

DARRYL J. HODGKINSON

M.B. B.S. (Hons), F.R.C.S. (C), F.A.C.S. F.A.C.C.S.
DIP. AMERICAN BOARD PLASTIC SURGERY
Cosmetic Plastic Surgeon

29th January 2007

Attention: Dr John M Quinn
Executive Director for Surgical Affairs
The Royal Australasian College of Surgeons
College of Surgeons' Gardens,
Spring Street
Melbourne VIC 3000

Dear Dr Quinn,

The Environment.

It is my understanding that the purpose of Section 21 of the Royal Australasian College of Surgeons' Rules was to admit to the College of Surgeons, those Surgeons with acceptable higher degrees in a subspecialty, without the necessity of sitting examinations.

My main purpose for becoming a member of the Royal Australasian College of Surgeons, was to integrate into the general mainstream professional surgical environment in Australia, maintain standards through education and maintain collegiate contact with like sub specialists.

It is my understanding that a Surgeon, recognised as a Specialist in Australia for 10 years, could apply for F.R.A.C.S. membership under Section 21. I therefore duly applied for such recognition by the Royal Australasian College of Surgeons. There is no doubt that my qualifications are equivalent to F.R.A.C.S.

I have a postgraduate degree from the Royal College of Surgeons, Canada as well as an American Board of Plastic Surgery degree, both in plastic surgery, both qualifications which have been previously recognised by the Specialty Recognition Committee in 1988. I have practised successfully as a plastic, reconstructive and cosmetic surgeon for 26 years now, 16 years of those 26 years in Australia.

I am recognised as a Specialist Plastic Surgeon in Australia by the Health Insurance Commission.

Although a plastic surgery specialist, I have not been able to achieve ongoing education in Australia. I had to do that overseas.

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Other problems resulting from marginalisation within the profession, because I do not have a Fellow of the Royal Australasian College of Surgeons over the last 16 years, have been as follows:

1. Inability to attend Seminars.
2. Inability to attend the "closed" or exclusive meetings of the Australian Society of Plastic Surgeons and the Australian Society of Aesthetic Plastic Surgeons.
3. Inability to obtain Accreditation at Private Hospitals. This raises serious issues and may amount to breaches of the Trade Practices Act.
4. Inability to obtain Accreditation at Public Hospitals.
5. Inability to apply for positions in a Public Hospital.
6. The necessity to have my own Day Surgery hospital built.
7. Marginalisation by the Plastic Surgical community.
8. Vulnerability of criticism by Fellows of the Royal Australasian College of Surgeons.

The Application process.

The process adopted by the RACS under Section 21 with an interview process was marred from the beginning. There were multiple irregularities in the due process of the Application, being untimely, with poor communication exemplified with changes of dates of examination and a general but constant "moving of the goalposts".

Supporters of myself, who were Fellows of the Royal Australasian College of Surgeons, were criticized for their support, by other members of the Royal Australasian College of Surgeons who should not have known of the process (which should have been strictly confidential).

The Australian Society of Plastic Surgeons were informed, kept in the loop and should not have been, as they are separate societies and should not be privy to information supplied to R.A.C.S. This was a blatant breach of fair process.

The interview process conducted by R.A.C.S. on June 15, 2006 was defective and reprehensible for the following reasons:

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- * During the interview on June 15 2006, one particular interviewer, a plastic surgeon was particularly aggressive and off-putting.
- * The findings of the interview were incorrect as the purpose of Section 21 is not to undergo a final examination which I might have been prepared for 26 years ago.
- * If I had wished to sit the final examination, I could have done that; since I obtained my primary fellowship in 1973 and I completed a Fellow of the Royal Australasian College of Surgeons **endorsed** residency in plastic surgery at the Mayo Clinic, Rochester, Minnesota, U.S.A.
- * It is impossible to leave an established practice to become what is basically deemed a Resident again. It is fundamentally unfair.
- * My practice has in effect, been reviewed by an Australian Plastic Surgeon, Dr Kourosh Tavakoli, who has been my Associate for the last two years.
- * The Interview Committee's decision is incomprehensible and cannot be acted upon in my particular case. The decision did not focus on Rule 21 and as such, is lacking in fairness.

I appear to be treated differently from some others.

