

## UNIVERSITY OF TORONTO

## THE GOVERNING COUNCIL

REPORT NUMBER 52 OF THE ACADEMIC APPEALS BOARDSeptember 21st, 1979

To the Academic Affairs Committee,  
University of Toronto.

Your Board reports that it held meetings on Friday, September 21st, 1979 at 2:00 p.m. in the Dean's Conference Room, Medical Sciences Building and on Friday, September 28th, 1979 at 1:30 p.m. in Room 106, Simcoe Hall, at which the following were present:

Professor J.B. Dunlop (In the Chair)  
Ms. Beverley A. Batten  
\*Professor W.E. Grasham  
Professor Merrijoy Kelner

Dean John C. Ricker  
Mr. Thomas H. Simpson  
Professor Victor G. Smith  
Miss M. Salter, Secretary

In Attendance:

Mr. G. ....  
and counsel, Mr. Richard J. Sommers

Dean A.R. Ten Cate  
Faculty of Dentistry

\* Present on September 21st, 1979 only

THE MEETING WAS HELD IN CLOSED SESSION

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

1. Mr. G.

At its meeting on Friday, September 21st, 1979 the Academic Appeals Board heard the appeal of MR. G. against a decision of the Academic Appeal Committee of the Faculty of Dentistry denying his appeal against his failure in three of five theoretical and three of nine clinical subjects in April, 1979. The Board met again on September 28th to continue its consideration of the evidence and arguments presented at the hearing. The decision of the Board is that the appeal should be dismissed.

Following his failures in April the appellant applied to write supplemental examinations. These were undertaken in June and failures in two theoretical subjects were recorded. Thereafter, the Executive Committee of the Faculty examined the appellant's total academic performance and in light of his failure of third year in the spring of 1977 concluded that he should be denied further enrolment in the Faculty. It should be noted that the Faculty had also refused the appellant re-enrolment in 1977 on the ground that he had failed twice. However, this Board allowed his appeal to be permitted to repeat the one course he had failed after supplementals on that occasion and the repetition in 1977-78 was successful. The appellant thus entered the fourth year in 1978. (REPORT #34)

Following this second decision not to permit him to re-enroll, the appellant launched the appeal against the April failures based on a number of grounds. Notwithstanding the failure of the appellant to give notice of appeal within 14 days from the date of receipt of the decision appealed against, as required by faculty regulations, the Faculty Committee heard the appeal on the merits and dismissed it.

The appellant asked this Board, as he had asked the Faculty's Committee, for alternative relief. He requested that his original April examination papers in the two theoretical subjects he failed in April and June be referred to two outside examiners along with the examination papers of the nine students who received the lowest passing marks to be ranked from 1 to 10. He further requested that his clinical work in two subjects be reviewed by an outside examiner. In the alternative he requested permission to repeat the fourth year.

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The appellant claimed to have been deprived arbitrarily of numerous credits in two clinical subjects and gave evidence of a number of irregularities in his supervision and assessment in one of them. The Faculty did not respond to this evidence but took the position that the failure and refusal of re-enrolment were based on the failures in the theoretical subjects (both in April and in June) and that the issue of the clinical subjects were therefore irrelevant. The Board was disturbed by this unanswered evidence but in light of the appellant's other failures did not see it as justifying relief.

The appellant also claimed that his identity was disclosed to the examiners in his theoretical subjects, that he had been informed in January by a member of the Faculty that if that member had "anything to do with it, I would see that you will never graduate from this school" and that members of the dental profession were aware that one student had failed fourth year approximately five weeks before the supplemental examinations were written at a time when 17 students were facing supplemental examination.

