

CONFIDENTIAL

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 59 OF THE ACADEMIC APPEALS BOARD

To the Academic Affairs Committee,  
University of Toronto.

Your Board reports that it held meetings on Tuesday, August 26th, 1980, at 3:30 p.m. in the Council Chamber, Faculty of Pharmacy and on October 28th, 1980, at 3:30 p.m. in the Council Chamber, Galbraith Building, at which the following were present:

Professor J.B. Dunlop (In the Chair)  
Ms. Beverley A. Batten  
Mrs. Frances Jones  
Professor J.T. Mayhall

Principal R.M.H. Shepherd  
Professor Victor G. Smith  
\*Ms. D. Polawski, Acting Secretary  
\*\*Miss M. Salter, Secretary

In Attendance:

\*Mr. S.  
and counsel Mr. Harvey Groberman  
Toronto Community Legal Assistance  
Services

\*Professor E.J. Barbeau  
Department of Mathematics  
Faculty of Arts and Science

\*Mr. W.D. Foulds  
Assistant Dean and Secretary  
Faculty of Arts and Science

Mr. N.  
\*\*Dean D.J. Tigert  
Faculty of Management Studies

\* Present at August 26th, 1980 meeting only

\*\* Present at October 28th, 1980 meeting only

THE MEETING WAS HELD IN CLOSED SESSION

THE FOLLOWING IS REPORTED FOR INFORMATION

1. Mr. S.

At its meeting on August 26th, 1980 the Academic Appeals Board heard the appeal of Mr. S. against a decision of the Academic Appeals Board of the Faculty of Arts and Science denying his request for an adjustment in his final mark in ANT 346 Y (1979 summer session). The decision of the Board is that the appeal should be dismissed.

In the winter of 1978-79 the appellant was in his third year. Because of his father's illness in that year the appellant was required to devote a considerable amount of time to the family business and as a result withdrew from two courses and was unable to complete the work of a third one on time. He petitioned for an extension of time in respect of the third course and took two courses in the summer session, including ANT 346 Y, to make up for the two courses he had dropped. If he had been successful in the two summer courses and if his petition had been allowed he would have qualified for his degree.

However, the appellant failed ANT 346 Y because he received a mark of zero on an essay which he had written on a topic not approved in advance and considered by the instructor to be irrelevant to the course. The appellant had left Toronto immediately after the summer session in August to take up a job in Dallas, Texas and did not learn of this failure until he received his statement of grades sometime in September. He exchanged correspondence with his college registrar and ascertained the reason for his failure in October. In the meantime he had had to abandon plans to attend law

REPORT NUMBER 59 OF THE ACADEMIC APPEALS BOARD

1. Mr. S. (Cont'd)

school at Southern Methodist University in Dallas because he did not have a degree, a necessary entrance requirement for American law schools. The appellant decided to try to remedy this deficiency by taking a course at Southern Methodist for which he hoped to obtain credit from the University of Toronto by letter of permission. In late January of 1980 he returned to Toronto where his petition concerning the course he had had difficulty completing was granted. During that visit the appellant met and talked to the course instructor in ANT 346 Y who agreed to accept and grade another essay for credit. The appellant wrote such an essay and submitted it.

The appellant did not return to Dallas until early March, having been delayed by an injury to his knee and difficulty with his work permit and visa. By this date he had missed so much of his course at Southern Methodist that he withdrew.

Meanwhile the instructor graded the appellant's new essay in ANT 346 Y and revised his mark in the course to 58. This mark was submitted to the Department on April 15th, 1980 and forwarded to the Faculty on May 8th. The Faculty rejected the mark under the regulation, of which the appellant, the course instructor and the Department chairman appear to have been unaware, prohibiting instructors from accepting new work after a course is finished. The Academic Appeals Board of the Faculty, applying this regulation, observed that if students were given an opportunity to submit new work after the conclusion of a course they would have an unfair advantage over other students whose marks had already been determined by work submitted during the course. The Faculty Board referred to the principle involved as "a corner stone of fairness in grading practices". Such a regulation cannot, of course, be ignored by this or any other appellate body.

The appellant took no course in the summer of 1980 and so continues to face the handicap and the frustration involved in being one course short of a degree. The appellant's difficulties, however, while giving rise to considerable sympathy on the part of the Board, do not justify any remedial action involving ANT 346 Y. The criterion for determining success or failure in a course is performance in the course and the appellant did, in fact, fail, albeit it may have been more a matter of misjudgment than ignorance. Personal difficulties that affect performance in a course may give grounds for special consideration in respect of the course but the appellant's personal problems did not bear on his ability to perform in ANT 346 Y. Thus there is simply no basis on which the Board would be entitled to intervene.

It is unfortunate that ignorance of the rules put the appellant to the effort of writing an essay for which he could not obtain credit. However, the regulations appeared both in the Faculty calendar and in the instructors' handbook and should have been known to the appellant as well as to the instructor and the Department chairman.

Appeal dismissed.

2. Mr. N.

At its meeting on August 26th, 1980 the Academic Appeals Board heard the appeal of Mr. N. against a decision of the Applications and Memorials Committee of the School of Graduate Studies upholding the termination of the appellant's Master of Business Administration candidacy upon the recommendation of the Graduate Department of Management Studies. No one appeared on behalf of the School of Graduate Studies or the Department at the hearing, a state of affairs that was without precedent in the experience of the Board. Following the hearing the Board found itself lacking complete information as to the regulations governing the M.B.A. programme and lacking an official transcript of the appellant's work. This, too, was without precedent in the Board's experience because such documentation ordinarily comes to the Board as a matter of course. The Board chose to rectify what was presumably an administrative oversight by requesting this information and also requesting the attendance of a representative of the Department to answer questions, if necessary, relating to the regulations and the transcript.

