

THE GOVERNING COUNCIL

REPORT NUMBER 47 OF THE ACADEMIC APPEALS BOARD

To the Academic Affairs Committee,
University of Toronto.

Your Board reports that it held meetings on Friday, January 19th, 1979 at 1:30 p.m. and on Monday, January 22nd, 1979 at 7:30 p.m. in the Croft Chapter House, University College, at which the following were present;

Professor J. Michael Bliss (In the Chair)	Professor Peter Salus
Ms. Beverley A. Batten	Mr. Mark K. Wax
Professor W.E. Grasham	Miss Marie Salter, Secretary
Dean John C. Ricker	

In Attendance:

Mr. W.
and Counsel, Mr. Orest H.T. Rudzik

Mr. H. Donald Guthrie, Q.C.
Cassels, Brock

Dean M.L. Friedland
Faculty of Law

Ms. Marie Huxter
Assistant Dean and
Director of Admissions
Faculty of Law

Professor Robert Sharpe
Faculty of Law

THE MEETING WAS HELD IN CLOSED SESSION

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

1. Mr. W.

At its meetings of January 19th and 22nd, 1979, the Academic Appeals Board heard the appeal of Mr. W. from a decision by the Faculty of Law that he fail his second year. The appellant had not written three examinations in his second year courses and had failed one course in which he had written the examination. Regulations of the Faculty of Law state, "In special circumstances, such as illness or other severe strain, the Faculty may grant aegrotat standing or permission to write one or more supplemental examinations." At the Marks Meeting on June 9th, 1978, however, it was decided that the appellant had failed his year. This decision was confirmed at a meeting of the Faculty on September 29th, 1978, which was communicated to the appellant as follows:

"in light of your total performance at the law school Faculty Council did not consider that your medical evidence was sufficient to warrant granting an aegrotat standing or supplemental privileges and thus that you had failed your year."

The appellant's submission to this Board argued that the Faculty's decision should be overturned because he was not given a proper hearing at the September 29th meeting; because more complete medical evidence relating to his illness at the time of the examinations had been produced; and because delays in arranging both that hearing and this appeal, which had been prejudicial to his position, were caused by the Faculty of Law. In view of these circumstances, the appellant asked that he be given aegrotat standing or be allowed to write supplemental examinations in enough of his missed courses to make it possible for him to complete second year.

1. Mr. W.

(Cont'd)

Although there is some concern about the procedures in the Faculty of Law relating to its September 29th hearing, the Board concludes that the appellant has now received a full hearing of his case. Reviewing the evidence as presented to the Faculty on June 9th and again on September 29th, the Board sees no reason to reject the Faculty's decision to fail the appellant. Nor does it believe that any of the additional evidence significantly changes the situation. The Faculty of Law is not responsible for various delays that have occurred since its original decision on June 9th, 1978. The Board's decision, therefore, is to deny the appeal.

The Faculty of Law has not established formal procedures for academic appeals by its students. Students who petition for a re-consideration of a Faculty decision are given a "hearing" or "re-hearing" at another meeting of the Faculty Council. In the appellant's case, he was allowed to present new evidence at the September 29th meeting and to state his case. The appellant argued that a breach of his rights to natural justice took place at that meeting inasmuch as it was a judicial hearing in which he was not given a full opportunity to present his case through confrontation of evidence before the Faculty of which he was unaware, cross-examination, and other procedures.

The Dean of Law testified to the difficulties involved in this small faculty conforming fully to the Governing Council's "Guidelines for Academic Appeals Within Divisions". The basic problem seems to be the difficulty, perhaps the impossibility of establishing an internal body when all members of the teaching staff are involved in initial decisions reached at marks meetings. The Faculty argued that the appellant had not been treated unjustly at the September 29th meeting, but that in any case his right to a full appeal was being satisfied by the University through this hearing before the Academic Appeals Board.

The Board accepts the Faculty's argument that the procedures have not been unjust to the appellant. Because of the nature of marks meetings in the Faculty it would be inappropriate and possibly improper, for an internal reconsideration of a decision to be equated with a formal appeal procedure. On the other hand, it would overturn fundamental principles of evaluation and grading within a university for students to receive initially the kind of hearing given in a formal appeal. The existence of this Board fulfills the University's obligation to provide students with a formal appeal procedure against decisions of the Faculty; the procedures in place at the University of Toronto do not contravene the appellant's rights.

The Board expresses concern, however, about the extent to which the Faculty of Law's procedure deviates from the Governing Council guidelines. It may well be that the Governing Council should attempt to clarify the direction it gives to University divisions when it establishes "guidelines". Be that as it may, the practical consequence of the situation in the Faculty of Law is that this division (otherwise noted for its self-sufficiency) is relying on the Academic Appeals Board to perform a function which, at least in the initial stages, other divisions now carry out internally in accordance with the wishes of the Governing Council.

The Board sees no reason to overturn the Faculty's decision that the appellant had failed second year. On June 9th and again on September 29th the Faculty weighed the circumstances surrounding the appellant's failure to write several examinations, and included in their deliberation a consideration of his total performance in law school. The file put before these meetings contained material appropriate to and normal in such deliberations. The central factor in the Faculty's decision was the inadequacy of the appellant's medical evidence as a justification for his failure to write three examinations. There is no doubt that it is University policy to give fair and reasonable treatment to students who are too ill to write examinations; indeed this is the rationale for the very existence of segregated standing. There is equally no doubt that the onus rests upon a student who misses examinations to

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1. Mr. W.C.

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provide his examiners with convincing medical evidence of his illness. Weighing the evidence before it, and having made appropriate and proper attempts to secure amplification of the medical evidence, the Faculty on June 9th and again on September 29th did not find the evidence of illness adequate to justify anything but failed standing. The Board does not believe these were improper decisions of the Faculty. Nor does it believe that further medical evidence submitted since September 29th gives reason to overturn these decisions. The medical evidence is inadequate to support the contention that the student suffered illnesses in the examination periods which were significantly different from health problems affecting him during the year; if these problems were indeed debilitating, the situation reinforces the Faculty's argument that the student was not sufficiently prepared in his courses to qualify for aggregate standing on the basis of missed examinations. The Board takes note of testimony by the Dean that the appellant's failing grade in Criminal Law should be raised by several marks because of additional material discovered on the re-reading of his paper. The grade would still be a failure, however, and the adjustment does not materially affect the overall situation.

The appellant's failure in his year's work stands. As with all other students who fail a year's work in the Faculty, the appellant has the right to re-apply for admission to that year.

The appellant's submission that the Faculty was responsible for the delays in his receipt of his grades, for postponements of the hearing of his petition, and for this hearing of his appeal, is judged to be without foundation. At all times the Faculty followed normal, reasonable, and often generous procedures. No procedures can prevent occasional breakdowns in communication, delay, and ensuing inconvenience to all concerned.

The appeal is dismissed.

Secretary
February 13th, 1979

Acting Chairman

