RE: THE MATTER OF AN APPEAL PURSUANT TO
S. 45(1) OF THE REGIONAL HEALTH SERVICES ACT AND S. 8(1) OF
THE PRACTITIONER STAFF APPEALS REGULATIONS WITH RESPECT TO
THE ACCEPTANCE OF THE APPELLANT'S RESIGNATION FROM THE PRACTITIONER
STAFF OF THE REGINA QU'APPELLE HEALTH REGION ON OCTOBER 29, 2010 BY THE
REGINA QU'APPELLE REGIONAL HEALTH AUTHORITY

BETWEEN:

DR. LEITH DEWAR,

APPELLANT

AND:

REGINA QU'APPELLE REGIONAL HEALTH AUTHORITY,

RESPONDENT

DECISION OF THE PRACTITIONER STAFF APPEALS TRIBUNAL

Brad D. Hunter appeared and acted on behalf of the Appellant
Brenda R. Hildebrandt, Q.C. and Christopher C. Boychuk, Q.C. appeared and acted on behalf of the Respondent

A. INTRODUCTION

[1] This appeal concerns whether *The Regional Health Services Act*, S.S. 20002, c. R-8.2 (the "*Act*") grants the Practitioner Staff Appeals Tribunal jurisdiction to review an action taken by the Regina Qu'Appelle Regional Health Authority (the "Authority") pursuant to an "alternative resolution agreement" (the "Agreement"). In particular, Dr. Leith Dewar agreed to provide the Authority with an undated, signed letter of resignation that granted the Authority the discretion to accept Dr. Dewar's resignation in accordance with the terms of the Agreement. The Authority accepted Dr. Dewar's resignation as a member of the staff of the Regina Qu'Appelle Health Region on October 29, 2010.

[2] Dr. Dewar appeals the acceptance of his resignation, relying on the Tribunal's authority to review a decision of a board of a regional health authority with respect to disciplining a Practitioner Staff member. Dr. Dewar asserts that the acceptance of his resignation was triggered inappropriately; the Authority inadequately investigated concerns with Dr. Dewar's behavior; the Authority failed to provide Dr. Dewar with sufficient opportunity to comply with the Agreement; and, the Authority failed to consider relevant facts and criteria in deciding to accept his resignation. The Authority argues that the resignation arises by an agreement to specifically avoid a disciplinary process thus is outside the Tribunal's jurisdiction. If the Tribunal determines it has jurisdiction, the Authority disputes Dr. Dewar's characterization of the Authority's investigation and circumstances that triggered the resignation.

[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. The Tribunal further finds that the Authority acted unreasonably when it accepted Dr. Dewar's resignation and orders that Dr. Dewar's resignation be set aside.

B. FACTUAL BACKGROUND

[4] Dr. Leith Dewar is a cardiothoracic surgeon who was employed in the Regina Qu'Appelle Health Region until the acceptance of his resignation by the Authority on October 29, 2010. On June 28, 2010, Dr. Dewar, after consulting his lawyer, voluntarily entered into an "Alternative Resolution Agreement" (the "Agreement") with the Authority. The Agreement was precipitated by a serious incident in May 2010 between Dr. Dewar and a Critical Care Associate ("CCA") in the Regina General Hospital's Surgical Intensive Care Unit ("SICU"). The Tribunal was provided with conflicting accounts of the incident with only Dr. Dewar offering a firsthand account. It is not necessary, however, for the Tribunal to determine the actual events of that day as both the Authority and Dr. Dewar acknowledged that the incident was serious enough to

consider Dr. Dewar's resignation as an appropriate consequence of Dr. Dewar's behavior. In fact, Dr. Dewar was the first to raise the possibility of resignation as a potential consequence of his role in the May 2010 incident.

[5] Thus, in a meeting on June 14, 2010 between Dr. Dewar, Dr. Ogrady, Head of the Department of Surgery, Dr. Vuksic, Senior Medical Officer, and Brad Havervold, Executive Director of the Practitioners Staff Affairs Department, Dr. Dewar was provided with three options on how to proceed in light of the May 2010 incident. The first option would have resulted in the matter being referred to the Authority's Discipline Committee. The second option provided for Dr. Dewar's resignation. The third option presented by the Authority was the Agreement. Dr. Dewar indicated his preference for the third option.

