QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2011 SKQB 392**

Date: **2011 10 20**
Docket: Q. B. G. 1751 of 2011
Judicial Centre: Regina

BETWEEN:

REGINA QU'APPELLE REGIONAL HEALTH AUTHORITY

APPELLANT

- and -

DR. LEITH DEWAR

RESPONDENT

Counsel:

Reginald A. Watson, Q.C. — for the appellant
Brad D. Hunter — for the respondent

JUDGMENT
October 20, 2011

ZARZECZNY J.

INTRODUCTION

[1] The Regina Qu'Appelle Regional Health Authority ("the health authority") appeals the decision of the Practitioner Staff Appeals Tribunal (the "appeals tribunal") dated July 15, 2011 (the "decision") rendered in respect of the case of Dr. Leith Dewar ("Dr. Dewar"). The appeal is taken pursuant to s. 45(4) of *The Regional Health Services Act*, S.S. 2002, c. R-8.2 (the "*Act*"). Because of its central importance to the jurisdiction

of the appeal tribunal and this Court, s. 45 of the *Act* is reproduced in full and it states as follows:

> 45(1) A person who is aggrieved by a decision of a regional health authority or an affiliate made in relation to the following matters may, in accordance with the regulations, appeal the decision to a tribunal established by the regulations:
>
> (a) the appointment of the person to the practitioner staff or the reappointment, suspension or termination of appointment of the person;
>
> (b) the disciplining of the person as a member of the practitioner staff;
>
> (c) the granting of privileges to the person as a member of the practitioner staff, or the amending, suspending or revoking of privileges granted to the person.
>
> (2) Subject to the regulations, a tribunal may determine its own procedures for the hearing of an appeal pursuant to subsection (1).
>
> (3) For the purposes of hearing an appeal pursuant to subsection (1), the members of a tribunal have the powers conferred on commissioners by The Public Inquiries Act.
>
> (4) A decision of a tribunal may be appealed to a judge of the Court of Queen's Bench on a question of law or jurisdiction within 30 days after the date of the tribunal's decision.

[2] The provisions of the *Act* are supplemented by *The Practitioner Staff Appeals Regulations*, R.R.S. c. R-8.2, Reg. 5 (the "*Appeals Regulations*"). A combination of the *Act* and the *Appeals Regulations* constitute the appeal tribunal a statutory tribunal within the context of this Court's appellate review. Its members are appointed by the Minister of Health for the Province of Saskatchewan and in accordance with and pursuant to the criterion outlined in s. 3 of the *Appeals Regulations*. No issue is taken with respect to the regularity of the appointment of the appeal tribunal hearing Dr. Dewar's appeal.

[3] Section 11 of the *Appeals Regulations* provide that the appeal tribunal must conduct an appeal heard by it "as a hearing *de novo*". Section 11 provides in full as follows:

> 11(1) An appeal to the tribunal shall be conducted as a hearing *de novo*.
>
> (2) At a hearing, the appellant and the respondent have the right to appear before the tribunal and may, at their own expense, be represented by counsel.
>
> (3) If the appellant or the respondent fails to attend a hearing, the tribunal may proceed with the hearing in the absence of the appellant or respondent.

[4] Section 14(1) of the *Appeals Regulations* provides the appeal tribunal with its scope of authority and it provides as follows:

> 14(1) Within 30 days after the completion of a hearing, the tribunal shall make a decision:
>
> (a) confirming the decision of the board;
>
> (b) varying the decision of the board; or
>
> (c) quashing the decision of the board and substituting its own decision for that of the board.

THE APPEAL TO THE COURT OF QUEEN'S BENCH

[5] The health authority appeals the decision of the appeal tribunal and para. 1 of the notice of appeal seeks the following alternate relief:

> 1. Pursuant to Section 5(4) of *The Regional Health Services Act*, S.S. 2002, c. R-82. (the "Act")":

(a) An Order setting aside the decision of the Practitioner Staff Appeals Tribunal (the "Tribunal") dated July15, 2011, and reinstating the resignation of the Respondent dated October 29, 2010; or

(b) In the alternative, an Order setting aside the decision of the Practitioner Staff Appeals Tribunal dated July 15, 2011, and remitting the matter to the Tribunal for rehearing.

