

MEDICAL APPEAL BOARD

BETWEEN:	James Montague Scott, M.D.	APPELLANT
AND:	Kelowna General Hospital	RESPONDENT

Members of the Panel:

M. Graham Clay, M.D., Chair
B. Lynn Beattie, M.D., Member
Gordon Armour, Member

Counsel for the Appellant	Christopher Hinkson, Q.C. Lorene M. Williams
Solicitors for the Appellant	Harper, Grey & Easton
Counsel for the Respondent	Daniel A. Webster, Q.C. Penny A. Washington
Solicitors for the Respondent	Bull, Housser & Tupper

Heard at Vancouver, British Columbia, September 14, 15 and 16, 1992,
December 14, 15 and 16, 1992 and January 16, 1993.

REASONS FOR JUDGMENT

This is an appeal from the decision of the Board of Trustees (the "Board of Trustees") of the Kelowna General Hospital (the "Hospital") to remove the Appellant from membership in the Medical Staff working in the Department of Radiology (the "Department").

The Appellant obtained his M.D. from the University of Calgary in 1980 and followed that by training in the specialty of radiology, primarily at the University of Calgary, obtaining his specialty certification and Fellowship in the Royal College of Physicians and Surgeons of Canada in 1986. He undertook

further subspecialty training including one year in a neuroradiology fellowship at the Vancouver General Hospital.

The Hospital presented its case first to allow the Appellant to hear the case to which he had to respond.

In his opening submission, counsel for the Hospital stated that the problem was not simply a dispute between two people but stated that the problems which lead to the Appellant's loss of hospital privileges were based on many elements. Since the Hospital felt that its mandate was to ensure that the institution was operated in an efficient and effective manner, it was their contention that removal of the Appellant from the staff of the Hospital was a reasonable step in overcoming the difficulties which had developed in its Department of Radiology. It was considered that teamwork was vital to maintain a high standard of patient care and felt that the desired standard was being compromised by difficulties which had developed in the Department. The Panel was told that the Appellant's competence was not in issue.

The Appellant began working in the Hospital and also became an employee of Kelowna Radiology, the association of private practitioners of radiology whose members also supplied radiological services to the Hospital, in 1988. This had been the arrangement for many years. It was planned that he would become a partner of Kelowna Radiology in a year or so. In September of 1988, he applied for privileges at the Hospital and, on November 9, was appointed to the Provisional Medical Staff with the expectation that transfer to Active status would follow a satisfactory probationary period. He was appointed to the Active Medical Staff at the time of his next application in December 1989.

Difficulties in the relationship between the Appellant and Kelowna Radiology became apparent during 1989 when discussions were underway about the cost of the Appellant buying an interest in Kelowna Radiology and its holding company, Camos. The dispute resulted in the Appellant's resignation from Kelowna Radiology the following February and civil litigation is ongoing.

The Appellant left the Hospital abruptly on March 1, 1990, returning June 1, 1990 following which problems within the Department became a focus of concern. As a result, the Hospital questioned the functioning of the Department, its dynamics, its personalities and the competence of its members. A study was conducted in November of that year by Peat Marwick Stevenson & Kellogg who reported on February 28, 1991. While counsel for the Appellant objected to entry of the Report, there was no question that a review had taken place. Counsel for the Respondent stated the reviewers, upon recognizing the problems of the dynamics within the Department, advised that one possible solution was to clean house completely by discharging all the radiologists and appointing a new director and an entirely new staff of radiologists. The Hospital decided this was not reasonable and instead decided

to appoint Dr. N as the interim Director with a mandate to solve the problems within the Department following recommendations of the Medical Executive.

In February 1991, when letters of reappointment were sent to the members of the Hospital's medical staff, the Hospital decided that the radiologists would be appointed on a monthly basis until it had been determined how the difficulties within the Department were to be managed. While there was a difference of opinion as to whether the Appellant's privileges were revoked or simply not renewed, it was the Hospital's position that the specifics were of little consequence since the result was the same.

Dr. N, the first witness called by the Hospital, holds an M.D. and a Fellowship in Radiology with the Royal College of Physicians and Surgeons of Canada. He has no formal subspecialty training. Dr. N has been the de facto Director of the Department since 1989, a member of the Medical Staff of the Hospital since 1977 and a partner of Kelowna Radiology since 1979. Dr. N stated that since the 1960's all radiologists on the staff of the Hospital were also partners in or associates of Kelowna Radiology, a situation which continued until 1990.

In 1984, when the Appellant first came to Kelowna and met Dr. N, he was still training. Ultimately, discussions resulted in the Appellant's move to Kelowna in 1988. His appointment was predicated on an understanding that he was experienced in neuroradiology although it was recognized that he needed experience in computerized tomography, interventional radiology and ultrasound. In the first year, the Appellant was paid a salary of \$110,000 with a week for conference leave included (together with an accompanying \$2500 allowance) as well as seven weeks of holidays. The following year he was paid at the rate of a partner, \$210,000 per annum which was prorated on a monthly basis after his resignation from the partnership. While information regarding the financial disputes around his departure was discussed in evidence, they are of no concern to this Panel unless his dispute with Kelowna Radiology is found to have affected his hospital appointment.

The contract between Kelowna Radiology and the Hospital expired in 1988. It was Dr. N's evidence that discussions regarding a new contract were going well until the Appellant's departure from the Hospital in March 1990 and that no contract currently exists between Kelowna Radiology and the Hospital. As well, he stated that concerns expressed by the Hospital regarding the potential necessity to become a member of Kelowna Radiology to obtain an appointment to the Hospital's medical staff had been recognized resulting in changes in the purchase arrangements for shares in Kelowna Radiology.

Dr. N stated that problems relating to both the Appellant's performance as a radiologist and his derogatory remarks about another radiologist had been recognized prior to 1990. As a result, Dr. N had called a meeting with two of his partners to discuss the potential of problems should the Appellant join the practice. On questioning, Dr. N stated that the Appellant had never considered

any conflict with the Hospital's Medical Staff By-laws until discussions intended to finalize his purchase of a share in the private practice resulted in financial differences.

A memorandum dated February 28, 1990, sent by the Appellant to Dr. N and Dr. M, another radiologist, was entered in evidence. In it, the Appellant questioned the cost of a share in Kelowna Radiology, suggesting that by purchasing one he might be buying an appointment at the Hospital, something he said was expressly forbidden by the Hospital's bylaws. As well, it criticized management of the Hospital Department and the quality of work done in the Department, suggesting that the Department should be functioning at a much higher level. The Appellant also suggested there would be difficulties in recruitment of radiologists. Dr. N countered by commenting that three have joined since that time.

When the Appellant removed himself from the Hospital abruptly on March 1, 1990, Dr. N questioned if this should be considered a leave of absence despite failure of any formal request for such a leave. The first indication that it might be considered as such was recorded in minutes of a Medical Executive meeting dated March 18, 1990, a meeting which the Appellant attended. The Appellant returned to the Hospital in June 1990 within the 90-day allowance for a leave of absence. At that time, Dr. N slated him for 1/5 of the work in the hospital since he was one of five radiologists on Hospital staff.

There was ongoing correspondence regarding the slating until the Hospital, recognizing that many other problems were developing within the Department, decided to obtain advice from outside the institution. Initially, Dr. S of Toronto was consulted and, although he did not attend the hospital to assess the matters at first hand, he gave some advice which was not accepted for a number of reasons including the fact that he worked in very different circumstances (i.e. a university hospital), he worked in another province and he did not visit the Hospital for an on-site assessment.

The Hospital finally engaged the firm of Peat Marwick Stevenson & Kellogg who visited the institution in November 1990. By the time their review was submitted, Dr. N had come to the conclusion that the problems between the Appellant and the Hospital were not resolvable. Dr. N had concerns that factional separations within the Department and the developing stress for staff at all levels would soon affect both the quality of care and recruitment. Meanwhile, according to Dr. N's evidence, the Board of Trustees had accepted the review in part but decided that, instead of appointing an outsider as Head of the Department, they would give the position to Dr. N on an interim basis. He has since been confirmed in the position.

In October 1991, the Appellant's privileges were rescinded (or not renewed, depending on whether the monthly appointment mechanism was in effect or a

letter which the Appellant received in February 1991 constituted an appointment for a full year).

In cross-examination, Dr. N agreed that the differences may not be all one-sided but felt that he had acted professionally throughout. Dr. N stated that the intention to ask the Appellant to join the partnership of Kelowna Radiology had been sincere until the Appellant withdrew at the end of February 1990, despite Dr. N's concerns about the Appellant's interpersonal skills. As well, Dr. N was aware of the potential conflict of the combination of a Hospital appointment and purchase of a share in Kelowna Radiology. He had discussions with the Board of Trustees regarding this and took care to separate the two situations, despite their obvious relationship. It was Dr. N's contention that the Appellant had been paid better for his time at Kelowna Radiology than new radiologists were paid elsewhere. He stated that the costs incurred privately because of the Appellant's dispute bore no relation to his opposition to the Appellant's return to the Hospital staff. When Mr. Hinkson suggested that the Appellant's civil actions had cost Dr. N hundreds of thousands of dollars, Dr. N denied this stating that the costs might be in the tens of thousands, not hundreds of thousands and repeated that this had not influenced the manner in which he had treated the Appellant when he was working in the Department.

In reviewing various letters submitted in evidence, Dr. N stated that he suspects that the Appellant never had any intention of joining Kelowna Radiology. As well, Dr. N said he had concerns about the accuracy of some statements made by the Appellant, including the suggestion that he had twenty job offers but chose to come to Kelowna. Dr. N also noted that contracts with the Hospital for radiological services were between individual radiologists and the Hospital, not between the group and the Hospital. He finds no conflict in being the Head of the Department of Radiology and being a member of Kelowna Radiology.

The memorandum the Appellant sent to Dr. N and Dr. M (another radiologist) February 28, 1990 and also gave broad distribution was revisited. As well as expressing his side in the dispute with Kelowna Radiology, the Appellant made many remarks about the departmental management, his feeling that the Department was not capable of attracting new people of quality and suggestions that the Hospital needed both a second computerized axial scanner and a magnetic resonance imager. Because of what he perceived as the inflammatory and inaccurate nature of the memorandum, Dr. N had written Mr. F, Chairman of the Board of Trustees to correct some of the errors in the memorandum as well as ensure the Board of Trustees that there would be nothing related to Kelowna Radiology that would be allowed to impede the recruitment and compensation of newly appointed radiologists. In his evidence, Dr. N questioned whether or not there was anything in the Medical Staff Bylaws expressly forbidding the inclusion of hospital privileges in the value of a practice. As well, Dr. N disagreed with the written suggestion of the

Appellant that he, as Director of the Department, had failed to schedule members with subspecialty training in their areas of expertise.

Dr. N repeated that he had tried to get along with the Appellant and had no personal animosities even on the Appellant's return in June 1990 but that his criticisms were to be viewed as those of the Director of the Department. He confirmed this by referring to a letter dated June 7, 1990, which he wrote to his partners in Kelowna Radiology stating that he must not attend any meetings regarding potential actions by the Appellant against Kelowna Radiology in order to maintain his neutrality as Director of the Department. As well, he withdrew from any involvement in business discussions in the private partnership to ensure that his ability to make decisions was not compromised.

By August 1990, he could not understand how an erroneous assessment of the Appellant had been made in the first place. It was then that Dr. N checked the references which had been submitted supporting the Appellant's original application for appointment to the Hospital and reviewed the Curriculum Vitae which the Appellant had given since there were concerns regarding its accuracy, particularly related to "work in progress". He obtained information suggesting that the material submitted might be misleading. Dr. N emphasized that this reassessment was done to determine why an error in judgment had been made, not to discover more material which might paint the Appellant in a poor light. As Director of the Department, Dr. N felt it was his responsibility to deal with difficulties within the Hospital using as much information as possible.

Dr. N stated that documentation submitted as evidence in the hearing was not entered in an attempt to make the Appellant's defence more difficult but to confirm his (Dr. N's) own evidence. He had been advised by Dr. W, the Chief of Staff, to document problems. Dr. N said that he prepared the same documentation for others when he perceived potential problems. This documentation included notes made following discussions with the Appellant and, after the Appellant's return in June 1990, presented viewpoints from the Appellant that were very critical of the abilities of other radiologists while also suggesting that some or all of the radiologists would be leaving the Hospital in the near future. Dr. N stated that he felt that the comments made by the Appellant on several occasions were quite inaccurate and his criticisms of others unfair in contrast to the professional and factual level of comments other radiologists might make about other departmental members.