REPORT NUMBER 59 OF THE ACADEMIC APPEALS BOARD2. Mr. N. (Cont'd)

The Board thus met again on October 28th, when Dean Tigert of the Faculty of Management Studies and the appellant were present. The appellant protested that the second meeting was improper and that the Department should be treated as having waived its right to be heard. However, after indicating to the appellant that the Department was not being asked to argue its case but merely to supply essential information, the Board proceeded to question Dean Tigert briefly. The appellant was given the opportunity to make further submissions. Although he made further submissions, he did not withdraw his protest.

The Board's decision is that the appeal should be dismissed.

The appellant was admitted to the two-year M.B.A. programme as a part-time student commencing in the fall of 1976. He took two courses in the fall term and two more in the summer of 1977, one of which he failed. In 1977-78 he took two fall courses, two spring courses and one summer course but did not complete the summer course. In 1978-79 he took again the course he had not completed and the course he had failed. He took two other courses as well, one of which was a second year course which he took concurrently with the last of his first year subjects. In July of 1979 his candidacy was terminated on the grounds that he had failed to achieve the necessary standing in the courses of the first year.

In 1976 the Graduate Department of the Faculty of Management Studies had adopted regulations which required first-year students, in order to be eligible to proceed to the second year, to obtain a grade point average of 5.0 (a B average) with no more than two grades below B- (4 grade points). These regulations were supposed to apply, according to a memorandum issued by the Associate Dean "to all new students entering the programme in September 1976" and under these criteria the appellant did not qualify to continue.

However, this memorandum was issued on November 15th, 1976 and was addressed to all faculty. Dean Tigert stated that the students would have been informed of the change in regulations by the 1977-79 calendar which would have become available some time late in the fall of 1976. Dean Tigert was not dean at that time and so could not be more precise about these facts. The only evidence of the regulation being brought to the particular attention of the appellant was in the form of a letter from the Associate Dean dated September 9th, 1977 noting the appellant's poor academic performance in his summer work (where he had, as already noted, failed one course) and drawing his attention to the "current regulation of the Faculty as explained on page 17 of our 1977-79 calendar of which you have a copy."

The appellant contended that he was entitled to be judged by the regulations that prevailed prior to the enactment of the 1976 regulations and, indeed, asserted that throughout his attendance in the programme he assumed that the earlier rules applied to him. The Associate Dean's letter, he said, seemed to him to be based on a mistaken view.

The appellant's contention raised an issue of fundamental importance in University law. Can the University enact new regulations affecting students already enrolled or are the students entitled to insist all regulations in force at the time of their entry must remain in force until such time as they graduate? The answer must surely be that, apart from amendments that would operate to the prejudice of the student, the University is entitled to make appropriate changes. The Board believes, however, that in the interests of all concerned the possibility that regulations may be changed should be made as clear to students through calendar publications as the regulations themselves. To prejudicial amendments the answer may be different. For example, in a decision dated November 3, 1976 (see Academic Appeals Handbook, page 57) the Subcommittee on Academic Appeals, as this Board was then known, ruled that a student who had passed a course in accordance with the prevailing regulations could not be deprived of credit for the course by a new regulation altering the course requirements. The regulations in the present case, however, are not of a retrospective effect. They were publicized within the Faculty in the fall of 1976 before the appellant had completed any of his courses albeit not before he had done most of the work in two of them. It is certainly arguable that where regulations raise the required cumulative average the requirement should

(REPORT  
# 27,  
CASE 2.)

2. Mr. N: (Cont'd)

not be applied to work already performed where the result would be prejudicial to the student. Can it also be argued that a student, having embarked on a programme in the expectation that he or she can satisfy the prevailing assessment criteria, has the right to be judged by those criteria throughout the programme rather than more demanding ones? Can the student claim prejudice in that had he or she known of the higher criteria the programme might not have been commenced? The question is one which the Board need not determine in order to dispose of this appeal and would prefer not to determine without hearing full argument on both sides of the issue.

The reason that the Board need not decide the issue in this appeal is that, as the Committee on Applications and Memorials pointed out, whichever regulations prevailed the appellant has failed to meet the requirements.

The regulations enacted in 1976 are, as already noted, to be found in the calendar of the Faculty of Management Studies 1977-79. The regulations in force prior to the enactment of these current regulations do not appear in the calendar for 1976-77, the one to which the appellant referred us. The 1976-77 calendar makes only one reference to grading and this relates to the requirement of a 4.0 grade point average a diploma course student must obtain in order to be allowed to enter the second year of the M.B.A. The criteria applicable to the first year M.B.A. students are contained in the 1975-76 calendar. Under those regulations the necessary grade point average was 4.0 and failed courses were required to be included in the calculations. As in the current regulations a limit of two C's was imposed. On this basis the appellant's grade point average on the first year work was 3.9 and he had two C's and an F. The appellant argued that his grade point average should be calculated to include his second year course. However, under both the earlier and the later regulations credit for the first year is based on assessment of the first year work and eligibility to proceed to second year depends on performance in the first year. The fact that the appellant took a second-year course concurrently with the last of his first year courses in the spring of 1979 does not entitle him to include that second-year course in the calculation of the first-year grade point average.

Under either set of regulations a student whose work is deemed unsatisfactory may have his or her registration cancelled. Thus, the decision to cancel the appellant's registration was an appropriate one. The Board was somewhat puzzled by the fact that the Management Studies regulations permitted C grades at all. The Board wondered if this was inconsistent with the rule of the School of Graduate Studies that the lowest passing grade is a B-. However, as nothing turned on this the Board did not pursue the issue.

Appeal dismissed.

Secretary  
December 18th, 1980

Chairman