[6] There are six grounds advanced to support the health authority's appeal and they are as follows:

(a) The Tribunal erred in law in concluding that the resignation agreed to by Dr. Dewar in an alternate resolution agreement dated June 28, 2010 (the "Agreement") constituted a decision of the Regina Qu'Appelle Regional Health Authority ("RQRHA") within the meaning of para. 45(1)(b) of the *Act*, and by failing to hold that one of the conditions specified in Article 9 of the Agreement for acceptance of the Respondent's resignation had been met;

(b) The Tribunal erred in law and exceeded its jurisdiction by imposing additional conditions for the acceptance of Dr. Dewar's resignation not specified in Article 9 of the Agreement;

(c) The Tribunal erred in law by concluding that it had jurisdiction to hear an appeal from the outcome of an alternate resolution agreement between a regional health authority and a member of its practitioner staff and exceeded its jurisdiction in continuing to hear such an appeal;

(d) The Tribunal erred in law by misconstruing the legal relationship between RQRHA and Dr. Dewar by implying terms and conditions relevant to an employment contract;

(e) The Tribunal erred in law in concluding that RQRHA conducted an "inadequate" investigation, when no obligation regarding an appropriate investigation exists at law or is imposed under the Agreement; and

(f) The Tribunal erred in law and exceeded its jurisdiction by permitting the Respondent to call rebuttal viva voce evidence for the purpose of addressing issues of credibility.

THE FACTS

[7] The facts of this case are set out in detail in the appeal decision at paras. 4 - 16. While they do not bear full repetition, nevertheless they can be summarized as follows for the purposes of this judgment.

[8] Dr. Dewar is a cardiothoracic surgeon. He was a member of the practitioner staff of the health authority. Although the materials before the court are unclear with respect to when he began his work with the health authority, nevertheless a review of the transcript of the evidence before the appeal tribunal (Appeal Book, vols. 1, 2 and 3) confirms he had been a member of the practitioner staff practicing at the health authority's Regina General Hospital facility for years.

[9] The evidence before the appeal tribunal further confirms that his history with the health authority was not without incident nor controversy. By his own admission, he engaged in a "pattern of disruptive behaviour" which had subjected him to prior disciplinary action.

[10] The circumstances which brought Dr. Dewar's case to the appeal tribunal, and now the review by this Court, firstly relates to an incident that occurred in May of 2010 between Dr. Dewar and a physician colleague engaged as a Critical Care Associate at the health authority's Regina General Hospital facility and its Surgical Intensive Care

Unit. Both the health authority and Dr. Dewar acknowledged that the incident was serious enough to consider Dr. Dewar's resignation as an appropriate consequence of his behaviour (appeal decision, para. 4). A meeting was arranged on June 14, 2010 between Dr. Dewar, the head of the surgical department at the Regina General Hospital, the senior medical officer and the executive director of the Practitioner's Staff Affairs Department.

[11] At this meeting, Dr. Dewar was provided with three options to address the May, 2010 incident. The first was a referral of the incident to the health authority's Discipline Committee, the second option was for Dr. Dewar to resign and the third option presented by the health authority was to utilize the Alternative Dispute Resolution provisions of the Regina Qu'Appelle Regional Health Authority Practitioner's Staff Bylaws (the "Bylaws") which provides, in Bylaw 101, as follows:

> **101. Alternate Dispute Resolution Process**
>
> With the consent of the parties, and without restricting the final authority and discretion of the Board on matters falling under Parts V, VI, VII, VIII, and IX of these Bylaws, the parties to proceedings under Parts V, VI, VII, VIII, and IX may agree to an alternative dispute resolution process where the circumstances warrant.

[12] It is noted, at this point, that the next following section of the Bylaws, Bylaw 102, provides as follows:

> **102. Right of Appeal**
>
> Nothing in these Bylaws limits or restricts any right of appeal or other legal recourse, which is available to an individual pursuant to *The Regional Health Services Act* and regulations, or any other applicable law.

[13] Dr. Dewar accepted the third option presented to him at the June 14, 2010 meeting, namely dealing with the matter pursuant to the Alternate Dispute Resolution provisions of Bylaw 101. He entered into the Alternate Resolution Agreement (the "agreement") between himself and the health authority dated June 28, 2010. Rather than repeating the entire agreement in the body of this judgment, a copy of it is attached as Appendix "A" and incorporated by reference into the terms of this judgment.