[6] The Agreement was signed on June 28, 2010 after Dr. Dewar had the opportunity to review the agreement with his lawyer. In accordance with the Agreement, Dr. Dewar undertook to promptly contact the Saskatchewan Physician Support Program ("SPSP") and arrange for and participate in treatment to address his disruptive behaviours and anger management problems. Dr. Dewar also agreed to submit to regular performance evaluations and to apologize to those impacted by his conduct during the May 2010 incident.

[7] Dr. Dewar contacted the SPSP and received a referral in late September to see Dr. Ahlijah, a psychiatrist. Dr. Dewar first met with Dr. Ahlijah on October 15, 2010 and continues to be under his care. In addition, Dr. Dewar is under the care of a clinical psychologist and a counselor.

[8] After a number of attempts to hold the apology session, the session was held on September 9, 2010. In attendance were Dr. Dewar, Dr. Vuksic, Dr. Ed Patterson, the CCA involved in the May 2010 incident, Dr. Berto Labuschange, in his capacity as head of the CCA department and to support Dr. Patterson, Dr. Denis Jones, acting head of the Intensivist department and to represent Dr. Zacharias who witnessed the May 2010 incident, and Steve Klotz, representing the nursing staff.

[9] By signing the Agreement Dr. Dewar acknowledged that the May 2010 incident was not the first time his behaviour attracted discipline by the Authority, but that he had demonstrated a "pattern of disruptive behaviour" that "negatively impacted the work environment and engendered fear" among other staff in the region. In addition, Dr. Dewar acknowledged that his behaviour "heightened concerns" regarding "patient safety, staff safety and risk management." Finally, Dr. Dewar acknowledged that the Agreement provided him with a "final opportunity" to address his disruptive behaviours as a failure to comply with the Agreement would result in the acceptance of his resignation from the region. Pursuant to the Agreement, Dr. Dewar provided the Authority with a signed, but undated letter of resignation that could be triggered if Dr.

Vuksic, Dr. Ogrady and Mr. Dwight Nelson, Chief Executive Officer of the region, reached a consensus that Dr. Dewar breached the Agreement. Paragraph 9 of the Agreement outlined specific circumstances when Dr. Dewar's resignation could be triggered.

[10] Despite much discussion of Dr. Dewar's contact and involvement with SPSP during the hearing, the Authority ultimately reached a consensus that Dr. Dewar's resignation was triggered on September 27, 2010 during and subsequent to a telephone conversation with Dr. Beukes Vorster regarding a patient, Mrs. W. Specifically, the Authority concluded that during the September 2010 incident, Dr. Dewar breached clause 9a of the Agreement, that he not "Exhibit angry, disrespectful, or otherwise disruptive behaviour in the workplace context."

[11] Mrs. W. was a surgical patient of Dr. Dewar's who was recuperating immediately following surgery in the SICU under the care of medical team that included Dr. Vorster, a CCA. The SICU is a closed unit whereby CCAs manage the care of admitted patients in consultation with appropriate specialists, such as Dr. Dewar, and other members of the medical team. The most responsible physician in the SICU, however, is an Intensivist. As a closed unit, all decisions regarding patient care in the SICU are coordinated through the Intensivist to avoid duplicate or contradictory interventions by various members of the medical team. The Intensivist at the time of the September 2010 incident was Dr. Jennifer Baird. Dr. Baird is married to Dr. Dewar.

[12] When it became apparent that interventions in the SICU to stabilize Mrs. W.'s condition were not having the desired effect, Dr. Vorster consulted Dr. Baird who directed him to contact Dr. Dewar. Over the phone, Dr. Vorster spoke with Dr. Dewar about Mrs. W.'s condition and requested that Dr. Dewar attend the SICU to conduct a surgical assessment. Dr. Dewar refused to attend the SICU. Instead, he booked the operating room for immediate surgery. Mrs. W. was subsequently operated on and recuperated without incident.