Letters about the Department, invited by the Peat Marwick Stevenson & Kellogg review, were not always accurate in Dr. N's opinion although some criticisms were justified and have been addressed. Dr. N agreed that there were problems with other radiologists at the same time as the problems with the Appellant but that these have been solved either by alteration of the extent of time and work some radiologists do in the Hospital and departure of some radiologists from the community. Anonymous letters sent to the reviewers, supposedly from technicians, and submitted in evidence cannot be given

substance by this Panel in the absence of identification of the authors and an opportunity to examine them at the hearing.

Dr. N insisted that, upon return to the Hospital in June of 1990, the Appellant received the number of hours of work that were due him since he shared equally with others on the schedule.

Responding to questions from the Panel, Dr. N stated that the staff of the Department had been made aware of the Appellant's impending return at their regular meetings and the technicians had been encouraged to keep out of any conflicts and avoid taking sides.

Regarding the process of assessment of a Curriculum Vitae, material regarding "work in progress" is usually an indication of the applicant's interests and something he will continue to work on in his own time; as well, one expects honesty in material included in this section.

It was Dr. N's understanding that the Appellant's departure on March 1, 1990 amounted to a resignation from the Hospital rather than a leave of absence. Following the Appellant's return to the Hospital, contact between the Board of Trustees and Dr. N was through the Chief of Staff, the Medical Executive and Administration of the Hospital. Various discussions resulted in a recommendation in August 1991 that the Appellant should not continue at the Hospital.

When asked how he would write a letter of reference for the Appellant, should he be asked for one, Dr. Noble stated that he would explain that there had been conflicts between radiologists and, as a result, the Department had been reorganized and the Appellant was no longer on staff. He would be accurate but brief and sincerely hoped that the Appellant would find another position.

Dr. W, Chief of Staff at the Hospital was the next witness. He stated that, since his appointment in 1983, the budget has increased from about \$27 million to nearly \$100 million as the institution has changed from a community hospital to a regional referral institution, serving a growing population.

During this period of development, he was concerned about the ability of the Department of Radiology to carry out its responsibilities at a satisfactory level considering the sophistication of new equipment in the Department. With purchase of such equipment as a computerized axial scanner, radiologists would take extra training but, during the first year or two of a machine's use, concerns might develop about the quality of reading. During 1986 and 1987 there was a significant attempt to recruit radiological staff both to increase the availability of radiologists with the increasing workload and to improve the level of subspecialization. Despite recruitment being difficult, the hospital was successful in recruiting Dr. C in 1988 and then the Appellant. It was the pattern that radiologists coming to the community would join Kelowna Radiology and also work at the hospital. Dr. W emphasized that hospital

appointments did not depend on partnership arrangements with Kelowna Radiology but that the workload within the Hospital was shared by those appointed to hospital staff in an amicable way arranged by the Department Chief. He noted that, in this manner, the Hospital and therefore the community could have the value of the presence of radiologists with many varied talents rather than only three or four which could, on a full time basis, manage the needs of the hospital.

Because of the association of all hospital radiological staff with Kelowna Radiology, it was inevitable that concerns would develop at some time with suggestions that an appointment to the staff of the Radiology Department required purchase of a partnership in Kelowna Radiology. Dr. W's first concern that such a problem might be developing was in the summer of 1989 when Dr. C announced that he was leaving "for a while" because he had been asked by Kelowna Radiology to stay on salary for a second year rather than join the partnership. As far as Dr. W knew, the only criticism of Dr. C's work was that he was slow.

Dr. W stated that he thought the Appellant would become a partner in Kelowna Radiology about October 1989. During the following two months, both Dr. N and the Appellant stated that negotiations were underway but, by January 1990, Dr. W was made aware that significant problems had developed when the Appellant visited him to state that he felt that he had been misled about the costs of buying into Kelowna Radiology and Camos Holdings. This was soon followed by a letter from the Appellant stating that he had failed in his negotiations and must seek work elsewhere. The matter was considered at the Medical Executive meeting March 5. By then, Dr. W stated that he was tired of the Department and its management since the two most recent recruits had left and there had been earlier concerns about accuracy of readings from the Department. Considering these problems and the planned expansion of the unit with the hospital's development, he felt changes would be required in the Department.

In Dr. W's opinion, the first evidence of personality problems impinging on departmental management was when he learned that Dr. K might not come to the Hospital unless the problems within the Department were resolved. As well, a new facility of the British Columbia Cancer Agency was to be associated with the Hospital, necessitating a sophisticated Department of Radiology.

In discussing the Appellant's return to work at the Hospital in June 1990, Dr. W recognized the Appellant's right to return, given that the absence had been considered within the definition of a leave of absence. However, as the situation in the Department did not improve over the next few months, Dr. W suggested that Peat Marwick Stevenson & Kellogg be invited to review the Department and its relationship with the Hospital, following the abortive attempt at a review by Dr. S. Dr. W's reaction to the report was twofold: first, he considered that outside arrangements of radiologists were of no concern as

long as they did not impede recruitment of radiologists for the Hospital and, second, he did not believe that having radiologists who worked only at the Hospital was a viable option.

Following receipt of the final report, Dr. W felt that the dispute between the Appellant and Dr. C on the one side and Dr. N on the other was not resolvable and stated that until the arrival of those two new radiologists Dr. N's record was unblemished. As well, it was thought that any attempt to bring in an outside radiologist to become Director, given the circumstances, would be very difficult and would take many months so it was decided that Dr. N should be given an opportunity to run the Department of Radiology. The irreconcilable differences as well as the disharmony and dysfunction which had developed since the arrival of the two new appointees was explained separately to the Medical Executive, the Senior Administration and the Board of Trustees. About May 1991, a meeting was held with the Appellant, Dr. C and Mr. T, the new President of the Hospital. Both radiologists were told that they could work until the end of August. Dr. C moved to a satisfactory position in the United States but the Appellant, after initially saying that he would leave, decided not to terminate his association with the Hospital voluntarily. Nevertheless, the Board of Trustees accepted the advice given by the Medical Executive and withdrew his privileges effective October 1991.

There was considerable evidence entered on the question of whether or not the Appellant's appointment had been rescinded or not renewed. Normally appointments are made on an annual basis but the Board of Trustees was advised to make appointments to the Department of Radiology on a monthly basis. It was stated that one of the radiologists had noted that an annual appointment letter was sent to him in February only to be followed by the monthly reappointment notices. This problem was discussed during the hearing in an attempt to decide whether the Appellant had his privileges cancelled in October 1991 or whether they were not renewed for the month of October 1991.

It was Dr. W's evidence that since the departure of the Appellant and Dr. C the Department has recruited three more radiologists and is working harmoniously and well.

Dr. W then reviewed the manner in which removal or cancellation of the Appellant's privileges was advised by the Credentials Committee, agreed to by the Medical Executive and the advice then transmitted to the Board of Trustees which made its decision on October 2, 1991. It is this matter which is the subject of this appeal.

In cross examination, Dr. W's comments about the process of removal of the Appellant's privileges were canvassed in depth. Although the Board of Trustees agreed with the Medical Executive that the Appellant should leave the Hospital, Dr. W stated that the Board of Trustees does not "rubber stamp"

decisions of the Medical Executive but instead gathers its facts and makes its own decisions. Dr. W commented that it was during the hearing that he realized the motion of the Board of Trustees having to do with the reappointments for medical staff for 1991 had been recorded incorrectly when it stated that all those who had been on staff in 1990 would have their appointments renewed. His evidence was that this did not include the members of the Department of Radiology who were to have their appointments on a monthly basis until the problems in the Department were resolved.

Dr. W stated that there have been no outside audits of the Department of Radiology since October 1991 but that the dynamics within the Hospital and his own observations as a clinician confirm the good relationships within the Department at the present time. The Department is working better than it ever has since he has been at the Hospital. He also said that some of the senior radiologists spend less time within the Hospital and that both they and the newer radiologists are concentrating in areas which they do particularly well. As well, one of the radiologists who was on staff in October 1991 has since retired.

Dr. W stated that by 1990 the simple problems in the day to day activities of the Department of Radiology, such as having a radiologist in the Department at all times during the working day, have been corrected and he felt that the situation was improving before the new radiologists arrived rather than because they had arrived, suggesting it was speculation to say the improvement had occurred because of their arrival. By then he had recognized that the Department Head should spend more time in the Department rather than in his private practice facility because the Department required more "hands on" management. As well, with the difficulties in the Department it was recognized that external review was needed.

During 1990 it became apparent that Dr. N was frustrated and a new side of his character, which Dr. W described as childish and puerile, became apparent.

It was Dr. W's opinion that the Appellant's sudden departure at the beginning of March 1990 was the result of a childish huff. While Dr. W understood the Appellant's reaction, he considered it inappropriate and immature. In reviewing the situation, Dr. W stated that Hospital by-laws do not prevent any purchase of an existing practice. He emphasized that buying a practice does not automatically give a physician hospital privileges. As well, he noted that the Hospital Board has stated on many occasions that hospital privileges are not to be bought or sold. Dr. W confirmed that there had never been a contract between Kelowna Radiology and the Hospital but that all contracts (which expired at the end of 1988 and have not been signed again) were between the Hospital and radiologists who happened to be members of Kelowna Radiology.

As well, he repeated that the purchase of new specialized equipment within the Department since 1986 has necessitated continuing upgrading of the members of the Department of Radiology. At the same time, Dr. W commented that all members of the Department worked in each area in which they were capable and that, despite suggestions to the contrary, the Appellant had spent thirty-five to forty percent of his time in neuroradiology or CT scanning.

Dr. W defended his approach to planning of the Department, recognizing that the ideal would be a Department that could ultimately service a tertiary care facility. He is aware that there was a potential for conflict between the Hospital and Kelowna Radiology but stated that the Hospital was neither in a position to have many subspecialist radiologists on a full time basis nor to purchase all the equipment needed. They had developed "a reasonable, practical compromise where community radiologists worked in the hospital and vice-versa...." He confirmed that serious consideration had been given to the idea that all the hospital radiologists be dismissed and the Department be begun anew but the Medical Executive realized that such an approach was simply impractical.

Dr. W justified removal of the Appellant's privileges on the basis of his difficulties with all the other radiologists on the staff. It was perceived that his presence would make recruitment of other radiologists difficult.

In response to members of the Panel, Dr. W repeated that he believes the Department of Radiology is functioning well. The process for clinical appraisals in the Hospital was reviewed. As well, Dr. W noted that there had been a deficiency in reporting to the Board when problems in the Department began, considerably earlier than interpersonal difficulties developed between physicians. He agreed that the most important decision regarding physician appointments is at the time of the initial appointment, stating that the Hospital is now confirming references by telephoning referees as well as the last two or three places where applicants have worked. Dr. W stated that he became aware of developing differences between the Appellant and the partners of Kelowna Radiology during January 1990 and that he was also aware of divisions and rifts but not of disruptive behaviour.

The next witness called was Ms. D, a technician in the Department of Radiology since 1978 and, for the last five years, Supervisor of the Department's fifteen technicians. In this position she sees the radiologists daily. There is also a Nursing Supervisor for the angiography suite as well as five other nurses.

Ms. D stated that prior to the Appellant's arrival work in the angiography suite ran smoothly, as it did when he first came. However differences between the radiologists became obvious and, early in 1990, the Appellant failed to appear on a scheduled day. He returned the next day but she saw this as a "watershed." It was rumoured that he was leaving and things seemed to deteriorate. Tensions grew in an area where there was already stress and

physicians, especially the Appellant and Dr. C, would not ask for help when there were difficulties.

She reported that in mid 1990, the Appellant stated that there would be many changes, some of the physicians would be leaving and he would probably be in charge. Ms. D was concerned since the lack of cooperation was disturbing her normally smooth working environment. At that time Ms. D asked Dr. N what was really going on and agreed to verify a letter which Dr. N was to write about her concerns.

