

CONFIDENTIAL

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 34 OF THE ACADEMIC APPEALS BOARD

To the Academic Affairs Committee,
University of Toronto.

Your Board reports that it held a meeting on Wednesday, October 26th, 1977 at 4:00 p.m. in the Council Chamber, Faculty of Pharmacy, at which the following were present:

Professor J.B. Dunlop (In the Chair)
Dean B. Etkin
Professor W.E. Grasham
Mrs. Frances Jones

Professor Peter H. Salus
Mr. David Tennenhouse
Mr. Michael Treacy
Miss M. Salter, Secretary

In Attendance:

Mr. G
and Counsel Mr. Richard J. Sommers

Mr. Barry Mitchell
Faculty of Dentistry

Dean A.R. Ten Cate
Faculty of Dentistry

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

THE MEETING WAS HELD IN CLOSED SESSION

The Board heard the appeal of MR-G as reported below and issued reasons for its decision. Subsequently, it was pointed out that the reasons did not deal with an important point from the Faculty's point of view. The reasons were therefore revised and re-issued.

1. Mr. G

At its meeting on October 26th, 1977, the Academic Appeals Board heard the appeal of MR-G from a decision of the Appeals Committee of the Faculty of Dentistry, refusing his petition to be allowed to proceed to fourth year under probationary status and affirming a decision of the Executive Committee requiring the appellant to withdraw from the Faculty on the basis of "unsatisfactory work".

The appellant requested the Board to permit him to proceed to fourth year under probationary status with permission to repeat third year Periodontics. In the alternative, the appellant requested permission to repeat third year Periodontics as a part-time student and, if successful, to be permitted to proceed to fourth year in September 1978.

The decision of the Board is that the appellant should not be permitted to proceed to fourth year under probationary status but should, however, be allowed to repeat third year Periodontics as a part-time student. If successful he would be eligible to proceed to fourth year.

It is not difficult to understand the Faculty's concern about the appellant's performance. He had failed two subjects in his first year (1972-73) but had passed them on supplemental examinations. He failed Restorative Dentistry in second year (1973-74) and repeated it twice (1974-75, 1975-76) as a part-time student before successfully passing it and proceeding to third year. He had supplemental examinations again in third year (1976-77) and this time failed to pass one of them, Periodontics.

On the first occasion of his repetition of Restorative Dentistry as a part-time student the appellant had been involved in an automobile accident which had created medical problems affecting his ability to perform the work of the course. It was for this reason that the Faculty permitted him to repeat a second time. In his third year the appellant had personal difficulties involving marriage breakdown which may well have affected his work. Even taking account of his problems, however, his record certainly does not inspire enough confidence in his ability that he should be allowed to proceed to fourth

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year. Nevertheless, the appellant reached third year by meeting the requirements of the Faculty. The Faculty's rules allowed him to write supplementals in his first year to obtain standing. The rules also allowed him to repeat Restorative Dentistry and, although they would not have allowed him to repeat it again but for the exercise of discretion in his favour, this discretion was exercised on well-recognized grounds. The rules also permitted him to write supplementals in his third year and, faced with one failure on the supplementals, a precise Faculty rule applied. This rule states that "any student who after completing one year in the Faculty fails (after supplementals) one didactic or clinical subject in a subsequent year will be permitted to register in the following session as a part-time student and repeat the subject failed."

The Faculty purported to require the appellant to withdraw for "unsatisfactory work." The Faculty has a general rule in this regard which reads as follows: "Faculty Council may, for unsatisfactory work or conduct, suspend a student for a period of time not exceeding two years, or may require the student to withdraw from the Faculty without the right to re-enrolment." In light of the fact, however, that the appellant had obtained standing in his first two years in accordance with the Faculty's rules it was not open to the Faculty to invoke a general rule to declare the work of those years unsatisfactory. And since a particular rule governed the appellant's exact situation after third year, i.e. having failed (after supplementals) one subject, the general rule could not override it. Rules and regulations dealing with the rights and obligations of students, authorized to be made by Faculty Councils pursuant to The University of Toronto Act, are a form of subordinate legislation that should be interpreted in accordance with the principles applicable to legislation generally. The principle which governs this case is one of long standing. In the words of Sir Samuel Romilly, M.R. in the case of Pretty v Solly (1859) 26 Beav. 606 at 610 "The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the Statute to which it may properly apply."

The Faculty has another rule providing that "Faculty Council will, except in very exceptional circumstances, refuse further enrolment in the Faculty to any student who on two occasions fails to receive the right to advance to a higher year in the Faculty." Once again, the general rule is subject to the same specific rule and where the student has written supplementals and has failed only one, the specific rule applies; it cannot yet be said that he has failed to receive the right to advance to a higher year. The rule that students who fail two or more didactic or clinical subjects will be judged to have failed the year cannot, in the circumstances, have any application.

This is not to say that the general discretionary power to suspend or require withdrawal is meaningless. If, for example, a student not only failed the year but failed it very badly it is possible that the general rule would entitle the Faculty to suspend him or require him to withdraw. No specific rule says that a student who has failed is entitled to repeat. But if it is thought proper that a student with the kind of record the appellant possesses should be disentitled to continue with his or her studies, the rules must be written in such a way as to make this clear. The existing rule could be re-written in the following way: "Any student who, after completing one year in the Faculty, fails (after supplementals) one didactic or clinical subject in a subsequent year will be permitted to register in the following session as a part-time student and repeat the subject failed, provided he has not had a supplemental examination in a previous year." There may be more felicitous ways of expressing the same idea and the Faculty may wish to review its rules in a systematic fashion to ensure that they meet the Faculty's needs and conform to requirements of law. This suggestion is by way of example only. The point the Board would like to make clear is that it has no desire to thwart the legitimate objectives of any Faculty or School but that those objectives can and should be expressed in unambiguous terms.

One member of the Board voted against the decision and wished the fact to be recorded.

Secretary
Chairman

Chairman