



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *Young v. Central Health*, 2018 NLCA 24

Date: May 2, 2018

Docket Number: 201701H0044

BETWEEN:

TODD YOUNG

APPELLANT

AND:

CENTRAL HEALTH

RESPONDENT

Coram: Barry, Hoegg and O'Brien, JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
General Division 201601G6767
(2017 NLTD(G) 67)

Appeal Heard: February 5, 2018

Judgment Rendered: May 2, 2018

Reasons for Judgment By: Barry J.A.

Concurred In By: Hoegg and O'Brien, JJ.A.

Counsel for the Appellant: Jerome Kennedy, Q.C.

Counsel for the Respondent: Michelle Willette

Barry J.A.:

[1] Todd Young, a medical doctor, appeals a decision of Goodridge J. which upheld a decision of Central Health refusing Dr. Young hospital privileges.

[2] Dr. Young operated a family medicine practice at Springdale, NL, from 2009 to 2014. He was on the medical staff of Central Health during this time and had hospital privileges.

[3] On April 18, 2014, Dr. Young withdrew from medical practice after a complaint was filed that he had been guilty of professional misconduct by engaging in an inappropriate consensual sexual relationship with one female patient and inappropriately kissing and hugging another.

Prior Proceedings

[4] On December 18, 2015, the College of Physicians and Surgeons found Dr. Young guilty of professional misconduct and imposed a 19-month suspension. This commenced in April 2014 and ended on November 30, 2015. Dr. Young then resumed his practice as a family physician and applied to have his hospital privileges at Central Health reinstated.

[5] On March 14, 2016, Dr. Jeff Cole, the Vice President of Medical Services for Central Health, denied Dr. Young's application for reinstatement of hospital privileges.

[6] On August 31, 2016, Goodridge J. allowed an application for judicial review of Dr. Cole's decision on the basis that there had been a breach of the duty of procedural fairness. He sent the matter back for reconsideration. See *Young v. Central Health*, 2016 NLTD(G) 145 (Goodridge #1).

[7] Central Health asked Dr. Dennis Rashleigh, the Vice President of Medical Services for Western Health, to reconsider Dr. Young's application as directed by Goodridge J. On October 18, 2016, Dr. Rashleigh denied Dr. Young's application for privileges.

Dr. Rashleigh's Decision

[8] Dr. Young again applied for judicial review. Goodridge J. upheld Dr. Rashleigh's decision on March 30, 2017. See *Young v. Central Health*, 2017 NLTD(G) 67 (Goodridge #2).

[9] Dr. Rashleigh based his decision to a considerable extent on negative comments provided on February 4, 2016, by Dr. Frank Hicks, a physician in Springdale, with whom Dr. Young had worked for several years and whom he had asked to provide a reference. Other material before Dr. Rashleigh included:

- A 10-page letter from Dr. Young responding to issues raised in the materials provided by Central Health;
- Nine letters of reference from community members;
- Six letters of reference from physicians who had worked with Dr. Young in Ontario and Springdale; and
- Five letters of reference from other health care professionals who had worked or were working with Dr. Young in Springdale (three pharmacists, a registered nurse and a physiotherapist).

Hospital Bylaws

[10] Bylaws 28.2.2 and 28.2.5 of the Medical Staff Bylaws for the Central Health Authority provide:

28.2 The applicant will have demonstrated:

28.2.2 the ability to work and cooperate with and relate to others in a collegial and professional manner, in accordance with the Regional Health Authority's Respectful Workplace Policy;

...

28.2.5 ethical character, performance and behavior...

[11] By letter of October 18, 2016, Dr. Rashleigh set out his decision to deny the privileges sought by Dr. Young on the basis that Dr. Young did not meet the credentialing criteria set out in section 28 of the bylaws in force for Central Health and in particular sections 28.2.2 and 28.2.5. Dr. Rashleigh's letter reads in part as follows:

... With respect to 28.2.2, I am concerned that Dr. Hicks who is the referee who has known you the longest and worked closest with you described your relationship to colleagues and coworkers as poor and your professional attitude as marginal.

