

CONFIDENTIAL

UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL

REPORT NUMBER 20 OF THE SUBCOMMITTEE ON ACADEMIC APPEALS

To the Academic Affairs Committee,
University of Toronto.

Your Subcommittee reports that it held meetings on Friday, October 17th, 1975, in the Music Room, Hart House, Sunday, November 2nd, 1975, Wednesday, November 5th, 1975, and Thursday, November 6th, 1975, in the Council Chamber, Galbraith Building, at which the following were present:

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|--------------------------------------|----------------------------|
| Professor J.B. Dunlop (In the Chair) | Professor A.M. Kruger |
| Mrs. M.A. Barten | Mr. Byron E. Wall |
| Mr. J.E. Creelman | Professor A.M. Wall |
| Dr. A.M. Hunt | Miss M. Salter (Secretary) |

In Attendance:

- | | |
|-----------------------|----------------------------------|
| Dr. William J. Butler | Professor Peter Rosenthal |
| Dr. William Cheng | Department of Mathematics |
| Mr. F. and counsel | Dr. E. Llewellyn-Thomas |
| Mr. Michael Smith | Faculty of Medicine, and |
| Miss F. | Dr. J.W. Steiner |
| Dr. Gerald Green | Faculty of Medicine, and counsel |
| Dr. Michael Kolton | Mr. J.W. O'Brien, Q.C., |
| Dr. Joseph Lee | Cassels, Brock |
| Dr. Lyn Margesson | |

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION
THE MEETINGS WERE HELD IN OPEN SESSION

1. Mr. F.

Details concerning the appeal of Mr. F. and the reasons for the Subcommittee's decision are set out in the document entitled "Reasons for Decision", a copy of which is attached hereto as Appendix "A".

YOUR SUBCOMMITTEE AGREED

THAT the appeal of Mr. F. against a decision of the Appeals Committee of the Faculty of Medicine be denied.

Secretary
January 9th, 1976

Chairman



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SUBCOMMITTEE ON ACADEMIC APPEALS

APPEAL OF MR. F.

REASONS FOR DECISION

This is an appeal from a decision of the Appeals Committee of the Faculty of Medicine, dated January 16th, 1975, upholding a decision of the Board of Examiners for Period III, dated November 22nd, 1974, requiring the appellant, Mr. F., to withdraw from the Faculty of Medicine and denying him the privilege of repeating his Fourth Year.

The Notice of Appeal to the Subcommittee on Academic Appeals was dated March 27th, 1975. In April, Mr. F. changed solicitors. Commencing in May, efforts were made to set a date for the hearing. It was not until October 17th, however, that a date satisfactory to the parties, their witnesses, counsel and the Subcommittee could be arranged. The Subcommittee met on October 17th, November 2nd and November 5th, concluding its hearing on the evening of November 6th.

Mr. F. was represented before the Subcommittee by Mr. Michael Smith and Professor Peter Rosenthal. The Faculty of Medicine was represented by Mr. J. W. O'Brien, Q.C. The Subcommittee heard oral evidence submitted on behalf of the parties and received a substantial amount of documentary evidence.

The conclusion the Subcommittee reached after consideration of the evidence and the submissions of counsel is that Mr. F.'s appeal must be dismissed.

Mr. Smith drew to the Subcommittee's attention the fact that there had been an overlap in the composition of the Board of Examiners and the Appeals Committee. The Subcommittee felt that this might well be a basis for setting the decision of the Appeals Committee aside and remitting the matter to the Faculty for further consideration by an Appeals Committee not subject to this important criticism. The alternative course, which the Subcommittee eventually decided was to be preferred, in light of the length of time that had elapsed since the decision of the

Board of Examiners, because the proceedings between the appellant and the Faculty had become contentious, and since the Subcommittee had already conducted a full hearing, was for the Subcommittee to ignore the decision of the Appeals Committee and itself consider whether the decision of the Board of Examiners should be upheld or set aside. It does not seem to the Subcommittee that a medical appeals committee, differently constituted, would be in a better position to determine the issue than the Subcommittee itself.