[13] The content and tone of the conversation between Dr. Dewar and Dr. Vorster is in dispute. In an email to Dr. Vuksic on September 27, 2010, Dr. Vorster described Dr. Dewar as "immediately aggressive" upon receiving Dr. Vorster's call and blamed Dr. Vorster for Mrs. W.'s deterioration. Dr. Vorster also expressed his opinion that Dr. Dewar's failure to attend the SICU and assess Mrs. W. raised "serious patient safety concerns." In particular, he was concerned that there was uncertainty when Mrs. W. would be returning to surgery and the course of treatment in the meantime.

[14] Dr. Dewar disputes that he was immediately aggressive and asserts that he became direct and forceful in his questioning only after Dr. Vorster was imprecise and vague in the information he was providing about Mrs. W.'s condition. Dr. Dewar indicated that he wanted "objective data" from Dr. Vorster, which could be used to assess the patient's condition. While Dr. Dewar

does not deny that he may have asked Dr. Vorster what he had done, the question did not reflect his view that Dr. Vorster was to blame for the patient's condition. Rather, the question was aimed at determining if any interventions in the SICU could account for the patient's condition. Finally, Dr. Dewar stated that he ultimately received sufficient information to determine that surgery was required without an onsite assessment and communicated such to Dr. Vorster.

[15] Upon receipt of Dr. Vorster's email, Dr. Vuksic undertook to investigate the September 2010 incident. She spoke with Dr. Vorster on the telephone and also Dr. Dobson, the Authority's co-Senior Medical Officer, who spoke with Dr. Vorster on the day of the September 2010 incident. She also testified that she called the SICU and spoke with "a number of people who were there at the time" whom, Dr. Vuksic reports, confirmed there was confusion concerning Mrs. W.'s care plan.

[16] On October 14, 2010, Dr. Vuksic sent a letter to Dr. Dewar providing him with the opportunity to respond to Dr. Vorster's complaint. The subsequent meeting was held on October 22, 2010 with Dr. Vuksic, Mr. Nelson, Dr. Ogrady, Dr. Dewar and legal counsel for both Dr. Dewar and the Authority in attendance. A further meeting was held between Mr. Nelson, Dr. Ogrady, Dr. Vuksic, and Dr. Vorster as Mr. Nelson and Dr. Ogrady wished to hear directly from Dr. Vorster about the September 2010 incident. Subsequent to meeting with Dr. Vorster, Dr. Vuksic, Dr. Ogrady, and Mr. Nelson met to determine if Dr. Dewar breached the Agreement. Although not formally recorded, a consensus was reached that Dr. Dewar's conduct during the September 2010 incident breached the Agreement by:

- demonstrating angry and disrespectful conduct towards Dr. Vorster;
- disrupting the SICU by refusing to attend the SICU to assess Mrs. W.; and
- disrupting the SICU by failing to communicate his intention to return Mrs. W. to the operating room.

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.

C. ANALYSIS

Jurisdiction

[17] To begin, four jurisdictional questions arise in this case. First, the respondent made a preliminary application requesting that the Tribunal convene to hear only the jurisdictional issues. A decision was made by the vice-Chair of the Tribunal to deny this request.

[18] In *Prairie North Regional Health Authority v. Dr. Morley Kutzner and Dr. Thomas Blackwell*, 2010 SKCA 132 ("*Prairie North*"), Richards J.A. cautioned this Tribunal against separating jurisdictional issues from the main appeal. Specifically Richards J.A. provided that

"...it is often an exercise in false economy to separate out a "jurisdictional" issue on the theory that it should be dealt with separately from the balance of proceedings." It may have been more evident in *Prairie North* than in the present case that the Tribunal would have jurisdiction to hear the appeal if the allocation of operating room hours was found to be a matter of hospital privileges. Nonetheless, the question of whether the Agreement constituted a reviewable decision of the Board under s.45 of the *Act* is not so obviously a discrete or insular issue so as to warrant disregard of Richards J.A.'s directive. As the decision to hear the jurisdictional arguments at the same time as main appeal in this case was a mere procedural determination of scheduling, it was fully within the purview of the Chairperson to determine without input from the complete Panel.

[19] The second jurisdictional question to be determined by the Tribunal addresses whether a decision made pursuant to an alternative resolution agreement falls with 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.