[14] The introductory portions of the agreement recited, as the appeal tribunal recognized in the decision being reviewed, the purpose and intention of the agreement as follows:

> **In consideration** of the RQRHA [Regina Qu'Appelle Regional Health Authority] providing me with written reprimand regarding my conduct on May 10, 2010, rather than referring the matter for hearing before the Discipline Committee, as well as providing me with further opportunity to address and correct my pattern of disruptive behaviour, **I, Leith, Dewar, undertake and agree as follows**:

[15] In para. 1 of the agreement Dr. Dewar acknowledges:

> 1. I acknowledge that my conduct on May 10, 2010 constituted disruptive behaviour on my part, and **conduct subject to discipline** pursuant to the RQRHA Practitioner Staff Bylaws, for which I accept the written reprimand administered. [Emphasis added]

[16] The remainder of the terms of the agreement provide for rehabilitative commitments and initiatives intended to address, treat and hopefully modify Dr. Dewar's disruptive behaviour and anger management issues. They provide for performance evaluation reviews, consultation with a psychiatrist or other medical practitioners which

could provide Dr. Dewar with the assistance he acknowledge he needed. The agreement also provided for a meeting with members of the multi-disciplinary health care team who he had offended by his conduct May 10, 2010, which became referred to as the "apology session". Paragraph 9 of the agreement provides, in part, as follows:

> 9. I [Dr. Dewar] acknowledge that my disruptive behaviour has heightened concerns on the part of the RQRHA regarding patient safety, staff safety and risk management. I recognize that I have previously received warnings and been reprimanded regarding such behaviour and that the RQRHA has extended this final opportunity to me to seek further assistance in overcoming my behavioural issues. ...

[17] There then follows, in para. 9 of the agreement, a listing of six circumstances which would prompt Dr. Dewar's immediate resignation from the practitioner staff of the health authority. A signed but undated form of resignation was attached to the agreement. The determination of whether or not one or more of the circumstances set out in s. 9 of the agreement occurred would be determined "by consensus of the Senior Medical Officer, the Head of the Department of Surgery, and the Chief Executive Officer ...".

[18] The agreement closes with a paragraph stating as follows:

> In the absolute discretion of the Senior Medical Officer, in lieu of the acceptance of my immediate resignation, I may be subject to other measures pursuant to the RQRHA Practitioner Staff Bylaws by agreement between the RQRHA and me at the time. Such does not constitute a waiver of any breach or other default under this Agreement and shall not be deemed a waiver of any subsequent breach or default of a similar nature.

[19] As the appeal tribunal noted in its decision, this agreement was signed by Dr. Dewar after he had the opportunity to review the agreement with legal counsel. As it

turns out, much to everyone's regret, a further incident occurred on September 27, 2010 involving Dr. Dewar and his interaction with a colleague, Dr. Vorster, regarding a surgical patient of Dr. Dewar who was recuperating in the Surgical Intensive Care Unit ("SICU") under the care of a medical team that included Dr. Vorster. Dr. Vorster complained that a telephone conversation he had with Dr. Dewar regarding the condition of his patient in which Dr. Vorster raised concerns about the patient's post-surgical condition and requested Dr. Dewar to attend at the SICU generated what the health authority officials ultimately concluded was "...angry, disrespectful or otherwise disruptive behaviour in the workplace context".

[20] Dr. Vorster filed a complaint with the health authority which was investigated primarily by Dr. Vuksic, the Senior Medical Officer of the health authority. Dr. Dewar was invited to respond to Dr. Vorster's complaint after which a meeting was held on October 22, 2010 between all involved parties including legal counsel for Dr. Dewar and the health authority.

[21] As the appeal tribunal concluded, in its decision at para. 16; "...Although not formally recorded, a consensus was reached that Dr. Dewar's conduct during the September 2010 incident breached the Agreement ...". The appeal tribunal concluded by reference to the decision taken by the three individuals named in para. 9 of the agreement; "Their decision that Dr. Dewar's resignation had been triggered by the September 2010 incident was communicated to Dr. Dewar at a meeting held on October 29, 2010."

[22] Dr. Dewar subsequently appealed the actions of the health authority and its representative officials in accepting his resignation based upon the conclusion that the

September 27, 2010 incident "triggered" the provisions of para. 9 of the agreement. It is that appeal that was heard by the appeal tribunal and resulted in the decision now sought to be reviewed by the further appeal to this Court.

ISSUES

[23] The sole issue to be determined upon this appeal is whether or not the decision of the appeal tribunal dated July 15, 2011 contained reviewable errors of law or jurisdiction and if so, whether the decision should be set aside by order of this Court or alternatively, remitted back to the appeal tribunal for re-hearing.