With respect to 28.2.5, I am concerned that you engaged in a personal and sexual relationship with one patient and that you engaged in inappropriate conduct with a

second patient. I am also concerned that when first asked about the personal relationship between yourself and a female patient under your care, you stated that there was no such relationship. I find it troubling that in the initial correspondence I received, you described your wellbeing as the reason for your voluntary withdrawal. You stated, “As you are aware, on April 18th, 2014, I voluntarily resigned from Central Health. My wellbeing was such that I could no longer perform my duties”. (Letter January 31st, 2016). Finally, with respect to 28.2.5, Dr. Hicks’ reference describes your moral and ethical values as poor and your character as marginal.

With respect to your response, Dr. Hicks was a reference that you provided and he has known you for over 10 years. He has worked with you in the capacity of Chief of Service, training supervisor, co-worker and practice associate. I find no reason to ignore the reference that was given by Dr. Hicks.

I have reviewed the many glowing references that you have provided. I do not believe that these references overrule or eliminate the concerns of a physician who has worked very closely with you for the length of time that Dr. Hicks has.

In summary, I am unable to forward your application to the Credentials Committee at Central Health because I do not believe that you meet the criteria set out in Section 28 of the bylaws.

[12] Dr. Young applied for judicial review of Dr. Rashleigh’s decision.

Goodridge J.’s Second Decision

[13] In his second decision on judicial review, filed March 30, 2017, Goodridge J. concluded that Central Health’s rejection decision, set out in Dr. Rashleigh’s letter of October 18, 2016, satisfied the requirements of justification, transparency and intelligibility. Goodridge J. noted that Dr. Rashleigh considered appropriate criteria, including Dr. Young’s ability to work and cooperate with others and his ethical character, behavior and performance.

[14] Goodridge J. found that the rejection letter outlined the basis for preference of the negative reference of Dr. Hicks. He held that preference was not unreasonable, given the closeness and duration of Dr. Hicks’ professional contact with Dr. Young. Goodridge J. also concluded that the rejection of Dr. Young’s application at the initial screening stage was an outcome which was defensible in respect of the facts and the law. Dr. Young appealed Goodridge J.’s decision to this Court.

Issues

[15] Three issues arise:

- (i) What standard of review should this court apply to the lower court decision?
- (ii) Was the Applications Judge (Goodridge J.) correct in finding that Dr. Rashleigh's decision was justified, transparent and intelligible?
- (iii) Was the Applications Judge correct in finding that Dr. Rashleigh's decision fell within a range of possible acceptable outcomes which are defensible in respect of the facts and the law?

The Law and Analysis

(i) The standard of review

[16] The parties agree that the appropriate standard of review for an appellate court on an appeal of a judicial review decision is correctness. The appellate court must decide if the lower court, in reviewing the tribunal's decision, correctly identified the proper standard of review and correctly applied that standard to the decision.

[17] The parties also agree that the standard for review of Dr. Rashleigh's decision was reasonableness. The parties agree that the Applications Judge, Goodridge J., correctly identified this as the appropriate standard. Dr. Young, however, questions whether Goodridge J. correctly applied the reasonableness standard on the facts of this case.

[18] The Supreme Court of Canada explained the reasonableness standard in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paras. 46-47:

[46] What does this revised reasonableness standard mean? Reasonableness is one of the most widely used and yet most complex legal concepts. In any area of the law we turn our attention to, we find ourselves dealing with the reasonable, reasonableness or rationality. But what is a reasonable decision? How are reviewing courts to identify an unreasonable decision in the context of administrative law and, especially, of judicial review?

[47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness

is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[19] In *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] S.C.R. 364, at para. 42-45, Cromwell J. for the Court further elaborated upon the reasonableness standard:

[42] As we have seen, there are two aspects of the jurisprudence about judicial review of screening decisions sought in the midst of an ongoing administrative tribunal process. The first relates to the applicable standard of review and is concerned mainly with the outcome of the decision-making process. The standard of review ensures that the reviewing court gives due deference to the administrative decision maker. The second relates to the risks of premature intervention. The focus here is mainly on the process and the concern for efficiency, the minimization of costs and the preservation of the administrative scheme's integrity. Of course, this second aspect also resembles the first in its desire that courts should enjoy the benefit of considered administrative decisions, and should pay deference to those decisions where appropriate.