[20] A review of the *Act*, its regulations, the Regina Qu'Appelle Regional Health Authority Practitioner Staff Bylaws (the "Bylaws") and the Agreement precludes limiting Dr. Dewar's right to appeal by agreement. While s.101 of the Bylaws allows parties to pursue alternative dispute resolution to address disciplinary matters, s.102 explicitly provides 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." Furthermore, no attempt is made in the Agreement to limit Dr. Dewar's right to appeal. Thus, the scope of the Tribunal's jurisdiction is defined by s.45(1) of the *Act.*

[21] Section 45(1) provides that:

> 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 amending, suspending or revoking the privileges granted to the person.

Therefore, the third jurisdictional question to be addressed by the Tribunal is whether the acceptance of Dr. Dewar's resignation was a decision of the Authority.

[22] The respondent asserts that the consensus decision reached by Dr. Vuksic, Dr. Ogrady and Mr. Nelson that the Dr. Dewar's resignation had been triggered by the September 2010 incident, is not reviewable because it does not constitute a decision of the Authority. The Regional Health Authority is not precisely defined in the *Act* although *The Practitioner Staff Appeals Regulations*, c. R-8.2 Reg 5 (the "Regulations") provide a definition of "the Board" that allows for the term "Regional Health Authority" to be used interchangeably with the 12 person Board appointed pursuant to the *Act* to manage the affairs of the region. Furthermore, s. 8(1) of the Regulations provides that "A practitioner who is aggrieved by a decision of a board with respect to a matter set out in subsection 45(1) of the Act may appeal that decision to the tribunal…." Therefore, the respondent urged the Tribunal to consider the "overall context" in which s.45 operates, including the Bylaws and Regulations, and to limit s.45 application to decisions of the 12 person Board. The applicant alternatively argued that previous Tribunal decisions have established that the scope of s.45 extends beyond decisions of the 12 person board.

[23] Determining whether the scope of the right of appeal extends beyond decisions of the Board, however, is unnecessary. Through s.75(5) of the Bylaws, the Board delegates its authority to determine appropriate disciplinary measures, including to employ an alternative dispute resolution process, to the Senior Medical Officer and the appropriate Department Head. Section 75(7) of the Bylaws, however, provides that:

> Where the matter is resolved through an alternative dispute resolution process, the matter and the proposed resolution shall be reported to the Board for its consideration. In the event the Board does not adopt the proposed resolution, the Senior Medical Officer shall refer the complaint to the Discipline Committee.

In contrast, the Bylaws do not require the Board to explicitly adopt decisions with respect to dismissing a complaint or issuing a reprimand. Because the Agreement was presented to the Board and adopted, it is a decision of the Board for the purposes of s.45 of the *Act.*

[24] The final question regarding jurisdiction that needs to be addressed is whether the decision to accept Dr. Dewar's resignation relates to matters of appointment, discipline, and privileges as outlined in s.45(1) of the *Act.* Dr. Dewar's resignation terminated his appointment as a member of the Practitioner Staff of the region thereby ending his privileges. Moreover, the Agreement explicitly states that Dr. Dewar's conduct is "subject to a discipline to the RQRHA Practitioner Staff Bylaws" and that the Agreement constitutes a written reprimand. As a result, any of the three matters outlined in s.45(1) can be relied upon to initiate the appeal. Because the Authority had discretion in determining when and if the resignation would occur, the exercise of this discretion is reviewable by this Tribunal.

Main Appeal

[25] A significant amount of the hearing was dedicated to presenting evidence regarding Dr. Dewar's conduct during the apology meeting, the timeliness of his contact with the SPSP, and his perceived failure to respond to pages from colleagues. Likewise, Dr. Dewar's disciplinary history was discussed at length. While this information provides a context that may assist in interpreting the clauses of the Agreement, Dr. Vuksic testified that she, Dr. Ogrady, and Mr. Nelson solely consider the September 2010 incident in their decision to accept Dr. Dewar's resignation. Consequently, in reaching the decision that the Authority acted unreasonably when it accepted Dr. Dewar's resignation, the Tribunal primarily based its decision on evidence related to the September 2010 incident. Where other evidence was considered and influenced this decision, it is explicitly identified in these reasons.

[26] The applicant asserts that the Authority's investigation into the September 2010 incident was inadequate given the serious consequences Dr. Dewar may have faced as a result of the investigation's findings. The Tribunal agrees. In particular, the Authority's conclusions that Dr. Dewar disrupted the SICU by refusing to attend the SICU to assess Mrs. W. and failing to communicate his intention to return Mrs. W. to the operating room are not supported by the evidence presented.

