

CONFIDENTIAL

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 41 OF THE ACADEMIC APPEALS BOARD

To the Academic Affairs Committee,
University of Toronto.

Your Board reports that it held meetings on June 15th, 1978 at 1:30 p.m. and June 16th, 1978, at 11:00 a.m. in the Council Chamber, Faculty of Pharmacy and on June 21st, 1978, at 4:30 p.m. in the Office of the Governing Council, at which the following were present:

Professor J.B. Dunlop (In the Chair)	Professor Merrijoy Kalner
Professor Dennis Duffy	Mr. David Tennenhouse
Professor A.M. Hunt	Mr. Michael Treacy
Mrs. Frances Jones	Miss M. Salter, Secretary

In Attendance:

*Mr. S. and Counsel Mr. Brian Mulroney Students' Legal Aid Society	*Professor David Gauthier Chairman Department of Philosophy
*Mr. William A. Marcotte Graduate student	*Mr. Peter White Assistant Secretary School of Graduate Studies

*Present on June 15th and June 16th only.

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

THE MEETING WAS HELD IN CLOSED SESSION

1. Mr. S.

At its meetings on June 15th, 16th and 21st, the Academic Appeals Board heard and considered the appeal of Mr. S. against a decision of the Committee on Applications and Memorials of the School of Graduate Studies dated February 2nd, 1978 dismissing Mr. S's appeal against the termination of his Ph.D. programme in Philosophy. The decision of the Board is that the appeal should be dismissed.

On August 30th, 1976, the appellant, who had commenced his programme in 1974, was informed that, as a result of the grade of B- assigned to him by Professor David Gauthier in PHL 2131 XW his cumulative average fell below the required average of B+ and that he could not enrol for the fall term. It would ordinarily have followed that the appellant's programme would be terminated. The appellant had, however, been informed erroneously by a notice issued by the Graduate Department of Philosophy on June 9th, 1976 that his grade in the course had been a B. The Department had at the same time reported the correct grade of B- to the School of Graduate Studies, but the School itself had neither informed the appellant of his grade nor taken steps to terminate his programme. Thus, throughout the period from mid-June until the end of August the appellant was under the impression that his grade was adequate and that he was in good standing.

The delay in informing the appellant of the error formed one of the bases for his appeal. In his excellent presentation of the appellant's case, Mr. Brian Mulroney argued that had the appellant known in June of the inadequacy of his grade in PHL 2131 XW he might have had an opportunity to remedy the situation. By the time he learned of his true grade it was too late either to remedy the situation by further work or to transfer to another programme or University. The Board was not convinced on the evidence, however, that the appellant could have taken any remedial steps or that he would have had a more substantial chance of gaining admission to another programme or University had he been correctly informed in June rather than in September. In any event, the Department

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did not insist on standing strictly by the corrected record. It gave the appellant a remedy for the situation by allowing him to take two fall term courses in 1976-77 - PHL 2112 F and PHL 2131 F - on the understanding that if he received a grade of B+ or better in each he would be allowed to continue with his programme. It was open to the appellant at the time to appeal that decision. What remedy he might have obtained is, of course, impossible to say. It is possible to say, however, that the course of action proposed by the Department and followed by the appellant was reasonable. The Board does not feel that the appellant is entitled to a second or alternative remedy. The Board feels compelled to observe, however, that the problem would have been avoided if the School of Graduate Studies itself sent out official notification of grades. The error occurred because the Department's notice was made up from a carbon copy of the grade report sent by the Department to the School on which, due to the misalignment of the paper in the typewriter, the minus symbol following the capital B could not be distinguished from a broken line across the page. The Board recommends that steps be taken, both at the departmental and School levels, to guard against errors of this sort occurring.

It was also argued on behalf of the appellant that the Department lacked authority to require the appellant to take the particular courses, PHL 2112 F and PHL 2131 F, because this violated guidelines relating to the number of courses required in general and the number permissible in any particular area of study. In the Board's view, however, the situation was an extraordinary one not covered by the guidelines or any other regulations. The remedy was therefore an *ad hoc* one, and was not unfair. The appellant had other preferences for course work more closely related to his interests, but the Departmental view was that courses in areas where the appellant's record was not as strong would be preferable. Had the appellant, at the time, felt the requirement to be unfair he was at liberty to appeal. The appellant, however, took both courses, achieving a B+ in one but failing to achieve it in the other.

The appellant alleged that the professors who taught these courses were prejudiced against him and treated him unfairly, although he could see no reason why this should have been the case. The Board heard the appellant's testimony on this issue and examined the documentary evidence that was before it and had been before the Committee on Applications and Memorials. It came to the conclusion that the allegation was not established. While, clearly, there was evidence of a disagreement between the appellant and the two professors, and while, clearly, Professor Ferguson in PHL 2112 F did not share the appellant's view as to the merits of the appellant's work, the Board was not thereby led to the conclusion that either professor had a bias against the appellant or that their judgment of him was unfair. A second reader of the appellant's paper in PHL 2112 F also found it to be inadequate. The appellant introduced in evidence a letter from Sir Alfred Ayer whose work the appellant had been dealing with in his paper. Ayer had been asked by the appellant to say whether there was any error in the appellant's summary of Ayer's book. While the letter did not find fault with the summary neither did it go so far as to say that the paper was acceptable at the Ph.D. level. It was not inconsistent with the opinion of the second reader that the appellant's work "would earn an average mark, as paraphrase, in a lower level undergraduate course. But for an advanced course it is far too superficial."

Finally, the appellant alleged that he was not given a full and fair hearing by the Committee on Applications and Memorials. The Board cannot agree with this allegation. A paragraph in Mr. Mulroney's summary of the grounds of appeal correctly summarizes the appellant's evidence as follows: "The appellant's hearing before the Applications and Memorials Committee commenced on December 14th, 1977. At that time, the appellant was interrupted in the midst of his presentation by the Chairman of the Committee, and asked if he wished to make concluding submissions. The appellant requested a five minute recess to consider this development. Following the recess, the appellant re-entered the

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hearing to be told that the Committee, in his absence, had decided to recess." The inference the appellant wished drawn from this was that he had been prevented from presenting his case adequately. However, it was merely that particular session of the hearing which was adjourned, a course taken because the Chairman became aware that enough time did not remain on that day to permit a proper conclusion to the proceedings. The appellant was given ample opportunity on a subsequent occasion to present the balance of his case.

Thus while the Board agrees that it was extremely unfortunate the appellant was misinformed about his performance in June of 1976, the Board also feels that he was allowed a fair opportunity to reinstate himself. This was an opportunity he might not have had if his mark had been reported correctly in the first instance.

One other item of evidence deserves comment. The appellant testified that he had been advised at one stage that his chances of success might be enhanced if he engaged in "non-irritative" research. The Board expresses the hope that such advice is not considered sound in a university.

Appeal dismissed.

Secretary
July 24th, 1978

Chairman