The record disclosed that Mr. F. had never been a strong student in the Faculty, having had difficulties in every year. The great misfortune is that he reached the final year before his difficulties became so pronounced that the Faculty felt compelled to terminate his studies.

Period III, which is the Fourth Year of Medicine, is a clinical clerkship year which Mr. F. embarked on in 1973-74. During the course of that year students spend blocks of time in a number of hospital departments working as part of clinical teams that include internes, residents and staff physicians or surgeons. Their performance is assessed during each of these blocks, sometimes called "rotations", and an examination is given at the end. Mr. F. failed in Medicine, Surgery and one segment of the Ambulatory Care block, Family and Community Medicine. The Board of Examiners for Period III, on January 28th, 1974, required Mr. F. to withdraw from the Faculty. The Appeals Committee of the Faculty, on February 28th granted an appeal and permitted Mr. F. to undertake the Fourth Year again. A prerequisite was that Mr. F. take a remedial period in Physical Diagnosis and the Appeals Committee recommended that he be assigned to a different hospital for the repeat clerkship year.

There was also a condition that Mr. F. continue to see a psychiatrist, as he had already begun to do. This condition he appeared not to have fulfilled. It was agreed before the Subcommittee, however, that no question would be raised as to Mr. F.'s emotional health nor would it be contended that the Faculty had forced him to undergo psychiatric treatment. The Subcommittee has not, therefore, dealt with the point except to make this agreement part of the record.

Mr. F.'s hospital on the first occasion was Toronto General and on the second, St. Michael's. On his second attempt at the clerkship year, Mr. F. passed in Medicine, although the Physician-in-Chief at St. Michael's, Dr. J. T. Marotta, reported on November 19th, 1974, to the Chairman of the University Department of Medicine, Dr. C. H. Hollenberg, that his clinical assessors did not consider him very good. Dr. Marotta also expressed the view that Mr. F. "is unable to synthesize and formulate problems to a satisfactory conclusion. Without that ability he will be incapable of treating properly." Mr. F. failed Surgery and the Period III Co-ordinator for the University, whose duty it was to report clerkship results to the Faculty, wrote that the Head of Orthopaedics thought Mr. F. was one of the worst students he had ever seen and that another surgeon with considerable teaching experience felt that "on absolutely no account could this man be inflicted upon the general public". Thereafter the Board of Examiners whose decision is under appeal was convened with the consequence that Mr. F. was required for a second time to withdraw.

In his appeal to the Subcommittee, Mr. F. contended that he was a competent clinical clerk, that the assessment procedures for determining the competence of clinical clerks were defective in that they relied too heavily upon individual or personal judgments and that the judgments made about Mr. F. or a significant number of them, were affected by bias,

including racial bias. It was requested that Mr. F. be re-admitted to the Faculty and be given a further opportunity to complete the clinical clerkship year.

A considerable effort was made on behalf of Mr. F. to establish that there was a "climate of racism" in the Faculty of Medicine at the time that Mr. F. was involved in his second clerkship effort, and that this affected judgments made about him. "Racism" is one of those words which seems to have different meanings to different users and is applied to policies and views ranging from philosophies of inherent racial superiority and inferiority, which have been translated into fearful national policies such as genocide and apartheid, through economic exploitation, to cultural intolerance and fear of change in the nature of society. In the context of this appeal, it appears to mean discriminatory treatment and biased judgment based on prejudice against students of Chinese origin or extraction.

It is easy to allege that racial prejudice has affected the judgment made about an individual. Such allegations must, however, be substantiated. This can be done in various ways. Sometimes, for example, a prejudiced person will admit the fact of the prejudice and its impact upon his or her judgment. Sometimes the fact that a particular individual harbours prejudice can be established in other ways, and the inference that it affected the individual's judgment may be drawn. Merely to show that prejudice exists within a group to which the persons making a judgment belong does not lead to the inference that prejudice affected the judgment unless the prejudice is so common that it is probable the persons making the judgment were affected by it. Absent some such foundation, it is pure conjecture to suppose that adverse decisions are tinged by bias. The expression "climate of racism", to be relevant and material to this appeal, must therefore

mean racial prejudice within the Faculty of Medicine so pervasive that it may be attributed to the individuals who were judging Mr. F's performance.