[27] First, the Tribunal accepts Dr. Dewar's testimony that he was able to assess Mrs. W.'s condition based on the information provided to him on the telephone by Dr. Vorster and rejects the assertion that his failure to attend the SICU for an assessment was disruptive. Dr. Jones testified that a decision to return a patient to surgery can "definitely" be made over the telephone based on information provided by a CCA. In making the decision that Dr. Dewar should have attended the SICU, the Authority should have considered the specifics of Mrs. W.'s condition to determine if an onsite assessment was necessary. In making their decision, the Authority should have compared Dr. Dewar's actions against a standard of that of a cardiothoracic surgeon. Therefore, during its investigation, the Authority should have consulted other cardiothoracic surgeons before concluding Dr. Dewar acted inappropriately. The Tribunal does not accept the respondent's assertion that consulting a cardiothoracic surgeon was unnecessary because the Authority was evaluating Dr. Dewar's behaviour and not his clinic judgment. The Tribunal fails to see how this is a meaningful distinction when evaluating the appropriateness of a specialist's opinion of what is required to assess a patient.

[28] Second, the evidence presented during the hearing does not support a finding that Dr. Dewar did not communicate to Dr. Vorster his intention to immediately return Mrs. W. to the operating room. Progress Notes written by Dr. Vorster and included on Mrs. W. chart noted that Dr. Dewar "said he would book the OR." During the hearing, Dr. Vorster confirmed this

understanding when he stated "I understood that the patient would be fine, meaning we are taking my opinion on this situation and the patient would be going back to the operating room."

[29] The Tribunal recognizes, however, that for effective patient care other members of the care team, including the nursing staff, needed to be informed of Mrs. W.'s return to the operating room and the timing of her return. Dr. Vuksic testified that her investigation revealed confusion about the immediate care of Mrs. W.:

> …no one following that phone call seemed really clear at all on the plan of care for this patient, what would happen, whether someone would attend when or any of the ancillary information that would be needed for a multidisciplinary plan of care and the timing of that plan…

In addition, Dr. Vuksic testimony reveals that the Authority attributes the confusion about Mrs. W.'s care plan to Dr. Dewar's failure to attend the SICU. Specifically when asked what Dr. Dewar should have done to ensure that other members of the care team were aware of Mrs. W.'s return to surgery, Dr. Vuksic responded "I would have expected Dr. Dewar to be in the SICU telling the charge nurse he was taking the patient back to the OR." The Tribunal is, however, not prepared to accept that confusion existed among other members of the care team. Nor do we accept that if confusion existed, it is properly attributed to Dr. Dewar's failure to attend the SICU.

[30] The Authority's conclusion that confusion existed among other members of the care team is based on Dr. Vuksic's recollection of telephone conversations with unnamed nursing staff, of which no notes exist. While the Tribunal recognizes that it is not bound by formal rules of evidence, fairness dictates that Dr. Dewar be provided with the opportunity to challenge the veracity of allegations of his misconduct. The evidence, as presented by the respondent, does not allow for such challenge. As a consequence, the Tribunal has chosen to disregard this portion of Dr. Vuksic's testimony. Therefore, the Authority's conclusion that there was confusion among other members of the care team because Dr. Dewar did not attend the SICU has not been established.

[31] In the event the Tribunal erred in disregarding this evidence, it nonetheless remains unclear that the confusion among Mrs. W.'s care team should be attributed to Dr. Dewar. The Tribunal heard testimony concerning a system of prioritizing surgical patients based on the degree of urgency of the required intervention from both Dr. Dewar and Dr. Jones. Dr. Jones further testified that CCAs are generally able to differentiate between the degrees of urgency among surgical patients. Finally, Dr. Jones testified that any steps that are necessary to be taken by members of the care team to prepare a patient for surgery would be communicated by the CCA. Therefore, if Dr. Vorster was able to assess the degree of urgency associated with Mrs.

W.'s return to surgery and did not communicate this to the care team, it may be more appropriate to attribute the confusion to his actions.