[43] While these two aspects are well entrenched in the jurisprudence, it is artificial to separate the analysis in this way in the context of judicial review of a preliminary screening decision such as the one in issue here. Where, as here, reasonableness is the applicable standard of review, a more straightforward approach is to bring these two aspects together in the application of the standard of review. The reviewing court's approach must reflect the appropriate level of judicial deference both to the substance of the administrative tribunal's decision and to its ongoing process.

[44] Reasonableness as a standard of review reflects the appropriate deference to the administrative decision maker. It recognizes that certain questions that come before administrative tribunals do not lend themselves to a single result; administrative decision makers have "a margin of appreciation within the range of acceptable and rational solutions": *Dunsmuir*, at para. 47 (emphasis added). Reasonableness is a concept that must be applied in the particular context under review. The range of acceptable and rational solutions depends on the context of the particular type of decision making involved and all relevant factors: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at paras. 17-18 and 23. As was said in *Khosa*, reasonableness is a single concept that "takes its colour" from the particular context (para. 59). In this case, both the nature of the Commission's role in deciding to move to a board of inquiry and the place of that decision in the Commission's process are important aspects of that context and must be taken into account in applying the reasonableness standard.

[45] In my view, the reviewing court should ask whether there was any reasonable basis on the law or the evidence for the Commission's decision to refer the complaint

to a board of inquiry. This formulation seems to me to bring together the two aspects of the jurisprudence to ensure that both the decision and the process are treated with appropriate judicial deference.

The parties do not have significant differences concerning what is meant by a standard of reasonableness. Where they disagree is whether Goodridge J. properly applied the standard.

(ii) Did Goodridge J. correctly apply the reasonableness standard?

[20] Dr. Young submits that Goodridge J. erred in law in his contextual analysis by failing to give adequate or any consideration to certain facts in determining whether Dr. Rashleigh's conclusion, that Dr. Young did not meet the criteria set out in bylaw 28.2.2 (ability to work and cooperate with others) and 28.2.5 (ethical character), was reasonable.

[21] The facts noted by Dr. Young as having received inadequate or no consideration by Goodridge J. were:

- (a) the positive references regarding Dr. Young's collegiality;
- (b) the importance of hospital privileges for physicians;
- (c) the significance of Dr. Young having no right of appeal;
- (d) the impact of mental illness and the possibility of rehabilitation;
and
- (e) an alleged vagueness and ambiguity of subjective factors noted in the reference forms utilized by Central Health; for example "moral and ethical values", "emotional stability", and "character".

I will deal with each of these in turn.

(a) The positive references

[22] Goodridge J. provided adequate reasons for acceptance of Dr. Rashleigh's reliance upon the negative reference of Dr. Hicks rather than upon the positive references received. The Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at paras. 14-18, makes it clear that "a decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion". Goodridge J.

noted that Dr. Hicks had known Dr. Young for over 35 years and the two had worked closely together in recent years. In the absence of any indication of bias or other reason to question reliability, it was not an error in these circumstances for Goodridge J. to consider it reasonable for Dr. Rashleigh to assign significant weight to Dr. Hicks' views, considering the closeness and duration of Dr. Hicks' professional contact with Dr. Young. The relationships of Dr. Young with several of the other medical professional references were not nearly so close or so long and in some cases not of the same character. I cannot say that Goodridge J. erred in accepting the validity and sufficiency of Dr. Rashleigh's reasons for relying upon Dr. Hicks' reference on the issue of collegiality.

[23] On the matter of Dr. Young's ethical character, Goodridge J. correctly noted that Dr. Rashleigh had set out two examples of dishonesty or lack of candor (where Dr. Young initially denied the sexual relationship with a patient and where he referred to a "voluntary" withdrawal from practice without reference to a complaint about to be laid against him), two instances of professional misconduct (with the two patients) and two negative comments (by Dr. Hicks in his reference letter describing Dr. Young's moral and ethical values as "poor" and his character as "marginal"). Nor did Goodridge J. err in concluding that the decision of Dr. Rashleigh not to process further Dr. Young's application was a decision within the range of possible acceptable outcomes, where refusal to process further is an option set out in the bylaws. Goodridge J. did not err in concluding in these circumstances that Dr. Rashleigh's decision satisfied the requirements of justification, transparency and intelligibility.