She was interviewed by the external reviewers and reported the problems as she saw them, expressing an opinion that change was needed. Working in the area as she has, she felt that she knew how procedures should proceed but they were not going smoothly and were taking longer and longer. Both Dr. C and the Appellant frequently had problems; when the Appellant had problems he would not ask for help nor would he help others in difficulty. Other radiologists would seek help when necessary or offer it, if appropriate. Ms. D felt that there has been good cooperation between radiologists since the Appellant's departure.

In cross examination, Ms. D stated that she had not seen the letter, prior to the day of the examination, in which Dr. N had related his discussion with Ms. D regarding the Appellant.

Ms. D has been involved with angiographic studies for the past ten years and does no general radiology. She is in charge of the area and arranges any upgrading needed by the technicians. When the Appellant and Dr. N did the majority of the studies they had different techniques which she felt did not matter although the Appellant was much slower. Her concerns involved a perceived increase in potential complications related to the time in which a catheter was left in an artery. While both the Appellant and Dr. C would abandon a study rather than ask for assistance, Dr. N did help the Appellant enter carotid vessels on a couple of occasions. She felt that the Appellant would have assisted Dr. N had he been asked to. In contrast to the effect of the Appellant's arrival, when Dr. K arrived he wished only a few adjustments to the protocols to accommodate his technique although there were overall changes after new equipment arrived.

Regarding complaints that all the radiologists would disappear together to the cafeteria for coffee and lunch, she had no problem since they did have pagers and would return when needed.

Ms. D stated that she presumed the Appellant had resigned when he left. She did not ask anyone for the detailed reason for his departure.

Replying to questions from members of the Panel, Ms. D repeated that both the Appellant and Dr. C would not ask for help and, even if she suggested it might be useful and was available, they would decline. The only instance

which she could remember when one radiologist refused to help another was when the Appellant refused to assist Dr. C. This attitude was a concern for her. She also reported that when the Appellant arrived, Dr. N had encouraged the technicians to accommodate the changes in techniques which the Appellant wished and, in fact, Dr. N liked some of them and changed his filming sequence. Finally, she stated that some of the technicians did join camps related to the dispute but others did not wish to become involved.

Answering counsel for the Appellant, Ms. D gave more detail about the incident when the Appellant refused to assist. On that occasion, Dr. C was having significant difficulty with an angiogram, she thought likely a mesenteric angiogram, and was becoming irate. She took the X-rays to the Appellant but he refused to help, stating that he wanted nothing to do with the case. She could not recall the Appellant coming into the room where the study was actually underway.

Mr. F, a Kelowna businessman, was a government appointee to the Board of Trustees from 1982 to 1992 and its Chairman for the last seven years, having recently completed his final term on the Board of Trustees. He noted that the Hospital had grown dramatically during his tenure as evidenced not only by the great increase in the budget but also the increase in staff positions from 1100 to 1800 full time equivalents. Both the work volume and its complexity had increased. There was much capital expansion and more is expected with the hospital becoming a regional tertiary care centre, commencing cardiac surgery and developing the interior cancer clinic.

While Chairman of the Board of Trustees, Mr. F attended all the meetings of the Board of Trustees as well as the monthly meetings of the Medical Executive and the quarterly meetings of the Medical Staff. As a result, he became concerned, about 1988, that the arrangements between the radiologists and the Hospital might be construed as conflict of interest. He thought that the contracts with radiologists might result in accusations that hospital appointments were, in effect, being sold. At the time of his evidence, Mr. F stated that he felt the potential of conflict had been answered and would be covered if and when new contracts were signed with the individual radiologists on staff.

He also considered that the Department of Radiology had an insatiable need for funding which created difficulties in decisions about disbursement for capital expenditures. While he did not initially have concerns regarding personnel, it became apparent to him during a Board of Trustees' Committee review of the Department that there might be problems.

Mr. F remembered the meetings of the Medical Executive held in March 1990 when discussions took place following the Appellant's abrupt withdrawal from the Hospital. He stated that the Board of Trustees felt, at this time, that the radiologists working in the Hospital should receive payment for the fees that

they actually earned rather than share, in equal parts, the total professional payment between all radiologists.

The witness suggested that comments in minutes of the special Medical Executive Meeting held March 13, 1990 suggesting that "... It bothers the whole Medical Staff that we are losing a good radiologist ..." might be misleading. As well, Mr. F was aware that any dispute which the Appellant might have with Kelowna Radiology was of no concern of the Hospital. On March 14, another Special Meeting of the Medical Executive was held, this time with Dr. N, when concerns were expressed regarding the problems within the Department of Radiology. It was then that the Medical Executive stated they wished a resolution, otherwise suggesting that another Department Head should be appointed. Dr. N's response had been to state to the Administration, in writing, his recognition that any negotiations with Kelowna Radiology bore no relationship to hospital appointments. The Board of Trustees accepted this approach and left Dr. N as the Department Head.

Mr. F confirmed that the Appellant's request to return to the Medical Staff on June 1, 1990 was considered appropriate by the Board of Trustees since he was within the time allowed a leave of absence without written notice to the Hospital. Following this, the Executive Committee directed that each radiologist have an equal share of the work, a decision confirmed by the Board of Trustees as was the direction that each radiologist receives an equal share of the actual professional fees distributed to the radiologists for hospital work.

In response to the recommendation of the Peat, Marwick, Stevenson and Kellogg Report that a new Head of Radiology be recruited from outside the Hospital, it was the opinion of the Board of Trustees that recruitment would take too much time and that the milieu of the Department would not result in attracting a suitable candidate. Therefore it was decided to give Dr. N a probationary appointment for one year.

Mr. F confirmed that he was present at the Special Meeting of the Medical Executive on September 5, 1991 which Mr. Webster, the Hospital's solicitor, attended and from which a recommendation was sent to the Board of Trustees that the Appellant's privileges not be renewed because of irreconcilable differences with the other members of the Department of Radiology. The Board of Trustees accepted this advice at a Special In Camera Meeting on October 2, 1991, recognizing that the Appellant had the privilege to appeal directly to them. Mr. F expressed the opinion that it would have been impossible for the Department of Radiology to function properly if the Appellant's privileges had been continued.

At the conclusion of his term, on July 14, 1992, Mr. F's impression, from reports originating from Administration, the Medical Executive and the Department itself, was that the Department was running smoothly.

In cross examination, Mr. F confirmed that the Board had not accepted the advice of the Peat Marwick Stevenson & Kellogg review regarding appointment of an outside candidate as Department Head and also stated that the Board of Trustees had no previous reason to be aware of the individual arrangements for purchase of partnership shares in Kelowna Radiology or, for that matter, for the purchase of partnership shares by the Hospital's pathologists who also have a non-hospital component of their practice.

Regarding the decision to continue the use of radiologists on a part-time basis rather have a department limited to full time physicians, Mr. F felt that this decision had been difficult but was in the best interests of the Hospital. The Board of Trustees had considered continuing the Appellant's appointment and directing him and Dr. N to get along but felt the chances of that working would be remote. Despite the potential for conflict of interest, Mr. F stated that he had no difficulty in accepting Dr. N's recommendation that the Appellant leave since even by March 1990 it was obvious that the function of the Department of Radiology was being affected by the conflicts. To the best of his recollection, Mr. F thought that he heard no complaints about the Appellant prior to February 1990. Mr. F recognized that the Department needed change at that time and understood the concerns of physicians but felt that comments made by an outside advisor who never visited the Hospital bore no credibility. He felt that the Board of Trustees had carried out their responsibilities when they directed Dr. N to correct the problems within the Department and proceed with its development.

Questions were raised in evidence about whether or not Kelowna Radiology had been self-serving by installing mammographic equipment rather than having it installed in the Hospital. It was Mr. F's evidence that, while the Board of Trustees wished a mammographic unit to be installed in the Hospital, they were having trouble obtaining funding. Nevertheless they were disappointed when Kelowna Radiology obtained "approval" to operate a unit.

Replying to questions from members of the Panel, Mr. F confirmed that letters granting members of the Department of Radiology one year appointments had been sent in February 1991 whereas the intention had been that appointments be given only for monthly periods. The review process was also revisited. He stated that the Hospital would have been prepared to have the Appellant on staff but felt that Dr. N was not. Therefore the Board of Trustees made its decision when it accepted the advice of the Medical Executive.

Dr. K was the next witness. Dr. K obtained his M.D. in 1981 following which he specialized in radiology, obtaining his specialty qualifications in 1986. One year later he completed further studies in nuclear medicine in which he was qualified in 1987. He began work in a group associated with the Royal Alexandra Hospital in Edmonton until moving to Kelowna at the end of September 1991.

Dr. K had always wished to work with a smaller group and in an area where the climate was gentler so, when he was first contacted by the Appellant, he arranged to visit Kelowna about February 1990. It was Dr. K's impression that his expenses had been paid by the group. While in Kelowna he met all members of the group and visited both the Hospital and the private practice facilities. Following the meetings, the Appellant took Dr. K to dinner where the Appellant discussed "impending changes" in the Department noting that the quality needed improvement. Dr. K could not remember further details. At the time, there was discussion about buying a share of the private practice and it was Dr. K's impression that the Appellant was still interested in the group at that time.

Dr. K's next contact with the Appellant was when the Appellant sent him a copy of the memorandum sent by him to Drs. M and N on February 28, 1990 in which it was stated that Dr. K had been insulted by the offer made by Kelowna Radiology and would likely not come to Kelowna. As a result, Dr. K telephoned Dr. N as Chairman of the Department to refute the statements attributed to him and report his continued interest in an appointment in the Hospital. Dr. K made a further informational visit in the spring of 1990 and by the fall of that year became very interested after realizing that the Hospital really was developing. However, he did not come at that time since he did not wish to become involved in the in-fighting. At a visit in mid-1991, Dr. K was assured that the Appellant would not be on staff after the end of September so Dr. K moved to Kelowna to begin working there in October 1991. Since that time, Dr. K has been completely satisfied with the development of his practice and with the attitude in the Department. He feels that, despite the current fiscal constraints with hospital budgeting, there has been no difficulty within the Department. He is currently an associate with Kelowna Radiology. In response to a question from Mr. Webster, Dr. K stated that he would seek a position elsewhere should the Appellant return to the Hospital.

In cross examination, Dr. K's situation in relation to Kelowna Radiology was reviewed. He stated that any information he had about the Appellant's aborted relationship with the group was second hand. His knowledge of the Appellant really dates to the time when the Appellant was training in neuroradiology at the Vancouver General Hospital, where Dr. K had been sent by his Edmonton group to observe angiography. He and the Appellant had attended the same private school but did not know each other then and they went to different Alberta medical schools.

With regard to the cost of buying into Kelowna Radiology and Camos Holdings, Dr. K stated that he did not know what the circumstances of the Appellant's proposed purchase were and considered that none of his business. While evidence was lead to suggest that the Appellant's financial treatment was considerably different nothing developed from the prolonged questioning since Dr. K is not an expert on remuneration of radiologists.

Since working in Kelowna, Dr. K has heard opinions of the earlier problems from many sources and all have been supportive of Dr. N. He has never contacted the Appellant to learn his side of the story but, nevertheless, has formed an opinion that the disharmony in the Department was related to the Appellant's presence.

Replying to a member of the Panel, Dr. K explained that his decision not to come to Kelowna until the Appellant had left was based on the misinformation in the Appellant's memorandum sent to Dr. M and Dr. N as well as word he received from others. His concerns about the Appellant resulting from this misinformation had been reinforced by comments made by others since his arrival in Kelowna.

Dr. L, a medical graduate of the University of Alberta and a member of the staff of the Department of Radiology at the Hospital since July 1990 was the next witness. He became a partner in Kelowna Radiology in August 1992.

Dr. L had known the Appellant briefly during his specialty training. He met Dr. N at a course in California in 1987 or 1988. At the time, he was invited to call regarding the potential of an appointment at the Hospital and did in 1989. He visited Kelowna in the early summer of that year and, on his second visit in October 1989, was offered a position to begin when he had finished training the following June.