To establish that a "climate of racism" existed at the Faculty of Medicine during the crucial time when Mr. F. was being assessed, evidence of statements made and reported in the press, letters to the editors of various publications and an observation made in the Provincial Legislature, was tendered. This evidence reflected the view that in a Faculty to which access is limited, too many places might be going to foreign-born students to the detriment of applicants born in Canada. Since the only significant group of foreign-born students in the Faculty appears to be of Chinese origin, any policy based on these views would most certainly have its greatest impact on that group. One of the assumptions underlying this view is that cultural differences make it undesirable for an inordinate proportion of medical doctors (and hence an inordinate proportion of medical students) to be drawn from a particular (Chinese) group. The theory seems to be that medical doctors of one cultural background are not capable of adequately treating, or would not be accepted by patients of another cultural background. Another assumption seems to be that immigrants with the intelligence and ability to graduate in medicine from a Canadian university do not have the ability to communicate adequately with other Canadians whose cultural backgrounds may be different. The Subcommittee rejects these views, whether they be racist, xenophobic, or simply wrong.

More important from the point of view of this appeal, however, is that these views were expressed by a handful of individuals, only some of whom were in any way associated with the University of Toronto. Dr. Steiner, an Associate Dean of the Faculty, who gave oral evidence, expressed the view that among the two thousand or so clinicians who are in some way involved in the University's programme, there are bound to be some who are

racially prejudiced. He agreed that these views could affect the judgment made by such clinicians about students. However, he also said that such a large number of clinicians was involved in the assessing of each clinical clerk that he did not believe racial or cultural bias could affect the success or failure of any student. The Subcommittee saw no reason to doubt this opinion and the fact was, that of all the witnesses who gave oral evidence on behalf of Mr. F., only one spoke about the existence of racial prejudice among the physicians and surgeons responsible for assessing the clinical clerks. That witness was Dr. William Cheng, a classmate of Mr. F.'s and himself of Chinese extraction, who indicated that some Chinese students felt there was prejudice against them. He also said that he had never experienced it personally, and when asked what names usually came up in the discussions about the subject, he gave four, only one of whom was directly responsible for assessing Mr. F. This man had been a resident in one two-week phase of the eight week surgical rotation on both occasions that Mr. F. failed Surgery. He had not been one of the examiners in Surgery. Neither of the residents who gave oral evidence spoke of racial prejudice and one of them, Dr. Lyn Margesson, expressed the view that Mr. F.'s difficulty in getting on with clinicians, including in particular the surgical resident named by Dr. Cheng, was due to personality rather than racial differences. That some people were complaining about too many places in the Faculty going to "foreign" students would seem to suggest that far from being a pervasively "racist" institution, it was altogether too even-handed to suit some people.

One further item on the general issue of prejudice deserves comment. This is a letter dated 17 July 1974 from a psychiatrist, himself of Chinese extraction, to Dr. Llewellyn-Thomas. It was said to be a response to the concern expressed to the Board of Medical Assessors by Dr. Steiner "about the possible development of emotional problems of Chinese students".

The suggestion is made that "preventive medicine" in the form of "one or more preliminary psychiatric examinations" might be helpful. This suggestion was regarded as unacceptable, a view with which the Subcommittee is in complete agreement. Nevertheless, the suggestion appears to be motivated by a concern for the welfare of Chinese students rather than by racist views.