[30] To this end, the failure to question Dr. Baird about this incident raises concerns about the adequacy of the Authority's investigation. While it is recognized that she is Dr. Dewar's spouse, she was the most responsible physician at the time of the September 2010 incident. She is also a professional whose integrity was not challenged during the hearing, thus she may have offered some insight into the management of Mrs. W.'s care that would support or conflict with the Authority's conclusions that Dr. Dewar's failure to attend the SICU to assess Mrs. W. was disruptive.

[31] In addition to concluding that Dr. Dewar's actions during the September 2010 incident were disruptive, the Authority concluded that he demonstrated angry and disrespectful conduct towards Dr. Vorster during their telephone conversation. As there is no evidence that anyone overheard the conversation, Dr. Vuksic, Dr. Ogrady, and Mr. Nelson were presented two divergent accounts of the content and tone of the conversation from Dr. Dewar and Dr. Vorster and chose to accept Dr. Vorster's account. The Tribunal has the benefit of testimony from both Dr. Vuksic and Dr. Ogrady for why they accepted Dr. Vorster's account of the telephone conversation. Dr. Vuksic explained:

> This is a conclusion based on our discussions with Dr. Vorster, the ancillary staff, and with Dr. Dewar himself and particularly with -- pertaining to the meeting of October 22nd, in that Dr. Dewar described the incident to us, as had Dr. Vorster and people who had been in the SICU at the time. We concluded that, in fact, Dr. Dewar had not attended the SICU. We also felt that during the October 22nd meeting, Dr. Dewar's credibility in being able to describe an incident such as this was still in question, given his description of the apology meeting which had occurred earlier on. We had grave concerns that his insight and his credibility in describing that meeting were impaired, and so, therefore, his description of the incident with Dr. Vorster were somewhat called into question quite significantly. And even so, to describe his -- in his own words that he said, I will not come, and that he spoke to Dr. Vorster like he was a student and he was a Royal College examiner, we felt that was disrespectful in itself. And also given the description of his apology meeting and his lack of insight there and descriptor, given the observations of myself and Dr. Jones, for example, we felt that warranted a significant lack of insight and a lack of credibility on the part of Dr. Dewar, containing both the nature of that incident on September 27th and the impact it had on the people who were involved in the care of that patient and the team involved in the care of that patient. (Vuksic exam at 386-7)

Likewise, Dr. Ogrady explained: at 487

> So the two issues for me on the credibility, I was -- I, as a department head, was presented with Dr. Dewar's, which sounded completely believable. I was presented with Dr. Vorster's, which sounded completely believable, and I am in the unenviable position of having to say, you know, which one's right? I look back on two things as -- that swayed me on that. Number one is that Dr. Dewar said he repeatedly got ahold of SPSP and yet when we spoke to SPSP, those phone calls had never happened.
>
> MR. HUNTER: There was what, sorry?
>
> A The phone calls had not happened to the extent that Dr. Dewar had said that they had happened, so there was an incorrect information given there. And the issue on the apology where there was such a divergence between Dr. Dewar's view of how the apology went and several other people in the room who felt that the animosity towards Dr. Dewar was not there. And those are the two items that swayed me towards believing that the issue is Dr. Vorster. The third and probably the most telling was what I had explained about the care plan. Had it gone the way Dr. Dewar had gone, I cannot believe in all my 20 some years of doing this that when something needs to go to the OR quickly, that people would deliberately wait 20 minutes and be surprised when the anesthetist shows up. So in those three things, I decided that the version of Dr. Vorster was correct. (Ogrady CrossX at 486-8)

[32] The Tribunal finds nothing inappropriate in the Authority's weighing of the two versions of the telephone call as described above by Dr. Vuksic and Dr. Ogrady and the ultimate decision to accept Dr. Vorster's account over that of Dr. Dewar. Furthermore, the Tribunal accepts that Dr. Dewar, at minimum, was disrespectful of Dr. Vorster in so far as Dr. Dewar admits that he questioned Dr. Vorster in the manner similar to how teacher would orally examine a student.

[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. That Dr. Dewar was entitled to expect both time and a conducive environment for

rehabilitation is supported by Dr. Vuksic's description that "it is considered best practice to look at making an effort or an attempt **to provide an environment** for some type of rehabilitation…" (emphasis added).