ANALYSIS

Standard of Review

[24] The parties to this application take opposing views with respect to the applicable standard to be applied by this Court in its consideration of this appeal from the decision of the appeal tribunal. The applicant argues for the application of the "correctness" standard, while the respondent urges the "reasonableness" standard upon this Court.

[25] Both counsel have referred to the governing case of *Dunsmuir v. New Brunswick* 2008 SCC 9, [2008] 1 S.C.R. 190. Counsel have also referred to the recent decision of the Saskatchewan Court of Appeal in the case of *Prairie North Regional Health Authority v. Kutzner* 2010 SKCA 132, 362 Sask. R. 214 in which the

Saskatchewan Court of Appeal applied the *Dunsmuir* decision to determine the scope of appellate court review of a practitioner staff appeals tribunal in the context of the *Act*, Regulations and Practitioner Staff Bylaws as are applicable (and in the case of the Bylaws, comparable) to the statutory and regulatory framework presently before the court.

[26] Little would be gained by a repetition of the Court of Appeal's analysis of the three "*Dunsmuir* factors" that were dealt with by that Court in paras. 29-35 of the *Kutzner, supra* judgment. After analysis, they led the Court to conclude as follows at para. 34:

> 34 Considering all three of the relevant factors together, I conclude that - at least in the context of this case - the appropriate standard of review is reasonableness, i.e. the root question in this appeal is whether the Tribunal reasonably concluded that the Authority's decision to change Drs. Kutzner and Blackwell's allocations of operating hours amounted to the amending, suspending or revoking of their privileges.

[27] As I consider I am bound to do, I accept the Court's analysis in the *Kutnzer* case respecting the *Dunsmuir* factors one and two, as analyzed in paras. 31 and 32.

[28] Where the difference between the parties arises, however, is with respect to their characterization of the issues and therefore nature of the inquiries and conclusions which the appeal tribunal was engaged to consider referable to the third *Dunsmuir* factor, namely; "The nature of the issue at play in the appeal".

[29] The appellant argues that the scope of the appeal tribunal's considerations was narrowly restricted to the interpretation and application of article 9 of the alternate

dispute resolution agreement to the circumstances subsequently arising which prompted the health authority to accept Dr. Dewar's resignation. Simply put, the appellant argues that the appeal tribunal was called upon to only consider the interpretation and application of this provision of the agreement. It argued the agreement was a contract, and the interpretation of this clause in it raised a question of law. It was therefore not within the special expertise of the appeal tribunal (in much the same way as would be the case if an external statute were required to be interpreted by the appeal tribunal), and therefore the appeal tribunal's decision attracts the correctness and not reasonableness standard of judicial review.

[30] Dr. Dewar argues that this characterization of the "nature of the issue at play" should not be accepted by the court. Rather, he argues that the nature of the issue must be considered, as the appeal tribunal did, as much wider. The appeal before the appeal tribunal engaged the full scope of the board's considerations contemplated by ss. 45(1)(a) of the *Act*. Dr. Dewar argues that fundamentally, the case before the appeal tribunal concerned disciplinary action taken by the health authority which resulted, by the health authority's acceptance of his written resignation, in the termination of his appointment as a member of the practitioner staff and the revocation of his privileges within the meaning of s. 45(1) of the *Act*.

[31] Dr. Dewar accepts that in its consideration of his appeal to it, the appeal tribunal's inquiry would necessarily involve the "*de novo*" consideration of the totality of his circumstances, particularly as it related to the "triggering event" which occurred September 27, 2010. It necessarily involved and engaged the appeal tribunal in a consideration of the impact of the whole of the agreement upon the position of the parties.

That, in turn, further necessitated the appeal tribunal's interpretation and application of the agreement to the whole of his circumstances.

[32] I have concluded, as the Court of Appeal did in *Kutnzer, supra*, that overall, the standard of reasonableness applies to my review, on appeal, of the appeal tribunal's decision in this case. Even if I am incorrect in this conclusion, insofar as it applies to the standard of appellate review of the board's interpretation of the agreement, with the result that the correctness standard should apply, for the reasons that will be outlined, I have concluded that the application of either standard with respect to that interpretation leads to the same conclusion and result .

The Appeal Tribunal's Decision

[33] The appeal tribunal's decision in this case represents a most accomplished recognition of the issues which the parties referred to it for determination, analysis of the statutory, contractual (agreement) provisions and the circumstances of the parties including the "triggering incident", all of which the appeal tribunal considered carefully and competently, as amply illustrated in and by the appeal decision.