Mr. Smith invited the Subcommittee to infer the existence of racial prejudice from a number of more specific items of evidence. The first was a letter from a clinician in the Family and Community Medicine segment of the Ambulatory Care block expressing the opinion that among Mr. F's shortcomings was a lack of honesty. This opinion was based on the belief that Mr. F. reported firm diagnostic conclusions without performing an adequate physical examination. Whether this was a proper inference is difficult for the Subcommittee to judge. Indeed, Mr. F, in his oral evidence, said that this clinician had misunderstood his diagnosis. The point is, however, that the inference is not one which points to racial prejudice simply because the student about whom it was drawn was of Chinese origin.

A second item was a letter from a clinician to Dr. Steiner relating an incident which the clinician appeared to think constituted peculiar behaviour on the part of Mr. F's sister who had presented herself for treatment. Miss F's evidence put this incident in an altogether different light, but again, assuming a complete misunderstanding of the situation on the part of the clinician, it does not follow that any element of racial prejudice was involved. Physicians (and others) have been known to misunderstand the behaviour of people of all races.

The third specific item was the letter from the Physician-in-Chief at St. Michael's Hospital to the Chairman of the University Department of Medicine already referred to, expressing the view that the

physicians who had assessed Mr. F's performance and had given him a pass in Medicine had been unduly charitable. This opinion is perfectly consistent with the view the Physician-in-Chief had formed from other evidence that Mr. F. was not competent. It certainly constitutes a harsh judgment of Mr. F. but it does not signify racial prejudice. Nor does his observation (in connection with admissions procedures) that "This boy would be reason enough to reinstitute the interview system". Mr. F's supporters among the residents who had worked with him and who gave oral or written evidence to the Subcommittee indicated that Mr. F. had a communication problem. Dr. William J. Butler found him difficult to understand. Dr. Margesson indicated that on first meeting it was easy to form the impression that Mr. F. did not know what he was doing, that it took time to get to know him and have a positive feeling about him, and that he would wilt in the face of tough or difficult personalities. Dr. G. Harada wrote that "When confronted with a senior staff man, [MR.F.] would appear to become inept and fumbling. His speech would become hesitant and stuttering. [MR.F.] would be unable to answer questions directed at him by the staff man which only an hour before he would answer to me. As I mentioned in the previous review of [MR.F.] case, initially I thought that this was mainly due to a language problem in that [MR.F.] would have to translate from Chinese to English before being able to answer questions. However, subsequently I learned that [MR.F.] has the same difficulties while speaking Chinese. Since I do not speak Chinese I am not certain as to whether this is true or not." In the light of these views, it is difficult to see how Dr. Marotta can be accused of racial prejudice in concluding that an interview might have prevented Mr. F. from gaining admission to the Faculty in the first instance.

Dr. Llewellyn-Thomas, Associate Dean, testified that communications interviews are now in use in the selection process although he indicated that as yet no one had been refused admission on the basis of such an interview.

A fourth item said to disclose prejudice was a letter to Dr. Llewellyn-Thomas from the Period III Co-ordinator at St. Michael's Hospital, Dr. Hudson, dated December 10th, 1974, after the second occasion on which Mr. F. had been required to withdraw. Dr. Hudson reported having suggested a pharmaceutical career for Mr. F. but in the face of Mr. F.'s determination to carry on with Medicine "I, therefore, said that Hong Kong seemed the only alternative ." Mr. F. had come to Canada from Hong Kong. The Subcommittee was asked to infer that Dr. Hudson thought Mr. F.'s problem was communication. Whether this was the proper inference or not, one could hardly say that it indicated racial prejudice on Dr. Hudson's part when Mr. F.'s supporters agree that he has a communication problem. Dr. Llewellyn-Thomas told the Subcommittee that there was no chance of a Hong Kong medical school accepting a student who had failed twice in a Canadian medical school. Thus Dr. Hudson may have been mistaken in suggesting this. His belief that Mr. F. might have a chance in his original home community that he would not have in Canada or the United States is not, however, a racist belief. Dr. Hudson also indicated that he had spent an hour and a quarter with Mr. F. and had offered to help him get a job. This is not the cynical brush-off that the Subcommittee was asked to label it.