One might look at a similar case of Dr Anthony Edis, an Endocrinological Surgeon from Perth, W.A. Dr Edis obtained a Fellow of the Royal Australasian College of Surgeons under Section 21 and has become integrated into the mainstream surgical community.

Dr Edis's situation is very similar to that of myself. However, I have two higher post-graduate degrees in plastic surgery whereas Dr Edis had one in general surgery. Dr Edis was not asked to sit the general surgical examinations to be asked questions on bowel or gall-bladder surgery and I should not be asked to answer questions on hand or trauma surgery, neither of which I perform at this point.

This would be a complete waste of exercise or energy as it is highly unlikely that I would ever practise these subspecialties of plastic surgery again as 90% of my practice is Aesthetic Plastic Surgery.

Furthermore, I have established myself as a leader in the field of Aesthetic Plastic Surgery as evidenced by being on the Faculty of the International Society of Aesthetic Plastic Surgeons with continuing invitations to give talks and presentations.

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My Curriculum Vitae evinces leadership in the field of Aesthetic Surgery and lists dozens of articles for the international scientific literature primarily on aesthetic plastic surgery and many chapters in textbooks on aesthetic plastic surgery.

I also have an annual surgical mission *Operation Restore Hope* which has treated well over a thousand patients with cleft lip and palate deformities in the Philippines and is recognised by Smile Train internationally and which is also likely to be recognised by Ausaid in the imminent future.

Summary

I appeal the Committee's decision and question the process of Section 21.

I believe that I have demonstrated my ability to be a plastic surgeon internationally for 26 years with 16 years in Australia and deserve to have a Fellow of the Royal Australasian College of Surgeons, so that I can become a part of the surgical community and be afforded the same rights and privileges as any other plastic surgeon in Australia who is qualified.

Dr D HODGKINSON

JANUARY 2007.

Sincerely yours,

Dr Darryl J. Hodgkinson

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My 33 year old association with the Royal Australasian College of Surgeons

My name is Dr Darryl James Hodgkinson. I am a qualified plastic and reconstructive surgeon, an Australian citizen and an Honours Graduate from Sydney University in 1971.

I decided to follow a career path in surgery in 1972 during my intern year at Sydney Hospital. I gained admission to the surgical residency program at St Vincent's Hospital in 1972. In that same year I gained the primary fellow of the **Royal Australasian College of Surgeons**. Working with the late Dr Victor Chang in cardiac surgery, I was inspired by his surgical prowess and he encouraged me to seek out a fellowship that was offered by the Royal Australasian College of Surgeons to study for one year at Dr Victor Chang's Alumni post-graduate educational institution - the prestigious Mayo Clinic in Rochester, Minnesota.

I was interviewed with several senior plastic surgeons and was chosen as the one candidate out of 7 to 8 national candidates to gain this fellowship at the Mayo Clinic. My initial interest was cardiac surgery at that stage.

I was warned by some senior residents and registrars in training that "they will never let you in". How prophetic! Yet, I thought that to gain superior training at the Mayo Clinic would lead me to the same degree of skill and proficiency as Victor Chang. What mattered to me most was to become a highly skilled, trained ethical surgeon and I took this as an opportunity rather than surgical positions which were offered to me by the Royal Australasian College of Surgeons' training system in Australia.

My senior mentor, Professor Douglas Tracy, with whom I had been a teaching fellow for one year, was also a post-graduate trainee in the United States at the Cleveland Clinic and he assured me that the choice to train at Mayo Clinic was not to be missed.

I sold my few worldly goods and arrived at Rochester with \$3,000.00 in hand to begin training in the shadow of some of the greatest names in surgery. The work ethic, effort, commitment and dedication needed to succeed as a trainee at Mayo is legendary. I spent three further years in general surgery and two further years in plastic surgery achieving my goal of being completely trained as a specialist plastic surgeon.

Knowing that the Royal College of Surgeons', Canada (FRCS (C) examination in plastic surgery had reciprocity with the F.R.A.C.S., I took the primary and final examinations in 1980 and became a specialist plastic surgeon passing this difficult exam on the first attempt.

In 1981, I also took the American Board of Plastic Surgeons' exam, passing this on the first attempt. I was granted a fellowship of the American College of Surgeons in 1983.