[34] The appeal tribunal firstly quite properly recognized, in paras. 1-3 of the appeal decision, the necessity of determining its jurisdiction with respect to the issue before it. It concluded, in part, in para. 3 as follows:

> [3] For the reasons provided below, we have decided that the discretion granted by the Agreement to the Authority to accept Dr. Dewar's resignation is a decision of the board with respect to the disciplining of a member of the Practitioner Staff. Therefore, it follows that a review of the

> reasonableness of the exercise of that discretion properly falls within the Tribunal's jurisdiction. ...

[35] In the appeal decision, after referring specifically to the *Kutzner, supra*, decision dealing with the question of the appeal tribunal's jurisdiction, the board recognized in para. 18 that the fundamental question that it needed to answer was whether or not the decision of the health authority (made pursuant to the agreement) was a reviewable decision under s. 45 of the *Act*. At para. 19, they concluded:

> [19] The second jurisdictional question to be determined by the Tribunal addresses whether a decision made pursuant to an alternative resolution agreement falls with[in] scope of the authority granted to the Tribunal pursuant to s. 45(1) of the *Act*. In deciding that the Tribunal has jurisdiction to hear this appeal, the Tribunal rejects the respondent's assertion that by its nature, any issue arising from the Agreement is not reviewable because the parties have agreed to govern the Authority's discretion by terms found in the Agreement.

[36] The appeal tribunal, in para. 20 of the appeal decision, reviewed the *Act*, the *Appeal Regulations* and the Bylaws as well as the agreement. It recognized that while Bylaw 101 allows the parties to pursue alternative dispute resolution to address disciplinary matters (and the agreement was the product of this alternative process), nevertheless Bylaw 102 expressly provided that: "Nothing in these Bylaws limits or restricts any right of appeal or other legal recourse, which is available to an individual pursuant to *The Regional Health Services Act* and regulations, or any other applicable law." The appeal tribunal further recognized that "no attempt is made in the Agreement to limit Dr. Dewar's right to appeal".

[37] The board concluded that it had jurisdiction to review the health authority's decision to terminate the appointment of Dr. Dewar and revoke his privileges by its acceptance of his previously tendered undated resignation. It concluded, therefore, that the case before it represented an appealable, and therefore reviewable, decision of this health authority within the meaning of s. 45 of the *Act* (appeal decision paras. 21-24).

[38] I have no hesitation in concluding that these fundamental decisions taken by the appeal tribunal evidence and constitute reasonable interpretations of the legislative and legal framework which Dr. Dewar's case presented including the Act, Regulations and Bylaws. I go so far as to conclude that the analysis undertaken and conclusions reached respecting the nature and scope of the appeal tribunal's jurisdiction and its scope of appellate authority and responsibility were the correct conclusions.

[39] Having reached the conclusion that it had jurisdiction to consider the appeal of Dr. Dewar, the appeal tribunal then conducted its *de novo* appeal hearing. It heard and received the sworn evidence of numerous witnesses presented by the parties. Upon the appeal to this Court, the appellant filed a transcript of those appeal proceedings which appear in vols. I-III of the appellant's Appeal Book. The appeal tribunal clearly satisfied its prerogative under s. 45(2) of the *Act* and its mandate under s. 11 of the *Appeals Regulations*. As paras. 25-37 of the decision amply illustrate, the appeal tribunal applied its knowledge and expertise in respect of the applicable medical protocols and professional obligations and expectations as those related to the conduct of the physicians in this case. It analyzed the "triggering incident". It considered the responsibility which it found and concluded the health authority had under its interpretation of the rehabilitation terms of the agreement.

[40] This Court is obliged, in law, to extend its deference to the view taken of the evidence heard and the conclusions which the appeal tribunal reached respecting the facts of Dr. Dewar's case – what occurred and what did not occur with respect to the events of September 27, 2010 (referred to by the appeal tribunal as the "September, 2010 incident"). The facts found with respect to the September, 2010 incident are findings that are not reviewable in law. The conclusions of the appeal tribunal with respect to those facts, including the impact they had upon the rights of the health authority to terminate Dr. Dewar under the agreement as a member of the practicing staff, are.

