension of the deadline for him to submit his appeal to the GAAB, granted by Prof. Charmaine Williams SGS Vice-Dean, Students. Therefore, any potential negative impact of such delay was mitigated by this extension.

Your Committee adds the following. The absence of the student member from the GDAAC meeting was not a procedural flaw. The GDAAC guidelines require every GDAAC to have a student member, but the guidelines do not require a student member to participate in every GDAAC decision. The quorum for a GDAAC meeting is three, but there is no requirement that the student member be one of the three.

Conclusion

The University's Graduate Supervision Guidelines contemplate that the relationship between a doctoral student and their supervisor "should ... barring graduate unit policies or unanticipated circumstances, remain intact until the student has successfully submitted and defended their thesis." Professor Wheeler's decision to cease supervising the Student was an unanticipated circumstance. Your Committee has no jurisdiction to order the primary remedy sought by the Student, that is, to order the Institute to require Professor Wheeler to continue as the Student's

doctoral supervisor. The issue before your Committee is best characterized as whether, given Professor Wheeler's unwillingness to supervise, the alternatives that the Institute offered to the Student in Professor Davies's letter of November 28, 2019, were reasonable paths to the completion of the Student's Ph.D. Your Committee finds that they were. Your Committee rejects the Student's submission that any procedural flaws in the GDAAC process require a new hearing before the GDAAC. The appeal is dismissed.