In January 1990, when Dr. L and his wife were in Kelowna looking for a house, they were entertained at the Appellant's residence. During that visit, the Appellant mentioned conflicts, including financial differences with Kelowna Radiology stating that his lawyer had become involved. The Appellant also said that Dr. M would soon be leaving the group, a matter that came as a surprise to Dr. L since it was his (Dr. L's) opinion that Dr. M was too young to retire. The Appellant was vague but reassuring about the reasons. As well, he suggested that Dr. L should receive something in the range of \$400,000 annually, a figure far in excess of what was being offered. During the conversation, the Appellant told Dr. L that he should stay out of discussions but that the outcome would be to his advantage. That same evening, the Appellant related that he had about 20 offers of a position but had selected Kelowna despite it being the lowest paying position. Dr. L wondered at the time if the Appellant was trying to take over the Department. The following day, in talking to Dr. N, Dr. L received assurances that the financial difficulties between the Appellant and the other radiologists would be resolved.

The next contact Dr. L had with the Hospital was when he learned that the Appellant had left on March 1, 1990 and Dr. N notified him that the Appellant was no longer with Kelowna Radiology. By the time of his arrival in Kelowna in July 1990, the Appellant had returned to the Hospital. The financial agreement between Kelowna Radiology and Dr. L was changed to Dr. L's advantage.

On July 9, 1990, soon after his arrival in Kelowna, Dr. L met the Appellant in the dictating room where the Appellant stated that one of the radiologists was being investigated by the College of Physicians and Surgeons for libeling him and would soon lose his license. As well, the Appellant commented that he was the only credible radiologist in the Hospital. Dr. L approached Dr. N about the conversation and was advised to keep records of such comments. Dr. L's next clear memory of a conversation with the Appellant was five or six weeks later when he learned that Dr. C would be returning to the Hospital. At the time, the Appellant stated that if he and Dr. C were not working full time in the Hospital by December, they would leave and the Hospital would be in difficulty. During the conversation, the Appellant again questioned the credibility of the Department, stating he had a file of over 170 cases of misdiagnosis and, on several occasions, he had to dictate an addendum to radiology reports. Dr. L was particularly disturbed that the conversation took place in front of a medical student. While Dr. L had no "run ins" with the Appellant during this period, he was aware that there was less cross coverage between radiologists and that the technicians were taking sides in the dispute.

Soon after, the Appellant stated that he had been called in to assess some studies while not on call since the Emergency Room physicians had no confidence in other radiologists. At the same time, the Appellant reported having two offers from Seattle, one for \$1,000,000 annually and another for \$500,000; two days later, when asked about these positions in front of another radiologist (Dr. M), the Appellant denied the conversation had taken place. As well, on several occasions the Appellant stated that there would be a major suit against Camos and, following removal of his privileges, against the Hospital. Dr. L noted that the Appellant had said that the Attorney-General and other government groups were investigating the Hospital and, specifically Dr. N and Mr. T (the administrator), and that both would be gone by Christmas. When questioned during the conversation about the reason for being so certain of the situation, the Appellant commented on the assurances he had received from a psychic whom he had visited at least four times and who had correctly predicted the move to Kelowna and the trouble in the Department as well as predicting that four radiologists would leave and the Appellant ultimately become Director of the Department.

Again, Dr. L made notes of the conversation and reviewed it with Dr. N who was outraged and, in turn, reported the matter to Mr. T. As a result of these encounters, Dr. L questioned the Appellant's ethical standards and wondered if he was trying to manipulate the financial arrangements with Kelowna Radiology which Dr. L perceived to be similar to his. Since the Appellant has departed, Dr. L feels that the environment in the Department is very much improved and reported Dr. K's presence is refreshing.

When cross examined, Dr. L confirmed that he considered it was inappropriate, if not offensive, to collect presumed errors in reporting without discussing them with the involved physicians. He would not condone discussing such

problems initially with others. As well, Dr. L agreed that he would criticize Dr. N if he were not discussing perceived problems in the Appellant's reporting with the Appellant himself. Sending addendum reports might be satisfactory but only if the involved colleagues were informed.

Replying to questions about extra calls that the Appellant claimed he had from the Emergency Room physicians, Dr. L confirmed his comments that they were a fabrication since there were no reports resultant, there were no billings and no record of technicians being called in for extra work. These calls simply did not occur as far as Dr. L could determine.

Despite the problems, Dr. L reported that his relationship with the Appellant was cordial as was the Appellant's relationship with other radiologists. However, he could not condone the Appellant's derogatory comments which was why he had expressed concerns to Dr. N who, after all, was the Director of the Department. Dr. L did not take the Appellant's comments about others as a warning but considered them malicious. Nevertheless, Dr. L did not discourage the comments but rather wished to hear them to be sure that it would not be necessary to leave Kelowna. His last recorded conversation with the Appellant was in June 1991.

Dr. L agreed that he had some questions about the standards of some of the radiologists.

Initially, Dr. L was concerned about joining the group practice since friends at Calgary had warned him about the Appellant's credibility. He came anyway since the only problem with the Appellant's relationship with the other radiologists in Kelowna that had been identified to Dr. L before his arrival was monetary.

Regarding the Appellant's reports about the psychic, Dr. L's evidence was that the Appellant stated he had visited the psychic four times and taped their conversations, typing them later. It was Dr. L's recollection that the Appellant was serious about the visits and believed the predictions because the psychic had been accurate in the past.

Dr. L confirmed that the offer which Kelowna Radiology had originally made was essentially the same as that purported to have been made to the Appellant. However, since his arrival, the only change that has been made was that the payment for his services at Kelowna Radiology was on a percentage of his actual billings rather than a fixed salary.

In response to questions from the Panel, Dr. L stated that the Appellant's return to the Hospital would be very disruptive and that the Appellant would not have enough work if he were to share the hospital work equally with the other seven radiologists currently on staff without working in the private facility. It was Dr. L's perception that the Department was running very smoothly.

Dr. L was recalled for further cross examination when the hearing reconvened in December. At that time the figures of his income were reviewed. While it had initially been agreed that he would receive a total of \$130,000 the first year and \$170,000 the second year for the services both in the hospital and in the private practice, the actual income which he received was 75% of the professional component of his billings for the first year (which totalled between \$180,000 and \$200,000) while in the second year it was increased to 85%. The exact amount is not yet decided. He confirmed that he had been a partner since August 1992 after buying a share of Camos. There was no need to buy a share in Kelowna Radiology.

The next witness was Mrs. CS, a radiology technician since 1988 and Floor Supervisor since February 1991. At the time of the hearing, she was on maternity leave.

Mrs. CS stated that she had many complaints about the Appellant originating from the long weekend in July 1991. On that weekend, she had difficulty getting the Appellant's cooperation to do ultrasound examinations which were needed and he "disappeared" from the Hospital before a contrast study, despite the fact that the patient was in the Department. As well, the Appellant left films to be read by others after the holiday.

In cross examination, Mrs. CS said that she had recorded her complaints about the Appellant soon after the weekend but could not remember if they had been written before or after she had discussed her concerns with Dr. N.

Dr. JC, a member of the Peat Marwick Stevenson & Kellogg Review Team was the next witness. He is Director of Radiology for the Fraser-Burrard Hospital Society, a position which he has held since 1987, after being Assistant Director for the preceding ten years. Prior to that, he was a staff radiologist at the Vancouver General Hospital for four years as well as an Assistant Professor in the University Department. He has been President of the B. C. Radiological Society and the B. C. Councillor to the Canadian Association of Radiologists. Currently he chairs the Committee of Heads of Radiology in the Province.

The review of the Radiology Department, which took place within a broad framework, included a request to assess the relationship of the Department to the Hospital, the Medical Staff and the private office. He had agreed to serve since a British Columbia radiologist with experience in a similar or slightly more advanced situation was needed. He felt that the Hospital was in a state of transition and that a constructive review would be a helpful impetus. Dr. JC thought his recent experience with transition at the Royal Columbian Hospital would be advantageous. The team attended the Hospital on November 15 and 16, 1990. He had not met the other members of the team previously although he had received a number of documents prior to interviewing. The interviews were sometimes held with all three reviewers and at other times held by individual reviewers. Dr. JC had known some of the members of the

Department from previous contact while in training or while he was a member of the staff at the Vancouver General Hospital.

While the team members met frequently during the review and discussed their viewpoints during the debriefing, Dr. JC was asked to submit a written report to Mr. G, the head of the team and did so the following week.

Mr. Hinkson's attempt to have the Report of the review not accepted in evidence was rejected by the Panel. It was Mr. Hinkson's contention that Dr. JC was not an author of the Report since his name did not appear on the final document but ample evidence was submitted demonstrating that many of Dr. JC's comments were quoted verbatim in the final report even though Dr. JC's name was not included in the authorship. Dr. JC had an opportunity to edit the report and did so. His agreement with double reading of mammography was not included but, aside from that, Dr. JC found nothing inconsistent with his own conclusions in the final report.

Dr. JC stated that teamwork was mandatory in the dynamics of a radiology group, far more so than in clinical divisions. He felt it essential for the trust that was important in continuity of the working relationships as one radiologist takes over the work of another. With such trust good ethical practices are essential, even if there are disputes between individuals. In assessing the Department, Dr. JC felt that there were examples of compromise of patient care resultant from breakdown of communication between radiologists. As well, it was his conclusion that the split between the Appellant and Dr. N was irreversible. Dr. JC suggested that the Hospital would be "shooting itself in the foot" if it insisted that all radiologists at the Hospital work there full time since it would deprive the Hospital, and therefore the community, of a number of subspecialty services. Nevertheless, despite the fact that the private practice allowed a broader base of radiologists for the Hospital than would otherwise be the case, he stated that the financial aspects of the private practice must be kept entirely separate from the Hospital and decisions that the Hospital might make.

Regarding recruitment, Dr. JC stated that the disputes in the Department of Radiology at the Hospital were well known in the broader radiological community and would certainly impede satisfactory recruitment of a director or a staff radiologist.

In cross examination, Dr. JC denied that he had singled out the Appellant and Dr. C for criticism despite hearing criticisms of others, citing as examples comments made concerning reporting of mammograms by those apparently not competent to do so and criticism of Dr. N's supervision of the radiologists. As well, he observed the interviews of some technicians while sitting in on the interviews conducted by Mr. G. There he heard criticisms of other radiologists which he considered justifiable. Some members of the Department considered

good in some areas might be working in areas where they had limited ability while others worked well within appropriate parameters.

Dr. JC stated that he accepted Dr. L's opinion that the Appellant had a personality problem.

In response to a suggestion that Dr. N had failed to attract good people to the Department, Dr. JC noted the success of recent appointees and commented that the radiologists who had been criticized were appointed prior to Dr. N becoming Head of the Department. As well, Dr. JC pointed out that being in a department for only two days limited one's ability to judge both the competence of individuals and their level of function.

He stated that he felt that the difficult interpersonal relationships were a result of many factors. He accepted that the difficulties between the Appellant and Kelowna Radiology were a factor but he also thought that the Administration of the Hospital was partly responsible. He recognized that the fiscal matters between hospital and private practice should be separated and that, on sale of a share, there should be no value for the hospital portion of the practice.

He recognized that the Appellant deserved a fair hearing and did not know if he had received one. As well, he felt that the hospital radiologists should have two agreements, one with the Hospital regarding the relationship between the radiologists and the institution and a second between the radiologists to confirm their relationship, one to another, and how they would function together to respond to the institution's needs.

Dr. JC commented on the need for new radiologists to work well with the others and, should more senior be taking advantage, to discuss the problem with the authorities of the institution. Regarding the interview of the Appellant by the team, Dr. JC stated that Mr. G had asked most of the questions. While the interview did include discussions on the financial arrangements with the private partnership, there were many questions of a general nature regarding the Department of Radiology as well as questions about the Appellant's relationships with other radiologists and the functioning of the Department. Parallel situations in other hospitals and other partnerships were discussed with the Appellant who showed that he misunderstood arrangements in other groups of radiologists.

Responding to questions from members of the Panel, Dr. JC stated that the terms of reference of the review were far too broad to complete in two days so the review team tried to develop recommendations that might be used to improve the Department quickly. Despite a focus of the recommendations on the Director of the Department, Dr. JC felt that the main problem was that the split between the two factions was so irreversible that it was interfering with recruitment and with the functioning of the Department. It was the first problem to correct.