[41] With respect to the latter issue, the appeal tribunal's interpretation and application of the agreement to the facts and circumstances which prompted the health authority to accept Dr. Dewar's resignation prompted it to consider all the terms of the whole agreement. Did the appeal tribunal reach a reasonable interpretation of the statutory, regulatory and bylaw framework and application of the agreement or, if the correctness standard should apply, did it correctly interpret and apply it in considering Dr. Dewar's appeal? These are the issues which this Court is engaged to consider upon this appeal. I have previously concluded that the appeal tribunal reasonably and indeed correctly interpreted the statutory, regulatory and bylaw provisions applicable. I turn now to consider its interpretation of the agreement.

[42] Paragraph 33 of the appeal decision reveals the appeal tribunal's analysis and conclusions reached in that regard. It states, in part, as follows:

> [33] Notwithstanding the conclusion that Dr. Dewar was disrespectful towards Dr. Vorster, the Tribunal finds that the Authority acted unreasonably when it determined that the September 2010 incident triggered Dr. Dewar's resignation. **As stated in the Agreement, its**

> **purpose was to give Dr. Dewar a "further opportunity to address and correct my pattern of disruptive behaviour ..." As such, Dr. Dewar is entitled to rely on being provided that opportunity.** Therefore, in determining whether the September 2010 incident was sufficient to trigger Dr. Dewar's resignation, the Tribunal balanced the seriousness of the incident with Dr. Dewar having the opportunity to address his disruptive behaviours. In concluding that the Authority had not provided Dr. Dewar with an opportunity to reform his behaviour, the Tribunal considered whether Dr. Dewar was provided sufficient time and a conducive environment for rehabilitation. ... [Emphasis added]

[43] The appeal tribunal goes on, in its analysis at paras. 34 - 37, to review the facts in the context of the terms of the agreement and, in particular, the spirit and intent of the parties as reflected in the appeal tribunal's interpretation of it (see also paras. 6, 9 and 34 of the appeal decision). At para. 36, after reviewing all of these matters, the appeal tribunal concluded: "...As a result, it is unreasonable for the Authority to have accepted Dr. Dewar's resignation when he did not return to an environment conducive to improving his interactions with colleagues." At para. 42: "This Tribunal further concludes that the Authority's decision to accept Dr. Dewar's resignation was unreasonable in the circumstances and should be set aside."

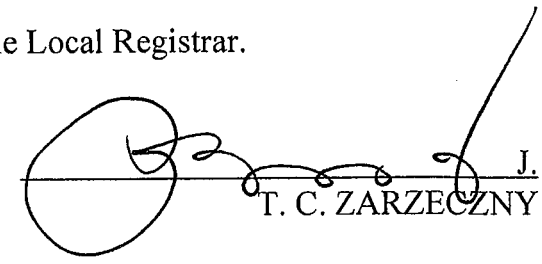
[44] I do not accept the contention of the appellant that anything contained in the appeal tribunal's decision, particularly as it relates to its interpretation and application of the terms and provisions of the agreement, constitutes reversible error on either a question of law or jurisdiction. I have concluded, as did the appeal tribunal, that para. 9 of the agreement cannot be read so as to allocate to the three officers named the absolute discretion to accept the undated resignation that the agreement provided for and which Dr. Dewar tendered as part of the alternate dispute resolution process. I agree with the conclusions reached by the appeal tribunal that the interpretation and application of the provisions of para. 9 of the agreement must be considered in the context of the entire

agreement and the intention of the parties in entering into it. As the appeal tribunal's decision illustrates, the agreement had its rehabilitative as well as its disciplinary dimension. The interpretation of the agreement by the appeal tribunal falls within the range of reasonable interpretations that can be given to the agreement and, indeed, I have concluded that it is the correct interpretation.

[45] Ground (f) of the notice of appeal was not pursued at the appeal hearing and the court was not persuaded that any support for ground (d) existed. The appeal decision, read as a whole, leaves no doubt about the appeal tribunal's accurate understanding of the legal relationship between Dr. Dewar and the health authority. It was not understood nor found to be one of employer-employee.

CONCLUSION

[46] Upon either standard of appellate review, "reasonableness" or "correctness", the conclusions reached by the appeal tribunal do not reflect an error in law or jurisdiction. Accordingly, appeal to the court of the appeal tribunal's decision is dismissed with costs awarded in favour of the successful party, the respondent, on a party and party basis pursuant to Column 4 of this Court's tariff of costs. If not agreed upon, those costs may be assessed by application to the Local Registrar.



J.
T. C. ZARZECZNY