(b) The importance of hospital privileges

[24] Goodridge J. correctly held that, as decided in *Henderson v. Victoria Hospital (London)*, [1959] S.C.R. 655, a Board of Trustees of a public hospital is under no obligation to grant hospital privileges to a particular practitioner. The right of entry into the hospital and the right to use the facilities must be found in the regulations of the hospital authority. A grant of privileges may impact patient safety, resource allocation and the health and well-being of all staff.

[25] In the present case, Section 4.2.1 of the bylaws of Central Health provides expressly that its Board of Trustees may make bylaws respecting the "granting, variation, suspension and revocation of medical staff privileges".

[26] Section 25.4 provides that where a physician has previously resigned or been terminated from an appointment of privileges, the physician "is required to

make application and follow the process for an initial appointment set out in Part VI of these Bylaws”. This process requires the Vice President of Medical Services or delegate, if of the opinion the applicant meets the criteria of Section 28, to forward the completed application for approval by relevant Chiefs of Staff or Senior Medical Officers. From there the application is submitted to the Credentials Committee.

[27] If the Vice President of Medical Services or delegate is of the initial opinion that the application fails to meet the criteria of Section 28, the bylaws permit the Vice President to refuse to process the application. The bylaws have no provision for an appeal of a Vice President’s refusal to process such an application.

[28] Goodridge J. did not err by failing to find Dr. Rashleigh’s decision unreasonable because of the importance of hospital privileges for physicians. As the Vice President of Medical Services for Western Health, Dr. Rashleigh would be fully aware that restrictions placed upon Dr. Young’s hospital privileges would mean the loss of some of his practice or income, deterioration in his professional standard and loss of continuing education: James T. Casey, *The Regulation of Professions in Canada*, looseleaf (Toronto: Carswell, 1994) at 18-1. Dr. Rashleigh would also know that privileges are necessary for a family doctor in rural Newfoundland and Labrador to provide the full range of services which best serves his or her patients and the community as a whole.

[29] Goodridge J. expressly noted at paragraph 22 of his second decision that medical privileges are important in terms of both income and service to Dr. Young’s functioning as a family physician. Goodridge J. did not err in referring to privileges as a “peripheral contextual factor”. Nor did he err in finding that Dr. Rashleigh’s decision was defensible in the circumstances, despite the impact upon Dr. Young’s hospital privileges.

(c) The significance of no right of appeal

[30] Dr. Young properly notes concern over the possibility of abuse where a doctor’s future is left under the bylaws to be determined by a single delegate of Central Health. Counsel for Dr. Young stressed the need for a full and fair consideration of all the evidence where a screening process is involved with no avenue of appeal as is the case here. He submits that the final nature of the decision should result in the reviewing justice subjecting the decision of a single doctor to a greater level of scrutiny.

[31] I agree with this submission. It is consistent with *Aylward v. Law Society of Newfoundland and Labrador*, 2013 NLCA 68, 344 Nfld. & P.E.I.R. 62, where this Court at paragraph 30 accepted that the absence of an appeal procedure suggests greater procedural protections should be afforded. But I am satisfied that Goodridge J. correctly provided the necessary level of scrutiny. He found that Dr. Rashleigh, in the circumstances of this case, had provided full and fair examination of all the evidence. It was not necessary for Dr. Rashleigh to expressly refer to the negative impact a lack of hospital privileges would have on Dr. Young's practice and income or on treatment of his patients and the community generally.

[32] Goodridge J. applied the appropriate level of scrutiny in the circumstances where no right of appeal was available.