Statements from three family practitioners were filed by Mr. Webster stating that, while they appreciated the Appellant's skills as a radiologist, they considered that the interpersonal difficulties within the Department were difficult and that the Appellant should not return to the Department while Dr. N was still a member.

The Appellant was the next witness. He reviewed his Curriculum Vitae and, in particular, material listed as "Work in Progress" at the time of his original application in 1988. The material associated with this information was given to the respondent's solicitors for examination regarding its completeness and the accuracy of the material stated in the Curriculum Vitae. The matters were canvassed in some depth. As well, there was questioning about his failure to pass the examination of the Medical Council of Canada at the time of his first sitting in 1980. It was the Appellant's evidence that he had pneumonia at the time and had been unable to complete the examination. He stated that he had passed the examination when he next sat it, which he suggested was the following year but also said he was unable to remember the exact date since it was not important to him. While issue had been made of his failure to pass his specialty examination at the first writing, he stated that he had been successful on the second attempt, one year later.

He said that he had made a deliberate decision not to apply for a position as a radiologist at a university centre since he enjoyed involvement with patient care more than research, despite being interested in research secondarily. The Appellant recognized that it was easier to transfer from an academic setting to a community setting than to make the opposite transition. He thought that Kelowna had the equipment and patient base needed for the type of practice which interested him and of importance also was the fact that Kelowna offered a good environment for his family.

The Appellant denied telling Dr. L of being offered positions in the United States, including one for one million dollars, stating that he had never considered looking to the United States for employment; however he stated that one day when the two were looking at journals, he had commented on two advertisements, one offering one million and the other one-half million dollars annually. He stated that he had considered many potential positions in Canada, narrowed them to a maximum of six and visited each site one or two times as he was deciding where to concentrate his attempts to obtain an appointment. He had gone to the Hospital on many occasions while visiting his father who was a Kelowna resident.

The Appellant was appointed to the probationary medical staff of the Hospital on November 9, 1988. He worked part time in the Hospital and part time at the private offices of Kelowna Radiology where he was an Associate. During his first year he received \$110,000 as payment for work in both the Hospital and the private office. At the time, payment for hospital work was made on a fee for service basis but the total amount generated by radiologists' activities

was paid to Kelowna Radiology rather than to the individual radiologist whose activities had generated the funds. At the time of his appointment, it was the Appellant's understanding that the contract for radiological services was between the Hospital and Kelowna Radiology. He stated that an evaluation of his work, undertaken one-half to two-thirds through his first year, had been favourable and that he found the atmosphere in Kelowna to be very collegial. He was asked to join Kelowna Radiology.

The first meeting to discuss the proposed partnership was between Dr. M, Dr. N and the Appellant in August 1989. With a favourable report about his activities, the Appellant looked forward to a more permanent relationship but he found that the terms which were offered were confusing so he asked for a letter detailing the proposal which, when it arrived, was inconsistent with his original understanding.

When originally offered a position, the Appellant stated that he understood that Kelowna Radiology had a contract with the Hospital and that the purchase price for a share in Kelowna Radiology included the cost of good will not only in relation to the private practice but also to the hospital component since the activities were as one group. Of the proposed \$170,000, \$90,000 was considered as the cost of equipment owned by Camos while the remainder was for good will. He stated that he felt that if his first year in Kelowna was satisfactory and he was invited to join the group, then the funds to pay for his share would come from the monies held back from payment for work done during his time in Kelowna, beginning from his first day. It was his evidence that the \$110,000 which he received for the first year's work represented less than a third of the billings resultant from his activities.

However, the Appellant stated that, when the discussions about partnership developed, he found that the situation expected of him was very different from all other similar situations across Canada. In other centres the funding for shares in a professional group practice would originate from monies "held back" from funds generated by the new partner during his pre-partnership activities. Only when an insufficient amount of money had been generated in this manner would funds change hands as the partnership agreement was completed.

Because of the differences, he contacted Administration of the Hospital to determine how to respond and also sought legal advice. Dr. W, the Chief of Staff told him, according to the Appellant, that good will in the Hospital was not for sale. Negotiations continued over the fall of 1989 and on to February 1990 with business communications between the Appellant and Kelowna Radiology being undertaken by the Appellant's solicitor. It was the Appellant's evidence that in late February 1990 the members of Kelowna Radiology gave him an ultimatum to pay the amount required by February 28 or leave the association with the private group. The Appellant's reply to this perceived demand was a lengthy memorandum, dated February 28, 1990, in which he

detailed his concerns regarding the difficulties he could see within the partnership, the inappropriateness of buying a share which he thought included a payment for goodwill within the Hospital, the inability of Kelowna Radiology to attract good people and the failure of the members of Kelowna Radiology to recognize that the money "held back" from his professional efforts should be applied to the purchase price of his share. The memorandum ended with the statement:

...you have left me with no alternative but to seek employment elsewhere effective your deadline, March 1.

At that time, the Appellant felt that it was well known that he was not interested in the routine work at Kelowna Radiology but wished to concentrate in neuroradiology, the area which interested him and would necessitate his practice being only in the Hospital. As well, it was the Appellant's evidence that he had received no prior criticism about the quality of his work and that his relationships with both the radiologists and other physicians at the Hospital had been excellent.

On March 1, 1990 the Appellant also withdrew from the Hospital activities, having notified the Hospital of the problems he was experiencing. Over the next two or three months after several communications with Dr. W, he was told that he was still considered a member of the Hospital's staff and could return to work at the Hospital as an independent practitioner. It was the Appellant's evidence that he probably learned of this during a conversation with Dr. W and likely late in May. He became aware that his departure could be considered a leave of absence but that he could not be absent from the Hospital more than ninety days.

Late in May, the Appellant did notify the Hospital that he would be available on May 29th and asked to be included in the radiologists' schedule from that date. It was found impossible to include him before June 5. Knowledge of the Appellant's planned return prompted a letter from Dr. N to Dr. DC, then Chairman of the Medical Executive. This letter commented on the difficulties which the Appellant had caused before his departure, many "fanciful" accusations made by the Appellant since that time and the perceived difficulties which would develop upon the Appellant's return. Dr. N asked that the return be prevented and that the Hospital face the situation. Nevertheless, Dr. N concluded the letter saying:

Notwithstanding all that has happened between us and the Appellant, we do not wish to adversely affect his reputation in any way if we can help it. For that reason, we would request that this letter not be circulated any more widely than is absolutely necessary.

In discussing this letter, the Appellant denied having been told by Dr. N of problems which had resulted from his actions. As well, he denied criticizing

other radiologists, stating that he tried to avoid the problems within the Department.

The Appellant actually returned to the Hospital on June 8th. Problems which developed regarding scheduling and distribution of income were discussed before the Panel. The Department continued the pattern of distribution of income on the basis of equal shares until the Board of Trustees became involved and directed Dr. N to pay each radiologist the funds which he had earned and to schedule the radiologists so that the Appellant had an equal share of work which meant one-sixth since, by July 1, Dr. L had begun then. The Appellant stated that difficulties within the Department prompted him to write Mr. RA, the Vice-president of Professional Services, on June 28th reviewing a number of perceived problems and concluding by stating that the Hospital had to decide if it wished to continue its position as a community hospital or become a referral centre.

By a letter dated August 9, 1990, from Dr. N to Dr. W, a number of notes were made available; these were made during or following meetings which Dr. N had attended or of which Dr. N had been informed. The Appellant denied commenting to one of the Department nurses and reported at a meeting of Kelowna Radiology on February 15, 1990, that one of the radiologists would not be around in a year but would be replaced by a radiologist of the Appellant's choosing. The Appellant attributed the discussion about a "senior" radiologist's impending departure to Dr. N but agreed that he (the Appellant) may have discussed departmental improvements with the nurse but denied discussing the matter of a second neuroradiologist with her. As well, he stated that the need for another neuroradiologist was a matter previously discussed with other radiologists; he had been contacted about the potential of a position by a radiologist then taking a fellowship year at the Vancouver General Hospital. The Appellant agreed that he had the two hour meeting with Dr. N on June 10th included in the notes, but denied criticizing other radiologists during the meeting or stating that he had reported one to the College of Physicians and Surgeons. Instead, the Appellant stated that he had contacted the College to see if they were able to help conduct an outside review of the situation in the Department, a potential which he had discussed with Dr. W. He stated that the College felt uncomfortable about the situation in Kelowna but did not have the "...professional capability within the College to assess the issues". The Appellant agreed that the tone of the meeting was not difficult.

During the Appellant's evidence, eleven statements were admitted in support of his return to the staff of the Hospital. These were from six physicians (three from Kelowna and three from Vernon, including two radiologists for whom the Appellant had done locums) and five radiology technicians (three from Kelowna, one from Vernon and one from Shuswap, both hospitals where he had worked as a locum).

In recalling the conversation which he had with Dr. L on July 9, 1990, the Appellant stated that Dr. L had approached him asking questions about the then current situation. The Appellant stated that he had only given information which was commonplace at the time, stating that there had been no discussions about individual radiologists. He only commented about the overall situation in the Department. As well, he denied the implication that his Curriculum Vitae was misleading, stating that documentation of the work in progress had been submitted for assessment to the Hospital's solicitors during the hearing.

He went on to say that the reports he had of his work had been positive, whether from clinicians or other radiologists. He had an excellent working relationship with the neurologists and neurosurgeons, perhaps resultant from changes which he had instituted.

It was the Appellant's perception that Dr. N had made every effort to schedule radiologists so that the Appellant would do a minimum of neuroradiology and spend as little time as possible in the Hospital. At some times he was only doing neuroradiology one or two days a month instead of spending the majority of his time at that work as had originally been promised.

The Appellant stated that, following his return to the Hospital in June 1990, he had many conversations with Dr. W who encouraged him to document anything that Dr. W could use against Dr. N but that he had declined, giving as his reason everyone knew about the situation and things should not deteriorate to the point of trying to hurt an individual. The Appellant did state that Dr. N had been rigid in the matter of scheduling so that, while he only worked one or two days each week, it was always on the same days so that he could not have any blocks which would allow either conference time or holiday periods. During the first few months as an independent radiologist within the Hospital, the Appellant found it increasingly difficult; as well, he was becoming more concerned about the quality of care in the institution particularly since radiologists (including himself) were not being scheduled in the area of their expertise. He was anxious for a completely unbiased review of the Department and informed the Administration of this. The Appellant believed that Dr. S was an inappropriate choice to do the review. When the Peat Marwick Stevenson & Kellogg Interim Report was submitted, the Appellant was away from the Hospital but, at the request of Dr. W, made comments about what he perceived could be the course suggested by the reviewers in which he stated that the Hospital had many difficult decisions to make, that there were major philosophical differences between himself and Dr. N and that the document appeared not to give the Hospital adequate direction.

The Appellant received a letter of reappointment for the 1991 year dated February 5, 1991. He denied knowledge that the appointment of all radiologists was to be on a month-to-month basis until the problems within the Department were sorted out. By then he stated that he was being scheduled

in neuroradiology only one or two days a month. When he received notice of renewal of his privileges for the month of May 1991, he considered it tantamount to cancellation of the privileges he had received in February. He agreed that he had stirred up many issues within the Department including scheduling, quality of care, and procedures being done by those without specialized training. While he denied direct knowledge of a plan to terminate his privileges on Oct. 1, 1991 as relayed to Dr. K in the late spring of 1991, he did recognize that there was an effort underway to remove him from the staff of the Hospital.

In response to questioning about his last significant conversation with Dr. L during which, in Dr. L's evidence, the Appellant was reputed to have said that there was an investigation underway by the Attorney-General, the Appellant stated that the conversation had not referred to the Attorney-General. Instead, he had stated that he hoped an impartial investigation into the Department of Radiology could take place. During that conversation, reference had been made to a psychic but the Appellant stated that he had only visited the psychic with a group of friends in 1985 or 1986 for an amusing afternoon. He denied following any direction because of this contact and denied discussing the matter with Dr. L in any meaningful sense. As well, he denied any prediction that Dr. N and Mr. T would be leaving the Hospital and that he, the Appellant, would become Department Head. It was his suggestion that the Department was the centre of discussion within the Hospital, that anything could happen and anyone there could be affected.