The evidence of disclosure of identity centred on the fact that the appellant had a code number in the 700 series while the remainder of the fourth year class had numbers in the 400s and 500s. This discrepancy existed because the appellant had been assigned the number as a member of an earlier class and had retained it when he became, as a result of his failure and repetition, a member of a different fourth year class in 1978-79. If one assumes that there could be no explanation for this discrepancy but that the appellant was a repeater, then, most unfortunately, the opportunity for identification would have been present and, indeed, the appellant petitioned at the outset of the examinations to be given a different number. By the time the petition was considered by the Examinations Committee, however, the examinations had been written and graded. According to Dean Ten Cate the instructors "declared at that meeting that they were not aware of the identity of the individual with the number in the 700 series, and in fact did not even recognize the number was not in the same series." The Examinations Committee therefore turned down the petition indicating that they were satisfied that the appellant's failures did not result from anyone knowing his identity. The Board was also informed that each failing paper had been read by three examiners. In light of this evidence the Board agreed with the opinion of the Faculty Appeals Committee "that the examinations were marked fairly and that no purpose would be served by having the papers re-marked by external examiners." It is worth noting that in any event, the Faculty rule under which the request was made provides only for reference of the appellant's work to outside experts, not the work of other members of the class.

In reaching its conclusion on this issue the Board was considerably influenced by the fact that the appellant, upon being informed of his failure in April, chose to take supplemental examinations. He raised the validity of his earlier marks only after he had failed again in two of the theoretical subjects. This apparent acceptance of initial failure, together with the repeated failure in supplementals, reinforces the view that the appellant's failure was a result of his own short-comings rather than being the result of a bias against him.

The evidence that one member of the faculty had disclosed a considerable prejudice against the appellant did not, in the view of the Board, undermine the conclusion that the appellant had been fairly treated. The name of this faculty member was disclosed for the first time at the Board's hearing and the appellant's testimony thus constituted the only evidence on this point. Dean Ten Cate in his submission to the Board had referred to this comment as "disturbing" but noted that "as the name of the instructor has not been given it is difficult to comment on this accusation."

The allegation that members of the dental profession were aware of the student having failed fourth year was supported by the letter of one member of the profession who wrote that "I was aware that one student had failed fourth year in late April 1979. This information was conveyed to me by a former staff member of the Faculty of Dentistry." The appellant testified that this information came from members of the Faculty but declined to give their names except in the absence of the Faculty representative at the hearing.

1. Mr. G. (Cont'd)

Dean Ten Cate. As the Faculty would be entitled to the opportunity to respond to evidence of this sort and could not do so under the conditions attached by the appellant, the matter was not pursued further. Dean Ten Cate noted that the appellant was the only student to fail the subject of Clinical Dentistry in April and speculated that this information, which would have become more widely known when the results were ratified by Faculty Council, could have been the basis for such a statement. The Board was certainly not prepared, on the strength of this information, to conclude that the faculty was proposing in advance to fail the appellant.

The alternative request that the appellant be allowed to repeat fourth year was based on an interpretation of the Faculty's regulations which the Board does not accept. An issue arose as to which of two versions of the "two failure" rule should apply, the one in effect when the appellant entered the Faculty or the one that has been adopted more recently. The argument on behalf of the appellant was that the earlier rule should apply and that on a proper interpretation of it the appellant was entitled to repeat fourth year. The Board feels that the appellant cannot succeed under either rule. The earlier version is as follows:

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 this Faculty.

It was urged that the appellant had failed on one occasion to receive the right to advance to a higher year and on one occasion had failed to graduate so that the rule did not apply. In the Board's view, however, the intent of the regulation is clear and an interpretation which would appear to permit the appellant to continue repeating his final year ad infinitum should not be accepted.

The later version is:

Any student who fails on two occasions to receive the right to advance to a higher year or to graduate shall be refused further enrolment in the Faculty, except under circumstances which Faculty Council may deem exceptional.

The intention of this version is, if anything, clearer and the Board declines to accept that it requires either two failures in the graduating year or two failures in a lower year before the student may be refused re-enrolment.

No one can be happy that a student must ultimately fail in the final year of a long and difficult program. Nevertheless, the Board feels bound to dismiss the appeal.

Secretary  
October 16th, 1979

Chairman