(d) The relevance of Dr. Young's mental illness

[33] Dr. Young submits that Goodridge J. made an error in considering Dr. Young's treatment for a mental illness (clinical depression) as a "peripheral contextual factor". Dr. Young fears these acts while mentally ill will be held against him forever. He claims he is being treated unfairly when Central Health is relying upon the same past conduct to refuse privileges as the College of Physicians and Surgeons relied upon in ruling on his case and imposing punishment. He says he has accepted responsibility for the mistakes he made and he feels the punishment imposed by the College was sufficient penalty for his ethical breaches. He asks how long the repercussions of past behavior must affect him and whether people in his position are going to be considered by the medical community as incapable of rehabilitation.

[34] I do not believe Goodridge J. erred in accepting the reasonableness of Dr. Rashleigh's decision. It is true that Dr. Rashleigh did not expressly refer to the mental illness of Dr. Young. But as noted in his decision, at paragraphs 22-23, Goodridge J. found that Dr. Rashleigh knew Dr. Young had lost his medical privileges and been suspended because of professional misconduct, had taken steps towards rehabilitation, had the support of his patients and was dealing now with recovering the privileges which were important to his function as a family physician from an income and service perspective. Goodridge J. recognized Dr. Rashleigh is a "specialized decision maker", with knowledge of the professional needs and the working environment of hospitals, who applied the required criterion and arrived at a decision defensible in fact and law. Goodridge J. showed appropriate deference to Dr. Rashleigh in permitting him to perform the required weighing and balancing of factors, which Dr. Rashleigh was in a better

position to do with his particular expertise and knowledge of the hospital environment.

[35] I recognize that the College of Physicians and Surgeons would have considered whether there was a risk of further misconduct, whether the public would be protected and whether Dr. Young could be rehabilitated. But this did not foreclose the entitlement of Central Health to decide whether Dr. Young met the criteria set out in its bylaws for obtaining privileges at its hospitals. The College may have less risk of liability than a health authority such as Central Health where a licensed physician acts in an inappropriate manner. The two entities have different mandates and different responsibilities to different stakeholders.

[36] I must note at this point that it may not be reasonable to leave Dr. Young without hospital privileges indefinitely, particularly where he has been receiving psychological and psychiatric counselling as a condition of the College of Physicians and Surgeons lifting his suspension. Central Health accepts that Dr. Young may reapply for hospital privileges. He questions whether he will receive a fair hearing. A new application will allow Dr. Young to show he has been rehabilitated. He will be in a position to address the criteria set out in the bylaws by updated evidence. This will be a new process and Central Health will have an obligation to consider fairly and reasonably Dr. Young's application in the context of the updated information supplied. It is premature to conclude that Central Health will ignore the possibility of Dr. Young's rehabilitation. It is unfortunate that more time will elapse before a decision on a further application for privileges may be obtained. But this Court must recognize that the legislation and bylaws relating to hospital privileges contemplates the initial decision on meeting credentialing criteria shall be made by medical experts and not the courts. Judges must show deference to the experts' opinions. Courts step in on judicial review only when decisions are unreasonable.

(e) The vagueness of key credentialing criteria

[37] Dr. Young questions the use of terms such as "moral and ethical values", "emotional stability", and "character" in the Reference Form utilized by Central Health. He used the example of concerns raised in other cases about another term, "collegiality", to illustrate the difficulty of ascribing meaning to such credentialing criteria.

[38] Dr. Young submits that Dr. Rashleigh decided Dr. Young did not meet the criteria of bylaw 28.2.2 (ability to work and cooperate with and relate to others

in a collegial and professional manner, in accordance with the Regional Health Authority's Respectful Workplace Policy) based solely upon the reference form provided by Dr. Hicks, when Dr. Hicks' comments had been contradicted by other doctors and medical professionals who had worked closely with Dr. Young.

[39] Dr. Young in a letter to Dr. Rashleigh pointed out that he had never been the subject of a Respectful Workplace Policy Complaint. Dr. Young argues that Dr. Rashleigh's decision appears to be based upon a definition of collegiality which does not allow for personality conflicts, professional disagreement or the expression of different views.