He confirmed that he was taking action against Kelowna Radiology to recover funds and that Dr. H, no longer a partner, was included in the suit. He also explained his actions during the July 1991 long weekend stating that he had reviewed the ultrasound requisitions which had arrived, consulted the staff on the involved wards and done the urgent studies. As well he explained the delay in doing an intravenous pyelogram, insisting that he had been at the Hospital for many hours each day of that weekend despite the technologist being unaware of his presence. He responded to questions about a letter he sent to Dr. N on August 12, 1991 by stating that it was a response to the frustration of numerous attempts on Dr. N's part to inflame tempers while avoiding dealing with issues. As well, he stated that delays in reporting his cases resulted from two causes: one was the infrequency of his scheduling in the Hospital with films being placed for reporting following the day that the examination had been done while the other was that many films were given to him by the other radiologists who were uncomfortable reporting difficult cases.

The Appellant denied the statement made by Dr. B that the Appellant would fail to telephone on the day of an examination to report abnormal findings but also stated that it may well have been the case that he was not in the Department when Dr. B wished to discuss a study, again because of the erratic scheduling resulting in his infrequent attendance at the Hospital following his return as an independent radiologist.

Other communications resultant from the differences between the Department Head and the Appellant were reviewed. As well, the situation when he was accused of denying assistance to Dr. C was canvassed with the Appellant stating that he was busy in an adjacent room, he reviewed Dr. C's films and, when it was possible, had gone into Dr. C's room where he found matters were satisfactory. He also stated that he was frequently called in during off hours to undertake the more complicated procedures which others were loath to do, suggesting that such situations occurred several times each week. In direct questioning of his reaction to Dr. L's evidence that the Appellant's comments suggesting the frequency of his call-backs by other physicians was grossly exaggerated, he explained that call backs do not always generate billing, especially when examinations have already been billed or when he was called by an emergency physician only for an opinion.

The Appellant was asked directly if he accepted any responsibility for the problems between him and Dr. N. While recognizing that every difficulty has two sides, he stated that until there were contractual difficulties between him and Kelowna Radiology there were no problems. However after February 1990, he felt that Dr. N had taken it upon himself to get him out of the Hospital. Despite that, he stated that he had no difficulty working in the Hospital and he continued working productively with all the radiologists even during periods of the worst animosity.

The Appellant suggested that letters he had written in frustration might better have not have been written. He felt that he had no difficulty working in the Department even when animosity was at its worst, that he had useful professional contact with other radiologists at the time and that nothing had occurred which could have been interpreted as disruptive to the Department. He could see no reason why he could not work in the Department if he were allowed to without being denied the opportunity to work in areas where he had expertise.

In cross examination, the Appellant's Curriculum Vitae was reviewed in detail. In particular, he was asked about the date he received his licentiate of the Medical Council of Canada, a general licensing examination. Agreeing that he had not obtained his licentiate after writing the examinations initially upon completion of medical school in 1980 because he had pneumonia, the Appellant thought that he had completed them successfully the following year but was unsure. He said that the licentiate was an essential qualification to obtain privileges to practice medicine but not a prerequisite for undertaking postgraduate training and the date he received it was of no concern to him. He agreed it was possible that the date of his registration with the Medical Council of Canada and therefore his successful completion of the examinations may have been as late as 1986, the date suggested by the registration number on his certificate.

Following completion of his basic medical degree in 1980, the Appellant took an internship limited to internal medicine followed by a four-year training period in radiology. There was confusion because of discrepancies in the dates given in his application to the Hospital for privileges but it would appear that the information given at the hearing was correct. Following the residency, the Appellant was unsuccessful in his first attempt at the certification examination of the Royal College of Physicians and Surgeons but succeeded the following year. He was employed as a locum tenens at various hospitals that year and until the end of June 1987 when he began a one-year period of neuroradiology fellowship at the Vancouver General Hospital. Following a locum period at that institution the Appellant joined the staff of the Hospital in October 1988.

The Appellant listed the studies which he considered part of neuroradiology, particularly as practised at the Hospital. There was questioning about the number of studies done at the Hospital and those doing them, particularly since he had been critical of performance within the Department and of the number of examinations undertaken by people not trained in that particular area. On February 28, 1990, he sent a memorandum to Dr. M and Dr. N which criticized the level of function of the Department, suggesting that it was like a community hospital instead of the tertiary level to which it aspired. The Appellant agreed that he was more interested in patient care than research and wished to limit his work to a hospital practice, stating that members of Kelowna Radiology were aware because of earlier discussions with them.

While scheduling rotated each radiologist to all "subspecialized areas" before his arrival, the Appellant stated that there had been a change after he joined the group since radiologists were assigned to areas of their interest. Even so he had not been doing the bulk of neuroradiology as late as February 1990. Although there had been movement in that direction, he recognized that he would not be able to limit his practice until the institution became a true tertiary care referral centre. He denied there had been discord with the other radiologists before his dispute in late February 1990 despite his constant frustration when he attempted to raise problems with the other radiologists. Among other things, that he was unable to obtain either conference time or holidays since times originally allotted were cancelled so that his senior partners could take vacations. Despite being upset at the scheduling patterns, he insisted that overall relationships were harmonious.

The memorandum dated Feb 28, 1990 was reviewed again, suggesting that the Appellant himself admitted to being frustrated and complaining about the scheduling problems on many occasions prior to that date as well as voicing repeated concerns about the standard of neuroradiology reporting. A letter dated May 30, 1990 commented on the unacceptably low standard of reporting as well as the treatment of newly recruited radiologists in the Department, referring to matters before February 28, 1990. The Appellant agreed that these two letters accurately reflected his feelings prior to February 1990,

stating that the matters had been raised at many meetings of Kelowna Radiology. Writing to Dr. N on August 12, 1991, the Appellant stated:

... The problems to which you refer are not of my making – rather, they arise from incompetent leadership and decision making on your part. These are problems which have existed ever since I came to Kelowna and despite my attempts to bring them to your attention on many occasion (sic), remain as problems three years later ...

The Appellant recognized that his letter was a result of his frustration but it did represent his attitude at the time regarding Dr. N's failure as a departmental director.

At the time of his absence from the Hospital in the spring of 1990, the Appellant stated that he initially considered the private practice and hospital practice to be one and the same so to leave one necessitated not continuing the other. When attempts at a reconciliation with Kelowna Radiology failed, he stated that it was his idea that he might be able to continue at the Hospital and that he had approached Dr. W about the possibility sometime in May. The Appellant agreed, on questioning by the Hospital's counsel that, in the fall of 1989, he had learned from his solicitor that the contract between the radiologists and the Hospital had expired at the end of 1988 and that negotiations for a new contract had not yet been completed. He agreed that he had signed a letter requesting that the Hospital pay the fees generated by his service directly to Kelowna Radiology and that he could have requested a change in this payment route which would have resulted in the payments being made directly to him. Despite knowing there was no contract and that he could be paid independent of Kelowna Radiology, the Appellant insisted that he did not know until May 1990 that he could work independently within the Hospital. The minutes of a meeting of the Medical Executive attended by the Appellant on March 13, 1990 were reviewed, including a statement saying:

... Dr. W said that since [the Appellant] still had hospital privileges, he could work fee for service in the Hospital. [The Appellant] said that given the nature of radiology work, the only feasible arrangement is for the radiologists to pool their income ...

Nevertheless, the Appellant insisted that he was unaware of his right to practice within the Hospital until May 1990, stating that he had signed the letter directing that his income be given to Kelowna Radiology since he was under contract to them and was negotiating with them to become a partner at the time the letter was sent.

On further questioning, the Appellant agreed that, at the same March meeting of the Medical Executive, Mr. F had asked whether he could come back to work. While the Appellant said he would only get two or three days a week work, the meeting did consider the question of his return to the Hospital. He

felt that the potential was only being explored and whether or not he could return was unclear. He felt it was unrealistic to return in the milieu then current.

It was the contention of the Hospital's solicitor that the Appellant had withdrawn his services in an attempt to put pressure on the Hospital and Kelowna Radiology to resolve the dispute about the terms of his share purchase. Dr. N's letter to the Appellant dated May 30, 1990 which had been entered as an exhibit was reviewed. It suggested that the Appellant did not take a leave of absence since he had indicated to the Hospital by letter on February 28 that he was leaving to seek alternate employment and discussions in March had indicated he would not be conveniently available for over 90 days. Because of this and despite the fact that he was to be available to work within the 90 days allowed for a leave of absence without prior application, Dr. N contended that the Appellant should not return to the Department. The Appellant agreed that it was quite clear that Dr. N did not wish his services in the Department. Commenting on the attitude, the Appellant stated that he expressed a desire to end the impasse with one member of Kelowna Radiology early in the time he was away from the Hospital but heard no more from him. He agreed that any solution would have to come through his lawyers or through the Hospital but felt, by mid-May, that it was obvious Kelowna Radiology had no intention of resolving the problems so he would have to make a move without Kelowna Radiology. At the time, he knew that he could not expect a neuroradiology department at the Hospital but wished to work in Kelowna hoping that the situation might become more amicable soon after. He was anxious to return to work and knew he had the right to do so, given the Medical Staff Bylaws.

The Appellant confirmed his May 30, 1990 letter to Dr. N which stated that Dr. N "...had total disregard for fairness, equity and honesty ..." in actions respecting Dr. C and himself. He felt that Dr. N mismanaged the Department, agreeing the language of his criticism was not that which he would offer about a department where there was teamwork but suggested that it described the inappropriate management style of the Director of the Department. The letter was also very critical about standards. As well, he stated that several ethical concerns arising from his situation were being addressed by the College of Physicians and Surgeons of British Columbia, including both the financial dispute with Kelowna Radiology and a suggestion that members of Kelowna Radiology had advised radiologists at the Royal Inland Hospital in Kamloops and the Greater Victoria Regional Hospital Society (the only other hospitals in the province where neuroradiology might be practised) not to consider engaging him.

With the notification to the Hospital of his intention to return, the Appellant also stated that he wished to be paid directly rather than through Kelowna

Radiology. However, he was clear in stating that he wished his equal share of the total payment to physicians in the Department, not the actual fee for the services which he had done. It was his contention that use of a scheme where everyone was paid the precise fees which he had earned would result in an inappropriately competitive situation. However, the Hospital decided that it would pay the Appellant for the examinations which he actually did, less an administrative fee. Accompanying this instruction to Dr. N was advised that the Appellant should have an equal share of the work available in the Department.

The Appellant's wish to practice neuroradiology on a full time basis, considering especially that he was the only one in the Hospital trained in this area, was accompanied by criticism of Dr. N's lack of training and ability. The Appellant stated that the complications in neuroradiology which he had seen at the Hospital were Dr. N's, a matter he had not discussed with others. While admitting discussing criticisms of the general quality of work with Kelowna Radiology members, he denied making these criticisms elsewhere. It was his contention that Dr. N was doing far too much of the neuroradiology despite lack of training while he was available but doing a very small percentage of the work. While stating that Dr. N was an excellent general radiologist the Appellant felt that, at best, Dr. N's techniques in neuroradiology were outdated. The Appellant contrasted his skills following a year of specialized training to Dr. N's following a couple of weeks of refresher courses. The Appellant stated that Dr. N had also requested others to direct procedural radiological examinations to himself (i.e. Dr. N) thus ensuring that the procedural fees went to Kelowna Radiology.

In April 1991, the Appellant felt that the atmosphere in the Department was Orwellian as a result of Dr. N's approach. Two months earlier the Appellant had written to Dr. W regarding the interim results of the radiology review stating that the problem not looked at by the review team was the "...theft, by a department director, of substantial hospital generated funds from colleagues" In the same letter, the Appellant criticized the situation where, he perceived, an outside clinic controlled the development of the Department. He advised the Hospital to appoint a hospital radiology group and felt that the Hospital had to make a decision regarding the future nature of the Department, supporting its development in a manner which the Board of Trustees thought appropriate. The Appellant felt that the report did not offer solutions in an attempt to mollify everyone. At this juncture, he suggested that the management approach was favouring members of Kelowna Radiology financially but that he should have been allowed to work the same total number of days in a month at the Hospital as the Kelowna Radiology members were able whether their time was spent at Kelowna Radiology, the Hospital or a combination of the two. It is clear that the Appellant felt that Dr. N, not working full time at the Hospital and being a member of Kelowna Radiology, was in a position of conflict. Nevertheless, the Appellant felt that the problem

may have been based in the difficulties which Dr. N was having with his partners while changing the direction of the Department.