I began my surgical practice in Virginia, U.S.A. in 1980 and practised all aspects of plastic surgery, including hand surgery, microsurgery, tumour surgery, trauma surgery, head and neck cancer surgery, limb reconstruction with congenital

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deformities, including cleft lip and palate. I established a cleft lip and palate clinic and gained a university appointment on the teaching staff at the Medical College of Virginia (MCV). I continued to write scientific articles for medical journals and have written over 50 articles for surgical journals, chapters in books and have produced teaching videos of surgical technique.

By 1987, 7 years after practice, approaching 40 years of age, having been away from (home) for 13 years with ageing parents and a seventh generation Australian heritage, I decided to repatriate back to Australia.

I applied for speciality recognition in Australia and this was granted in 1988 as a Specialist Plastic Surgeon. I applied for an appointment at St Vincent's Private Hospital which was also granted. It took two further years to divest myself from my very successful American practice on arrival in Sydney which was very much changed from the mid-70s when I left.

I became a Consultant at the Skin and Cancer Foundation in Darlinghurst and began practice at Pymble with associates in a Dermatology office. To my horror, applications to gain privileges at local private hospitals were knocked back with no reason. Applications for public hospital appointments were not even answered or considered.

My St Vincent's Hospital appointment depended on gaining a very difficult to obtain appointment at a public hospital, which was also rejected. I subsequently gained a public hospital appointment at Westmead in the Department of Maxillo-Facial Surgery in 1997.

St Luke's Hospital, the S.A.N. Hospital in Wahroonga, Prince of Wales Hospital and finally Dalcross Hospital rejected applications. The same rebuke came from the Australian Society of Plastic Surgeons; even scientific meetings of post-graduate educational forums were not available to me on request. These meetings were "closed" (No education unless one had a F.R.A.C.S. degree).

I inquired about the process to convert my reciprocity to an F.R.A.C.S. to allow me to keep my ongoing educational process alive in Australia. Under Section 21, I could be granted reciprocity. So, in 1999, I applied under Section 21 to the Royal Australasian College of Surgeons. This lengthy process resulted in rejection. Nothing had changed in the interim. It was a "closed shop". I sought assistance from the Trade Practices' Tribunal in 1994 as I knew the behaviour of the Fellows of the College and the College itself was against free and fair competition.

Eventually I applied to the new body of the ACCC and gave a lengthy submission to the ACCC with extensive legal advice, all costing me approximately \$100,000.00. Being locked out of hospitals, I bought and built the Double Bay Day Surgery which is a fully licensed day surgery hospital so that I could perform surgery.

Further applications were made to local hospitals and rejections continued from St Vincent's Hospital and St Lukes' Hospital Complex.

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The same group of self-interested plastic surgeons with a F.R.A.C.S. could restrict my practice by not allowing me to operate at private or public hospitals. All these surgeons were members of the Royal Australasian College of Surgeons, powerful plastic surgeons, who were in competition with me and who would use their Royal Australasian College of Surgeons as their "ace in the hole" every time. Even more humiliating was the painful experience of Fellow of the Royal Australasian College of Surgeons encouraging patients to sue me if they saw a dissatisfied patient.

Not having had a lawsuit for 18 years, suddenly in the difficult medicolegal environment of the late 1990s, I had several claims. Only one claim led to loss of a case in court. My F.R.A.C.S. competitors could literally perjure themselves because they were protected by the "powerful brotherhood" and I had been marginalised. Being marginalised by my practice changed from general plastic surgery to cosmetic plastic surgery. Fortunately, I had taken another six months fellowship in cosmetic surgery in my training in Newport Beach, California and I was quite interested in this field.

I became a member of the International Society of Aesthetic Plastic Surgery in 1995 and have become a Faculty Member of this prestigious body and am now on the nominating committee of that group.

I continued to review articles for Journals and write chapters in books on aesthetic plastic surgery.

I am the only Australian member of the Global Expert Service in Aesthetic Plastic Surgery (G.E.S.A.P.S.)

Knowing that the ACCC had set down more transparent criteria for evaluation of "foreign-trained" surgeons by the Royal Australasian College of Surgeons, I decided to reapply again for a Fellow of the Royal Australasian College of Surgeons under Section 21 over two years ago.