[40] Dr. Young points to the Report of the Independent Committee of Inquiry Into the Situations of Drs. Gabrielle Horne, Michael Goodyear and Bassem A. Nassar, released in January, 2016, in Halifax, Nova Scotia, where at pp. 41-44, the Commissioners stated:

There is no apparent consistency in the understanding of these terms, other than a general sense that collegiality is viewed as an important attribute of faculty members and active medical staff. There appears to have been no general agreement in practice about its meaning, other than that it relates to professional interactions with other faculty members leading to effective functioning of the department. Unfortunately, the combination of the undefined "*collegiality*" with the equally undefined "*effective functioning*" allowed both "*collegiality*" and "*effective functioning*" to be applied to Drs. Horne, Goodyear, and Nassar in broad, unspecific, but negative ways that related to perceptions of personality rather than to professional competence.

Indeed, it would appear that "*collegiality*" was commonly misunderstood as a personal characteristic, rather than a professional one. A weakness of the CDHA/Dalhousie environment is the vague and flexible way in which the term "*collegiality*" appears to be used.

...

Unfortunately, collegiality has sometimes been misunderstood, and misused, as a vaguely subjective personal characteristic that is to be judged as a criterion for reappointment, tenure, or continued appointment. The inherently collective nature of collegiality makes it impossible to define objectively this characteristic at the personal level. How is it possible objectively to assign packets of blame to individuals for the collective failure of a dysfunctional Department or one that fails to rise above "groupthink," and musty orthodoxy? There is a real danger that such personalization of collegiality can lead to exclusion of those who are different from the existing norm by reason of gender, race, ethnicity, age, political belief, sexual orientation, academic values, personality, or any of a number of other irrelevant characteristics. Collegiality

must not be allowed to become discrimination by stealth. Similarly, personalization of collegiality can become a weapon against those who “don’t fit in,” “don’t show sufficient support to the Chief,” are “too aggressive,” “uppity,” “disagreeable,” “disloyal,” “demanding,” “over-assertive,” “inflexible,” “tedious,” “abrasive,” “pushy,” “a problem child,” “a troublemaker,” “gadfly,” “malcontent,” “unappreciative,” “toxic,” or other negative descriptor of choice.

Dr. Young submits that the collegiality to be examined in this case should be recognized as a professional characteristic rather than a personal one. He argues that the concerns about the subjective nature of the term “collegiality” applies also to the terms “moral and ethical values” and “character”.

[41] There was nothing before Goodridge J. in the present case to support allegations of “discrimination by stealth”. Goodridge J. correctly pointed to Dr. Rashleigh’s reliance upon Dr. Hicks’ assessment of Dr. Young’s relationship with colleagues and coworkers as “poor”. This treated collegiality as a professional characteristic rather than a personal one. Also, there was nothing before Goodridge J. to challenge the correctness of his conclusion that Dr. Rashleigh reasonably could find evidence to support acceptance of Dr. Hicks’ description of Dr. Young’s moral and ethical values as “poor”. Whatever else might be encompassed by “moral and ethical values”, Dr. Young’s admitted questionable conduct with his two patients supports the assessment of moral and ethical values as “poor”.

Summary and Disposition

[42] In summary:

- (i) Goodridge J. correctly identified reasonableness as the standard of review to be applied in assessing the decision of Dr. Rashleigh.
- (ii) Goodridge J. correctly applied the reasonableness standard in that his contextual analysis of Dr. Rashleigh’s decision complied with the *Dunsmuir* test of justification, transparency and intelligibility in the process followed and correctly found that the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.
- (iii) Specifically, Goodridge J. correctly determined that Dr. Rashleigh had adequately considered:
 - The positive references regarding Dr. Young’s collegiality;

- The importance of hospital privileges for physicians;
- The significance of Dr. Young's having no right of appeal;
- The impact of mental illness and the possibility of rehabilitation; and
- The alleged vagueness and ambiguity of subjective factors noted in the reference forms utilized by Central Health.

(iv) Dr. Young is permitted under the relevant legislation and bylaws to make a further application for hospital privileges if he so wishes. Central Health will then have an obligation to fairly and reasonably decide, on the basis of current information, whether Dr. Young at that time meets the hospital's criteria for privileges.

(v) The appeal is dismissed, with costs to Central Health under Column 3 on the Scale of Costs.

L. D. Barry J.A.

I Concur: _____

L. R. Hoegg J.A.

I Concur: _____

F. P. O'Brien J.A.