The Appellant agreed that the Hospital had made a decision about the direction which it wished the Department to take and who should be the Director. He also recognized that decisions, including staffing decisions, would flow from that. Again the decision was to be between development of a tertiary referral approach and a community hospital approach. He recognized that, by his persistence that the Hospital should proceed with development as tertiary care institution, he was stirring things up, although not intentionally. His reaction was in response to the Hospital's request for his opinion.

Because of the April 1991 notification of one month's renewal of privileges, the Appellant sought legal counsel to learn how to respond. It was his contention that he already had privileges for one year but that the letter was tantamount to cancellation of those privileges, an act that should have been undertaken only with due process. On April 13, 1991, after receiving the first of the monthly letters of reappointment, the Appellant wrote to Dr. W complaining that he was being kept from doing neuroradiology and commenting on the concerns referring physicians had with the complications resultant from studies by other radiologists. He also stated that many physicians had approached him to offer their regrets at his impending departure. He commented on how he had spent "... the last fourteen months trying to sort out a mess at my expense ..." which, on questioning he interpreted to being the financial mess at Kelowna Radiology rather than the problems related to the Hospital's Department. He felt that his part in the activity was only a response to others and that he did not play a proactive role in the period following February 1990. As well, he stated that since his return to the Hospital in June 1990 he was gradually eased out of most of the neuroradiology done in the Department.

Despite review of Dr. N's evidence, the Appellant repeated that he was being scheduled out of neuroangiography and other neuroradiological procedures when he considered the number of days he was being scheduled into rooms where those procedures were undertaken rather than actually counting the examinations he had done over a period of months; he considered the fact that he actually did more than the five to ten percent was more by accident than design. Evidence was reviewed demonstrating that from February through August 1991, the Appellant did 37.5% of the neuroangiography, despite working in the Hospital only a couple of days each week.

The Appellant agreed that there were major discrepancies in Dr. L's description and his description of the same situations. He denied any aspiration to become head of the Department.

The Appellant denied that his letter of August 12, 1991 addressed to Dr. W was threatening Dr. W but stated that he realized at the time that people were trying to "throw" him out of the Hospital. In it, he also stated that any

decision to remove his privileges would require confirmation by all the appropriate appeal bodies, "...to and including the Provincial Cabinet" On that same date he had written a very critical letter to Dr. N regarding many incidents which, it was suggested, Dr. N had not addressed but instead centered the discussion on the perceived problems of the July 1 long weekend. It was the Appellant's feeling that Dr. N had been instructed by Dr. W to "dig up" complaints against the Appellant. Despite this, the Appellant stated that he continued to consult Dr. N about interpretation of examinations and Dr. N also continued to consult him.

In reexamination, the Appellant stated that it was his understanding that the Hospital had sought advice from Ms. Janice Dillon when the potential of his return to the Hospital in June 1990 had arisen and that she stated it was within his rights to do return. He reviewed the methods of payment potentially available, agreeing that he wished to be paid on a percentage basis for reading films but on a fee for service for procedural examinations.

The Appellant was questioned by the Panel. He stated that there was no formal quality assurance process underway in the Department but he, on his own initiative, had reviewed the efficacy of the pediatric protocol which he had established. He suggested that in one letter he had attempted to initiate such a process but it had not been accepted by Dr. N. While the Appellant assured the Panel that day-to-day working conditions were amicable, despite his concerns about the quality of procedures and the reporting of results, he stated that there was no forum for discussion of problems. The Department did not have regular monthly meetings where his concerns could be discussed and therefore he reported them in writing. Between June 1990 and September 1991 there were only two meetings of the Department despite the bylaw requirement for monthly meetings. There were no formal meetings of the radiologists where clinical information was exchanged or techniques discussed. Any exchange was informal, in contrast to the regular rounds in the Neuroscience and Pulmonary Departments.

The Appellant explained that the absence of support by the neurologists for this appeal was due to friendship of those staff members with Dr. N and their wish not to become involved in the dispute. He denied discussing the issues with those individuals.

The Appellant explained his failure to continue developing the "Work in Progress" reported in his 1988 Curriculum Vitae by the difficulties in getting time off to go to Vancouver to work with the others involved in the projects.

His failure to remember the date when he had written the licentiate examinations for the Medical Council of Canada was explored with the Appellant repeating that the examination had not been an issue of importance was not a landmark and he just wrote it sometime when it had been convenient. He simply did not remember the date and felt that it was no

concern in the scheme of things. Had the examination been a radiology examination, he would have considered the date a landmark.

The Appellant has been working at short term locum tenens positions since October 1991, hoping that he can return to Kelowna; he has not wished to accept another position when he might be successful in his appeal. He has not wished to uproot his family.

The question of his relationship with other radiologists and the matter of trust between physicians was reviewed at some length. The Appellant suggested that return to the Department could be satisfactory after a short adjustment period while financial matters were settled. He denied participating in discussions with any nurse, technician or other physician that would have resulted in development of two camps within the Department although he suggested that another radiologist who had since left the Hospital did so and may have aided in the development. He stated that he still would prefer to work full time within the Hospital, a situation which he believes would allow continuity of care and better interchange with other physicians. This would also allow him to maintain his skills at a superior level.

Upon questioning about the financial advantage of doing procedures with an invasive component, the Appellant said that the fees involved were minimal but agreed that they were billed by the radiologist involved in the study. He also said reporting of any invasive procedure was done by the radiologist who did the procedure and explained that, since he might do a procedure one day and not be in the Department for several days, he would not be available to discuss a procedure with the physician who requested it; this could be interpreted as slow reporting and was, in his opinion, poor patient care.

Evidence of Dr. H, a radiologist on staff during most of the Appellant's tenure but now retired, was given by a videotape. Dr. H stated that he had never heard the Appellant criticize other radiologists and was unaware of any incident when the Appellant had criticized other radiologists' reports. He stated that he felt that neither the Appellant nor Dr. N would compromise care of patients because of animosities toward one another, despite concern expressed by the Peat Marwick Stevenson & Kellogg review that such might happen.

In cross examination, he agreed that factions were developing between the Appellant and Dr. C on one hand and the other radiologists on the other. He recognized that all radiologists did radiology so their work overlapped and that he and the Appellant also both did computerized scanning.

Argument was heard on January 16, 1993, one month after conclusion of the second three-day session of the hearing.

When presenting the case for the Respondent, Mr. Webster reviewed "factual milestones," recognizing that the matters reported in the minutes of the Medical Executive meeting held March 13, 1990 were open to debate. The

Appellant was in attendance at the meeting where the fact that he was still on staff of the Hospital and could return at any time to take part in his "share" of the work was addressed. In response to this suggestion, the Appellant was reported as having said the only feasible arrangement for payment of radiologists in the system then in effect was to pool income.

The Appellant's credibility was considered a major issue by the Respondent and the question the Hospital considers important to answer in this case is "what is best for the Hospital and therefore the community which it serves." Emphasis was made that the issue is not one of the Appellant versus Dr. N, a difference which was described as "puerile" during evidence. It was the decision of the Board of Trustees that the problems in the Department had to be resolved and that removal of the Appellant from the staff of the Hospital was the only manner in which they could be solved. The Hospital felt that the differences between the Appellant and the Department were irreconcilable.

The Hospital agreed that comments by Dr. S of Toronto giving an opinion on how the difficulties might be resolved without visiting the Hospital, were of no value. However, the Hospital has accepted much of the advice resultant from the Peat Marwick Stevenson & Kellogg Report undertaken in November 1990. Advice to seek an outsider to become Director of the Department was not followed for pragmatic reasons while the medical staffing changes which were advised, as well as some of the management changes, have been followed. On balance the Hospital decided to continue the pattern of having their radiologists work part of the time in the Hospital and part of the time in practice outside the Hospital considering it the best manner in which to ensure that the maximum number of radiologists with individual subspecialties was available for the Hospital. In this process, it was determined that the greatest difficulties related to the Appellant's continued presence since the other radiologist who had not fit into the new scheme had accepted the advice to seek work elsewhere and had left.

As a result of the Report, which the Hospital submitted was written substantially by Dr. JC, the Department has been strengthened and Dr. N's performance for his probationary year was such that he has become the Director of the Department. New radiologists have been appointed and the Department is working well. The Hospital is satisfied that it made the correct decision in giving Dr. N an opportunity to manage the Department with a stronger mandate combined with a significant increase in the time which he spends in the Department. The ratio of hospital practice as opposed to private practice has been individualized so that the abilities of all radiologists can be used to good advantage.

Mr. Webster contended that the Appellant was never interested in private practice but was taking the opportunity of the group practice of Kelowna Radiology with its funding mechanisms to further his own career in a hospital outside a university since his interests are clinical rather than research. The

contention of the Appellant that he was comfortable with the situation until the February 1990 meeting with Kelowna Radiology was seen as inaccurate since his communications after that date were firm in their description of frustrations long before the February meeting. It was suggested that the difficulties in the spring of 1990 were in large measure a symptom of his frustration and that he was unable to accomplish his aims within his own time frame. On his return in June 1990, he realized that things "just were not going to work." It was suggested that there is not now, nor will there be for many years, a patient base that would allow one neuroradiologist to devote up to 80% of his time in this subspecialty.

It was stated that the concerns of the Department employees were demonstrated by Ms. CS's complaints about the Appellant's performance on the July 1st weekend in 1991 with the written reply by the Appellant, which was very critical of Dr. N's leadership, as much an exhibit of the Appellant's inability to obtain what he wanted from Kelowna Radiology as a concern about the situation in the Hospital. It was pointed out that the Appellant did agree this communication exposed the frustrations which he had since his arrival in Kelowna. As well, it was noted that his evidence was in conflict with the evidence of Dr. N, Dr. L, Dr. K, Dr. B, Ms. D and Ms. CS. The Appellant's initial evidence that he was unaware of his ability to return to work at the Hospital within the 90-day period of the leave of absence was also pointed to as another example of the lack of his credibility, given that on direct questioning he had admitted that he was aware that he could return at least by March 13, 1990, when he attended a meeting of the Medical Executive.

Despite the aggressive criticisms which the Appellant made of the Departmental management and the speed of change toward a more specialized pattern, the Hospital has decided to move more slowly and maintain the larger number of radiologists on staff than would be possible if radiologists worked full time in the institution. This approach is working well. The problem of the Appellant's disagreement with the approach will resurface if he is returned to staff.

The Appellant's credibility was again questioned regarding his statement to Dr. L that he had reported Dr. H to the College of Physicians and Surgeons on an ethical issue when it would appear that the conversation with the College consisted only of a request for help with difficulties in the Department. The College's response suggested a review might help but stated definitely that problems associated with management of the Department were outside the purview of the College.

Mr. Webster said that he had observed that, when the Appellant was questioned about a conversation which was purported to have taken place and its contents appeared to be to the Appellant's disadvantage, he would either deny that the conversation had taken place or turn the conversation around completely so that it would appear that the other person involved had

originated the idea in question. It was felt that this behaviour places his reliability in doubt, particularly since the dramatically opposing views in recollection became obvious as evidence was explored.

It was Mr. Webster's contention that the Panel should examine the potential of the problems which witnesses stated could result should the Appellant return to the staff of the Hospital. He felt that the Appellant would not change in his approach and that the others in the Department would not accept him as he is. Mr. Webster questioned whether or not the Appellant really appreciated the facts of the situation, stating that a lack of trust and respect persists. It was Mr. Webster's contention that the Hospital is making progress which would be impeded should the Appellant return but at the same time he expressed a hope that the Appellant could find a position that suited his talents so that the current problems could be forgotten.

Giving argument for the Appellant, Mr. Hinkson suggested that the problems in the case are really problems between Dr. N and the Appellant because the Hospital has made Dr. N the Director of the Department. It was suggested that a better approach would be to give the Appellant credit for the changes which had resulted from his criticisms instead of criticizing him for exposing an intolerable situation which Kelowna Radiology had forced upon the Hospital.