I gained support from other Fellow of the Royal Australasian College of Surgeons who had worked in my charity in the Philippines (Operation Restore Hope) www.operationrestorehope.org. In this charity, working with international plastic surgeons, our organisation has treated over 1,000 children with cleft lip and palate deformities without one mortality and with now recent support from the Smile Train, a Bill Gates' initiative organisation.

I was granted an interview by the Royal Australasian College of Surgeons on 15th June 2006 expecting at last to be accepted to have a Fellow of the Royal Australasian College of Surgeons and so become integrated into mainstream plastic surgery education, meetings, perhaps even hospital appointments.

In July 2006, I was informed by RACS that I had been rejected. I was informed that I should now sit the exams for the Royal Australasian College of Surgeons, having sat for my original examinations in plastic surgery twice and successfully. I was also told to become involved in a Residency program and have a two year assessment of my practice after which I may be granted a Fellowship.

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I have had a Fellow of the Royal Australasian College of Surgeons in my practice for two years working as a junior associate and am on more than equal footing. The whole process of the Section 21 interview was marred by common knowledge in the plastic surgical community, that I was applying for recognition and there was blatant admonition of one of my supporters by a senior plastic surgeon.

Another potential supporter was threatened by a Board Member of the Australian Society of Plastic Surgeons, Fellow of the Royal Australasian College of Surgeons.

The whole process was tainted, there being no due process about which I had bitterly complained previously prior to the interview. I have asked for a Transcript of the Interview and these have not been forthcoming 1½ months after the request.

In summary, the question might be, should I continue to gain the Fellow of the Royal Australasian College of Surgeons? My family and friends say, I should just give up. My advisors say that the whole process is about principle and the future of other plastic surgeons who might wish to come to Australia although this process of appeal is expensive and one might ask, why I should bear the brunt of this process?

I am continuing, because the Royal Australasian College of Surgeons is a cartel who have kept out at least equally trained surgeons from practising in Australia. Its members are protected when they break trade practices' law by the power of the Royal Australasian College of Surgeons. No organisation or its members should have the right to limit another surgeon's ability and in effect, de-skill them. The Royal Australasian College of Surgeons discourages skilled surgeons from attempting to practise in Australia.

As a prominent American plastic surgeon married to an Australian woman said to me, "they will never let you in", another prophecy I am trying to prove wrong. The appeal process is pending the fellowship.

DR DARRYL J. HODGKINSON - Plastic Surgeon
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MEMORANDUM FOR RE HODGKINSON

1. I appeared for Hodgkinson before the Appeal Panel of RACS.
2. I have read the letter from Isabelle Arnaud, Director, adjudication Branch, ACCC dated 21 February 2008. That letter records responses made by RACS to the ACCC.
3. It seems to me that the last two bullet points are the most important. They record, for presently relevant purposes, the RACS position that Dr Hodgkinson was given an opportunity to respond to evidence presented to the Appeal Committee and that the "Appeals Committee accepted evidence, which Dr Hodgkinson had the opportunity to refute, that the FRCS (Canada) is not comparable to the FRACS".
4. In my opinion these contentions advanced by RACS are false.
5. When the appeal was opened, and having announced my appearance for Dr Hodgkinson, I was told by the Appeals Committee that also present at the hearing were Dr Thiele, who was a member of the original interviewing panel from the decision of which the appeal had been brought. I was also told that present and advising the Committee was Mr Gorton, solicitor.
6. I drew attention to the "incongruous structural feature" that a member of the panel being appealed from was to be present and entitled to make submissions when the nature of the appeal was that the "process followed was hostile and combative and ultimately lacked bona fides". [Transcript p3]
7. I opened the appeal by pointing out that "The overseas qualification necessary to pass through this gateway this applicant had. This applicant was asked no questions about that qualification in his interview. He was asked in his correspondence with the College not a word about it." [Transcript p 6]
8. In my written outline of submissions, the opening paragraphs were: "Dr Hodgkinson has comparable qualifications, including a Canadian Fellowship and his American Boards. He was not asked a single question in his preliminary interview that went to the comparability of his qualifications."
9. Those submissions footnoted the fact that two of the members of the Appeal Committee also held RCS(C).
10. The President of RACS and a member of the Appeal Committee referred to the Canadian fellowship as being from "a very excellent College of Surgeons in Canada" [Transcript p 8] and that, as a result of holding that Fellowship he himself had been "excused the training program" for the FRACS. [Transcript p 9]
11. During the submissions for Dr Hodgkinson, not a word was said to suggest that a Canadian fellowship was not or might not be comparable to an FRACS. Not a word was said to deny or call in question the submissions outlined above.
12. Following the completion of the submissions, the Appeal Committee invited Dr Thiele to speak. I objected "to the process of a member of the body being appealed from having a right of audience before the appeal panel". [Transcript p 24]
13. Dr Thiele was led through the later part of his comments by the solicitor for the Appeal Committee, Mr Gorton, who had also been the solicitor for the interviewing panel. [Transcript p30].