[34] With respect to time, Dr. Vuksic testified that there is significance variance in the time it takes for disruptive physicians to reform. The September 2010 incident occurred less than three months from the date of the Agreement and during that time, Dr. Dewar had been away for month. The Tribunal finds it unreasonable for the Authority to have expected Dr. Dewar to change his behaviour in such a short period of time particularly as Dr. Dewar expressed at the time of signing the Agreement that he would have difficulty managing his anger.

[35] Furthermore, the Tribunal does not accept the respondent's assertion that Dr. Dewar's failure to have had contact with the SPSP before September was unreasonable or indicates a lack of sincere desire on Dr. Dewar's part to reform his behaviour. In addition to being away for July, upon returning to work in August, Dr. Dewar was one of only two, rather than the usual four, cardiothoracic surgeons working in the region. Dr. Dewar's testimony that he had little time to follow up with the SPSP before September is reasonable in light of his vacation and increased workload. Moreover, the Tribunal notes that the Authority also did not succeed in arranging the apology session until September.

[36] Dr. Ogrady testified that immediately following the May 2010 incident, he and Dr. Vuksic recognized that it was not appropriate for Dr. Dewar to go into the SICU and arrangements were made to have somebody to cover his cases that went into the SICU. In light of the seriousness of the May 2010 incident, it is unclear to the Tribunal what led the Authority to conclude that by August the circumstances had sufficiently changed so that it was now appropriate for Dr. Dewar to return to the SICU. Dr. Dewar had not begun treatment for his behaviours and the apology session, which Dr. Vuksic testified is designed for the apologizer and the recipients to begin a process of healing, had not occurred. At the best of times, the increased workload that faced Dr. Dewar in August would be stressful. 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.

[37] The environment for rehabilitation was further undermined by the ill-timed and executed apology session. Although the Tribunal recognizes the value in having the apology sooner rather than later, Dr. Dewar's behaviour during the session clearly demonstrates that he was not prepared to address his behaviour issues with his colleagues. The repeated scheduling and cancelling of the session due to colleagues' unwillingness to participate and the eventual replacement of some of the intended apology recipients with representatives unsurprisingly increased the tension Dr. Dewar was under. While Dr. Dewar is ultimately responsible for his words and actions during the apology session, the Authority's decision to place Dr. Dewar in a

position where he was likely to exacerbate the tension between him and his colleagues further demonstrates that he was not provided with a sufficient opportunity for rehabilitation.

Additional Matters

[38] An unsuccessful application was made by the respondent for the recusal of the Chairperson on grounds that certain decisions made prior to the hearing created a reasonable apprehension of bias. The decisions were in relation to hearing jurisdictional arguments and setting a date for the respondent to file materials with the Tribunal. The factors that were considered in deciding the jurisdictional issue were discussed previously, thus do not need to be repeated. Brief reasons for setting a deadline for the respondent to file materials are warranted.

[39] An application was made by the applicant on March 31, 2011, requesting that the Tribunal set a date for the respondent's materials to be filed. The applicant's materials had been filed on January 12, 2011 and per s.9 of the Regulations, the respondent's materials should have been filed by February 11, 2011. At the time of the application, the hearing was set for April 19 and 20, 2011. I deemed the applicant's request reasonable in light of the fact that the respondent was aware on March 28, 2011 of my decision to hear the whole of the appeal and an application for adjournment had not been made. The time for submission was set at the end of the day on April 4, 2011 to allow time for the respondent to formally request an adjournment and an extension on the time to file materials if necessary.

[40] Finally, a decision was made during the hearing to allow the applicant to call Dr. Baird as a rebuttal witness. Had that evidence not been allowed, the Tribunal's conclusions would remain the same.

Conclusions

[41] For the reasons described above, this Tribunal has concluded that it has the jurisdiction to hear the Notice of Appeal dated January 12, 2011.

[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.

Practitioners Staff Appeals Tribunal

Dated at Saskatoon, Saskatchewan, this "13th" day of "July", 2011.

Ms. Patricia L. Farnese, Vice-Chair

Dated at Saskatoon, Saskatchewan, this "14" day of "July", 2011.

Mr. Ross Huckle, Member

Dated at Yorkton, Saskatchewan, this "15" day of "July", 2011.

Dr. James Howlett, Member