It was stated that many of the problems could be traced to Dr. N who perpetuated them by constant reporting. It was the contention of counsel that the Appellant had no alternative but to react to outrageous allegations with the worst being those about his Curriculum Vitae. Comments were made suggesting that bias in the evidence given by Dr. L and Dr. K resulted from their perceived loyalty to Dr. N. As well, it was stated that Kelowna Radiology, as represented in the Hospital by Dr. N, considered itself to be the arbiter of who would receive an appointment at the Hospital, suggesting that this Panel should mandate Dr. N's activities should it grant privileges to the Appellant.

Further problems were thought to be related to the financial ultimatum of February 1990 regarding the Appellant's purchase of a share in Kelowna Radiology and Camos. At the time of the March 13, 1990 meeting of the Medical Executive, everyone thought that the Appellant was a fine radiologist but Dr. N worked to destroy the Appellant's potential of continuing in the Hospital because of the financial differences which had developed with Kelowna Radiology. As well, the different financial arrangements with Dr. L, upon his appointment, were used as an example of the unfair manner in which the Appellant had been treated.

It was contended that Dr. N did his utmost to ensure that the Appellant did not stay at the Hospital and in the process acted unprofessionally. As well, Mr. Hinkson stated that it was surprising that Dr. K had been told in June that the Appellant would be gone by October when the Board of Trustees was not asked

to vote on a motion to remove the Appellant from staff until their meeting on October 1, 1991.

Counsel for the Appellant suggested that Kelowna Radiology was, in effect, selling privileges to practice in the Hospital and continues to do so, albeit at a lower rate. He felt that the lack of a contract or contracts between the Hospital and its radiologists was resultant from the perceived conflicts. It was contended that Kelowna Radiology did place its own fiscal interests first as evidenced by the fact that it received mammographic equipment instead of the Hospital and that Dr. N's inadequacies had been confirmed by criticisms of the Peat Marwick Stevenson & Kellogg Report which noted inadequate coverage, inadequate staffing and a poor response to needs. As well, he considered that Dr. N in his position as Director from 1988 to 1990 had performed as inadequately as his predecessor. The problems in the Department were not new but only the Appellant complained about them. It was suggested that Dr. N was not at all interested in the Appellant's abilities but only motivated by an attitude that only members of Kelowna Radiology should have all the income from the Department.

It was stated that the entire case against the Appellant was based on evidence from Dr. N, with the evidence of Dr. L and Dr. K not being independent. Dr. L's evidence was thought to be evasive and inaccurate, if not misleading while it was contended that Dr. K was only appearing to support Dr. N. In contrast, the letters that had been submitted by the Appellant's counsel had, except for one, been supportive of the Appellant's ability and manner.

The suggestion was advanced that the Hospital had delegated its responsibilities in appointments to the Department to Kelowna Radiology and had taken the path of least resistance in removing the Appellant from the staff while protecting the old boys who had been on staff longer. It was not the Appellant who had instigated the problems but he was the one who had reported them.

It was admitted that the Appellant's actions had been inappropriate but, since he was reacting to situations which he had not instigated, the two problems should be considered together, freeing the Appellant of any implication of misdeeds. Appointing the Appellant to the Hospital without him having a membership in Kelowna Radiology was suggested to be to the Hospital's advantage since it would free the Hospital of its dependence on the private partnership. As well, despite changes in personnel since the Appellant's privileges have been removed, he has not been replaced and remains genuinely interested in returning to the Hospital. Should that be allowed, counsel stated that it was incumbent on this Panel to restrict Dr. N's activities in relation to the Appellant since Dr. N would likely not "change his stripes". It was stated that the Hospital had not considered its options when removing the Appellant's privileges and could, instead, have placed restraints on Dr. N.

In reply, counsel for the Respondent stated that the potential for a conflict of interest was obvious and that the Hospital had made its decision about whom it would trust. As well, he repeated that the moves of the Hospital in relation to the Department were deliberate, recognizing that change does take time and that they were also awaiting the Peat Marwick Stevenson & Kellogg Report before taking any action. Timing of the review had been delayed by the appointment of a new President of the Hospital. Dr. N knew that his actions would be scrutinized in the process of the review and contended that the dispute with the Appellant had delayed necessary changes. Dr. N had taken the leadership role as evidenced by the recent confirmation of his position as Director following a period as Acting Director. It was counsel's contention that the Department is now running well with the necessary changes in direction underway.

Stating that Senior Management, not the Board of Trustees runs the Hospital, counsel said that the Administration had notified the Appellant in June 1991 that he should seek work elsewhere. As well, he stated that the Administration is not being browbeaten by Dr. N.

During the long and complicated hearing, this Panel has heard much conflicting material and, as well, information which must not be considered since it does not pertain to activities within the Hospital. In particular, evidence which was presented in relation to Kelowna Radiology is of no interest to us except when actions within that group of radiologists impinge upon the activities of the Department. We are not here to consider financial disputes or other differences between radiologists and Kelowna Radiology. Those problems must be addressed in another forum. We must only consider the Appellant's application that he be given privileges to practice radiology at the Hospital under whatever proscriptions we make. As well, it was agreed that his professional capabilities were not in issue and they have not been considered.

Despite Mr. Hinkson's request that we place limitations on Dr. N's activities as Director of the Department, we cannot since we are without the authority to do that if we so wished. Authority of this Board is limited to deciding whether or not the Appellant should have privileges at the Hospital and, if so, what those privileges should be.

A matter which must be addressed relates to whether the Appellant's privileges were removed (i.e. the privileges granted for one year by the letter of February 5, 1991) or his month-long privileges were not renewed as a result of the Board of Trustees' action at its meeting of October 2, 1991. The outcome is identical since he no longer has privileges at the Hospital as a result of the action of the Board of Trustees. We need not define which process took place.

We agree that hospital privileges are not to be sold. Anyone assuming the practice of another physician must not automatically receive privileges any more than privileges be routinely refused for a physician who independently

establishes a practice in a community. This matter was discussed in detail in the decisions of this Board in *Aitken v. Penticton Regional Hospital* (1986) and *Byers v. Lady Minto Gulf Island Hospital* (1986). We agree with those decisions. However, these considerations cannot impede a hospital from deciding that one of its departments should be staffed with specialists on a part-time basis to enable it to obtain the services of a variety of subspecialists. What those physicians do professionally outside of the time they spend in the hospital is of no concern provided that such activities do not impinge on the smooth operation within the institution. We are satisfied that the Department now operates independently of Kelowna Radiology and is aware of the need to keep issues between it and the private firm clear of any conflict of interest. Purchase of hospital privileges is not mentioned in the Medical Staff Bylaws of the Hospital even though the Board of Trustees agrees with our attitude about the matter and appears to have said so through the Chief of Staff.

We cannot accept Mr. Hinkson's contention that Dr. JC did not share authorship of the Report submitted by Peat Marwick Stevenson & Kellogg. Ample evidence was submitted supporting the fact that he wrote a substantial part despite absence of his name in the authorship (where it should have been) and his disagreement with one matter which was not removed as he had requested. We accept his evidence as evidence of one of the authors of the Report.

It would appear from material presented during the hearing that the Hospital has not supervised or supported the management of the Department and that there may have been clinical situations which needed and still need significant improvement. For example, there should be quality assurance undertakings on a regular basis in all departments whether they are clinical or service areas. This has not been done in the Department. It is increasingly important as the Hospital develops into a more sophisticated institution. We also note that the Department is not holding the regular staff meetings mandated in the Bylaws of the Medical Staff.

As well, the Department appears to have been let down over the period between June 1990 and the spring of 1991 when the Appellant's significant complaints and aggressive criticisms to the Chief of Staff were listened to but not addressed in a forum such as a meeting between the Director and the Appellant. The situation would have been more constructively managed by a more aggressive administrative stance whether or not that approach would have avoided the situation we are now in. Constructive administration demands addressing issues. As well, the pattern of two year appointments for departmental directors seems wrong since so short a term weakens the ability of a director to plan and develop his department.

We agree with Dr. N's attention to documentation. If anything is to be remembered accurately, it must be recorded at the time. Any suggestion that by doing so he was just trying to build his case is unfair; he was being a

responsible administrator when documenting situations as they took place. Whether or not one agrees with his recorded perception, had he not done so his memory of events would be questioned.

It is difficult to be accurate in our assessment of the Appellant's relationship with the other radiologists and the Hospital before the issue of his share purchase developed. That is of limited consequence since this is a "hearing de novo" and, as such, we are here to judge only the current situation, reviewing the past to assist us in deciding the propriety of our decision. Nevertheless the Appellant's advance to the Active Medical Staff in December 1989 should have been questioned if there was any concern at that time about his relationship with other radiologists and his work in the Department. The situation following his return in June 1990 is very obvious despite the absence of some of the more senior radiologists from the hearing.

This Board has previously addressed the need for a physician to cooperate with other physicians in a hospital and, as well, have their respect (*Ledgerwood v. Squamish Hospital* [1991] & *Loewen v. Cariboo Memorial Hospital* [1984]). We continue to feel that this is paramount, particularly in service departments such as a department of radiology. There must be very comfortable relationships at all levels but particularly between the radiologists to whom other staff members look for guidance. It is clear to us that such was not the case in the Department after June 1990 and perhaps after February 1990 but has been since the Appellant is no longer there. The Administration should not have tolerated continuation of the Appellant's very direct and personal written accusations but by doing so allowed a situation to develop which was not going to be solved without the Appellant leaving the Department or all other members of the Department leaving. The latter was not a tenable nor, likely, a desirable choice. We feel that by continuing to make such direct criticisms, many of which appear to be without foundation, the Appellant was very much undermining the leadership. He was the most junior member of the Department at the time so his manner of directing criticisms to the Chief of Staff without attempting a considerably prolonged constructive approach to the Director of the Department seems clearly out of line.

It is obvious that Dr. N overreacted to a degree. The lack of clear definition of the limits of his role as Director may have contributed to this but he should have been more restrained, as behooves a director, in some of his responses. At the same time, he had a major problem to deal with and perhaps should have been firmer in his demands that the differences be resolved earlier. Nevertheless he now has a mandate to run the Department, has been confirmed in his position and the Department appears to be developing in a manner which will satisfy the increasing needs as the Hospital's care becomes more sophisticated. Despite the Appellant's predictions, recruitment has been satisfactory. Recent experience has demonstrated that the Administration made a good decision in appointing Dr. N rather than seeking an outsider to lead the Department out of its difficulties.

Credibility is in issue in much of the material discussed in the hearing. Review of the Curriculum Vitae was important and of significance, including the Appellant's attempt to suppress the date on which he successfully completed examination requirements for the Medical Council of Canada. It is unbelievable that he not only cannot remember accurately whether it was at the beginning or the end of his residency but also considers the examination to be so inconsequential that it is "not a milepost." This date is not usually a matter of review but his reaction has made it that. Letters supporting the Appellant's application for privileges at the Hospital were brief and superficial so the authors should have been contacted for detail. The matter of "Work in Progress" is of concern to us since we must accept the comments of Dr. DL and Dr. R regarding the limited degree to which projects had developed without criticizing the Appellant for failing to continue the studies; such failure is common as people leave the stimulus of an academic environment.

The different perceptions of conversations is of great concern. We accept that the Appellant has initiated much of the difficulty by making comments and accusations which he then suggested originated from the other participants. As well, we consider that there was little reason for one of the technicians to relate the Appellant's comment that he would probably be in charge unless the comment was actually made by the Appellant. His interpretation of the conversations with Dr. L are also suspect, especially since Dr. L reported the information promptly and it corresponded to other comments made by the Appellant at the time. We did not consider that the Appellant was a credible witness.

All evidence confirmed that the Department is now operating smoothly and developing in a manner required by the Hospital's needs. Recruitment has been satisfactory and the interpersonal relationships with the Department appear to be good. We have no evidence that the Appellant can work in the Department as a part-time radiologist without disrupting the situation. He must examine his ability to assess others and to work with others. Our impression is that his return would seriously damage the good working relationships in the Department and hamper its development.

Therefore we deny his appeal.

Dated at Vancouver, British Columbia this 1st day of March, 1993.

M. Graham Clay, M.D.

B. Lynn Beattie, M.D.

Gordon Armour