14. The issue of comparability of qualifications was raised for the first time at the very end of Dr Thiele's statement [Transcript p34-35]. He said: "The fact that it wasn't asked doesn't mean it wasn't considered. It absolutely was considered....The US Board examinations have never been considered the equivalent of the FRACS". He then stated that the (UK) FRCS was also not comparable but was "a very basic qualification" [Transcript p 35]. [There is not a word of evidence from the records of the interviewing panel that the comparability of the degree was in fact discussed at all].

15. Following this statement from Dr Thiele, for which no advance notice had been given, the Chair of the Appeal Committee offered me the "last word" if there was anything that I wanted to say in response. [Transcript p37]. I said that: "We objected to your hearing Dr Thiele and having heard him we maintain the objection. We came here to argue an appeal based on the papers provided to us by the college and we were ambushed at the last minute by a series of assertions from the other end of the board table by one of the senior officers of RACS. I can't imagine a less fair scenario." [Transcript pp 37-38].

16. I then asked for leave to cross examine Dr Thiele. This was refused. [Transcript p38].

17. The result of this was that there was not the faintest suggestion to Dr Hodgkinson at his original hearing that his Canadian fellowship might not be a comparable qualification. Nor is there any record whatever of it having been discussed by the panel amongst themselves. Nor was any such suggestion made during my submissions on his behalf during the appeal. On the contrary, when I pointed out that the two surgeons on the Appeal Committee held the same qualification, it was described as a "very excellent" one by the President of RACS.

18. Nor did Dr Thiele say that the Canadian fellowship was not comparable. Even if he had, the refusal of the Committee to allow me to cross examine him made his statement worthless.

19. In my opinion, the appeal hearing was neither fair nor bona fide. The presence of Mr Gorton, the solicitor for the initial committee, during the deliberations of the Committee and his active roll in leading statements from Dr Thiele meant that there was no separation between the Appeal Committee and the original panel.

20. These feature meant that the appeal was a travesty, a charade the only purpose of which was to give the impression to outsiders that there was a legitimate and impartial appeals process when there was in truth nothing of the sort.

21. There is absolutely no reason to believe that the further appeal granted by the Appeals Committee will be any fairer than the two hearings to date. There is every reason to think it will be just as unfair as the two hearings that have gone before.

22. A private club which conducted its affairs in this manner would be sanctioned by the courts. It is a disgraceful state of affairs that a College invested with the public responsibility of conferring surgical degrees should consider itself able to do so with impunity.

23. Finally, Dr Thiele made it absolutely clear that no matter what qualifications a surgeon had, if he was of middle years and had specialised, he would be required to go back and retrain in the universe of his specialty so that his current experience was the same as a young surgeon just graduating FRACS.

24. In my view, this requirement is inconsistent with RACS exercising the power in Article 21 in a bona fide manner. It shows in my view that RACS is using the pretext of

Article 21 as a means of excluding foreign trained surgeons rather than as a means of admitting those applicants who are comparable, having regard to their age and specialisation, to FRACS surgeons of the same age and standing. Although the President of the College sat on the appeals committee and although he expressed disquiet about this approach in discussion, in the end he voted for its application.

25. For the reasons outlined above, in my opinion RACS has an established policy and practice, which permeates the organisation, of using a pretextual interpretation of Article 21 to exclude appropriately trained and qualified foreign surgeons.

C A Sweeney QC
Owen Dixon Chambers

3 March 2008