UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 195 OF THE ACADEMIC APPEALS COMMITTEE

June 28th, 1995

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Wednesday, June 28th, 1995 at 10:00 a.m., in the Flavelle Room, Faculty of Law, 78 Queen's Park Crescent, at which the following were present:

Professor J. B. Dunlop, Chairman
Ms P. Cross
Professor D. Galbraith
Ms P. Haist
Professor R. Pike

Ms L. Snowden, Secretary

In attendance:

Mr. A.S., the appellant
Mr. L. Arnold, Arnold, Falzone & Fyshe, counsel for the appellant
Professor M. Donnelly, Associate Dean, Faculty of Arts & Science

At a meeting on 28 June, 1995 the Academic Appeals Committee heard and decided the appeal of Mr. A.S. from a decision of the Academic Appeals Board of the Faculty of Arts and Science dated February 10, 1994. The Board had dismissed an appeal from the decision of the Committee on Standing made August 10, 1992 refusing late withdrawal without academic penalty (WDR) from GLG201F and MAT135Y, courses he had failed in the 1991 Winter session.

The appellant had first enrolled in 1990-91 and had a respectable record at the end of his first winter session. But 1991-92 (W91) was a notable contrast.

In this appeal he requested the same remedy except that he included the only course he had passed that year, AST251F in which he had achieved a C-. He had already been allowed WDR designation in respect of the other courses of that session.

The decision of this Committee is that the appeal should be allowed.

A MATTER OF PROCESS

Because this Committee is ultimately responsible for ensuring that an appellant's claim has been determined by a process satisfying the *Statutory Powers Procedure Act*, this Committee conducts a full hearing in accordance with the Act's requirements. This means hearing oral evidence, examining documents, listening to submissions from both sides. Several times a year this may result in the Committee hearing a quite different case from that presented to the committee appealed from because at this point the appellant seeks legal or other assistance with the organization and presentation of the appeal. This appeal is such a case.

The approach is possibly not ideal. Certainly some regard it as too intrusive. But the alternative would be impractical at best. This Committee might have a limited role similar to a court engaged in judicial review, determining only that the divisional committee acted within its jurisdiction and that its procedures were fair. Or it might have a procedure like the Courts of Appeal of many common law jurisdictions and make decisions strictly based on the evidence heard by the divisional committee and whether the divisional committee's decision was justified by that evidence. In either case, the division would have to maintain a detailed record and possibly a transcript of the testimony in hundreds or even thousands of cases. It would go far beyond any record currently available to ensure that the two or three dozen reaching this Committee annually would have the appropriate material for review. This is surely unthinkable.

The suggestion that the divisional committee's decision is meaningless overlooks the fact that it is the disposition of the case and remains such unless and until the appellant convinces this Committee that it cannot stand.

A DIGRESSION

While many would prefer to believe that "lawyers in the university" are an unnecessary complication, the fact is that a competent advocate has skill and knowledge that make the advocate's services worth having in dealing with unavoidable legal processes within the institution. Competent counsel can ensure that these processes work as intended and do not become an impossible maze as they easily can. As students have access to the service provided by the student legal aid program in the Faculty of Law, one sometimes wonders why they do not consult earlier. It may be that they are unaware of the service, or unaware that they need help until they come a cropper while trying to go it alone. Often going it alone reflects the student's embarrassment at the prospect of disclosing personal problems.

The Associate Dean of Arts and Science notes that the Faculty does not have the same ready access. This is an unfortunate disadvantage resulting from the way in which scarce resources have been allocated by University and Faculty budget committees. In the individual case the Faculty has little to lose compared with the student, so the choice is understandable. When important principles are involved, Faculties and the University

retain counsel and it is fair to comment that the integrity of the system has been maintained.

A SECOND GENERAL CONCERN

Faculty officials often have a greater concern over the possible precedent-setting effect of a decision than the doctrine of precedent would justify. The Academic Appeals Committee and other bodies within the appellate system should obviously try as far as possible to be consistent so that those interested will have some idea of what to expect. The desire to decide like cases alike makes decisions a species of precedent. But deciding like cases in a like manner has so far established no devastating precedents in the University. It is surprising how seldom one finds an exact parallel for a case before the Committee.

This case illustrates how modest precedent can be. No previous occasion on which it had been established that a student had been rendered incapable of adequate performance throughout the entire year due to Major Affective Disorder was found. It is to be hoped that the future will not differ from the past in this respect because, unfortunately, as the budget strictures affect more activity it may well be that student services will be stretched. The general principle applicable to a case such as this has long been recognized in the University. Only the facts to which it is sought to apply it are new. The principle is that, taken with proof of ability to perform, proof of a temporary impediment so serious that adequate performance would be difficult if not impossible justifies an appropriate remedy. The merit in the case is not diminished by the existence of similar cases, but we have evidence of none. Here the digression ends.

THE MERITS OF THIS CASE

The appellant, represented by counsel, presented the oral testimony of the appellant's father as to the standards of performance the parents had expected of the appellant, the appellant's actual performance and the increasingly unusual behaviour of the appellant over the year and for some time thereafter.

The Committee also heard testimony from Dr. E. Ralph Pohlman, the psychiatrist under whose care the appellant placed himself in February of 1992. Dr. Pohlman told the Committee that the appellant suffered from Major Affective Disorder (clinical depression) and that rather than resulting from his difficulties, the condition was the cause of them. Thus, for example, his decision to drop courses which he then failed to drop was typical of someone suffering from that disorder. Decisions made are not executed. His assurances that he would get to work could not be accepted at face value. Indeed they were unlikely promises.

Dr. Pohlman said that he had apparently failed to make this point to the Arts and Science Committee because they concluded that the decision to drop, appearing to be the rational

approach, showed enough understanding by the appellant of his responsibility that he should be held accountable for his failure. Dr. Pohlman's view was that the ambiguity of the word "depression" was to blame. The appellant was not depressed in the popular sense of the term: unhappy, melancholy, "blue". He was incapable of a rational course of conduct. He regretted not having made that clear earlier.

The appellant himself told us he could not explain the behaviour of the person he was during his illness. He felt he was a different person altogether. Many questions were put to him at the hearing but he could not give a reasonable answer to any of them other than to say he was not, at the time, a reasonable person. Dr. Pohlman agreed that he should have thought to make certain the appellant had withdrawn. He stayed out in 1992-93. He spent part of the year in Geneva "doing research" which Dr. Pohlman doubted had benefited his recovery but had not considered harmful and which he had thus not opposed. He could not have gone back to his studies that year.

The appellant's record in the two years since he returned to study, although in different subjects, demonstrates significant ability. His father's evidence as to his behaviour and relations within the family indicated, and Dr. Pohlman thought it as well, that the appellant had emerged from the disordered period.

DISPOSITION OF THE APPEAL

The Committee's view was that the evidence justified the conclusion sought - the major impediment affected not only the appellant's academic performance but his conduct of affairs generally. The appropriate course for someone in these circumstances would have been withdrawal. The appropriate remedy is to permit late withdrawal without academic penalty (WDR) from the three courses.

Appeal allowed.

August 15th, 1995

Ms L. Snowden
Secretary

Professor J. B. Dunlop
Chairman