Stress was placed on the fact that Mr. F. was the only student known to have been required to withdraw from the Faculty of Medicine in the Fourth Year, although others experiencing difficulty had withdrawn voluntarily. This makes Mr. F.'s case unique but it does not make it a case of racial prejudice. The clinical clerkship is a relatively new programme. A few

students have failed it. The appellant appears to be the first student whose performance in it was deemed so inadequate as to require him to discontinue his studies. Many students of Chinese origin had, of course, passed. Being of Chinese origin cannot be said to have anything to do with it, one way or the other.

Dr. Steiner agreed that other students may have been allowed to have a third opportunity to pass a particular subject. The Subcommittee could see no significance in this since it must be supposed that those other students were judged capable of successfully completing the requirements to be admitted to the practice of medicine whereas Mr. F. was not. There surely can be no automatic rule about multiple repetitions.

Scope for racial and personal bias, according to the submission of the appellant, was permitted by the "subjective" nature of the assessment procedures in the clerkship year. The word "subjective" is not without its difficulties either, but in this context it means the judgment of students by clinicians based on observation of their performance on the job, their reports, oral and written, of case histories and diagnoses and their responses on oral examination. The system is subjective in that impressions play an important role and bias against an individual on personal or ethnic grounds, if it existed, could affect an assessor's judgment. It is difficult to see how clinical performance can be assessed in any other way. All that can be done to ensure fair assessment is to provide for a sufficient number of assessors so that the bias of an individual (personal or otherwise) is

offset or thoroughly diluted. Dr. Steiner's evidence indicated that this was the situation prevailing in Period III and, as Mr. O'Brien argued, it is clear that a substantial number of clinicians who dealt with Mr. F. ("seven or eight or nine" Mr. O'Brien said) came to the conclusion that he lacked competence in dealing with patients to the degree that he should not be allowed to graduate. Their judgment was upheld by the Period III Board of Examiners on two occasions.

There were, of course, clinicians who found Mr. F's performance acceptable, including Drs. Butler, Harada and Margesson. This makes it clear that Mr. F. did not make a botch of everything. No one contended that he did. But his supporting witnesses did not really contradict the view that his information gathering and reporting and his problem solving ability were seriously deficient, at least in some important contexts.

The Subcommittee was asked to attach significance in terms of personal bias affecting the appellant's assessment to two factors: Dr. Hollenberg's insistence that Mr. F. do his second clerkship either at Toronto General Hospital or at St. Michael's and the instruction that was given to pay close attention to his performance during this second clinical rotation. St. Michael's Hospital was chosen, although Mr. F. would have preferred Mount Sinai, because the choice accorded at the same time with Dr. Hollenberg's advice and with the first Appeal Committee's ruling that Mr. F. should repeat the clerkship year at a different hospital. Dr. Hollenberg, as Physician-in-Chief at Toronto General, responsible for Mr. F's medical rotation, had reached the conclusion (as indicated in the minutes of the meeting of the first Board of Examiners) that the appellant "is shy, modest and very willing, but is lacking in fundamental knowledge

and insight. While he has the ability to master facts, he lacks the ability to integrate and synthesize this material." This does not smack of personal antipathy nor does Dr. Hollenberg's statement to the medical Appeal Committee on the first appeal that Mr. F. was a "highly motivated and fine individual" who "did not have the capacity to perform at an acceptable degree of competence." This is a professional judgment and as Chairman of the University Department of Medicine it is understandable that Dr. Hollenberg would thus have views as to where a repeated clerkship should occur and as to the care that should be taken in the assessment procedure.

It is common enough in the academic world for repeating students to be judged again by the same teachers on the second occasion. The appellant had the benefit of a different setting and different assessors. The Subcommittee must conclude that he was fairly treated.

In the end, therefore, it comes to this: the Faculty of Medicine reached the conclusion that Mr. F. did not have the clinical ability that is necessary to practise medicine and that must be demonstrated before a degree is granted. Sad as the result is, the Subcommittee sees no reason for interfering with that judgment.

December 18th, 1975.