

CONFIDENTIAL

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 66 OF THE ACADEMIC APPEALS BOARD

To the Academic Affairs Committee,
University of Toronto.

Your Board reports that it held a meeting on Thursday, June 16th, 1981 at 10:00 a.m. and on Thursday, June 23rd, 1981 at 2:30 p.m. in the Council Chamber, Faculty of Pharmacy, at which the following were present:

Professor J.B. Dunlop (In the Chair)
**Ms. Beverley A. Batten
**Professor E.G. Clarke
*Professor J.T. Mayhall

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

In Attendance:

*Mr. Paul Calarco,
Director,
Toronto Community Legal Assistance
Services

*Mr. Eric McKee
University Ombudsman

*Present at meeting of June 16th, 1981 only
**Present at meeting of June 23rd, 1981 only

The Chairman opened the meeting by referring to a letter of April 3rd, 1981 received from the University Ombudsman a copy of which is attached hereto as Appendix "A", raising two matters for the consideration of the Board. He explained that in addition to hearing the appeals of students concerning the application of academic regulations, the Board also had the function of advising the Academic Affairs Committee upon matters of policy regarding academic appeals procedures.

The first of the two issues raised by the Ombudsman concerned the award of costs; the second issue concerned the rights of a member of the teaching staff who became involved in an appeal. With regard to the second issue, the Chairman observed that one possibility would be to allow a member of the teaching staff to become a party to the appeal. In order to do this, the Board would have to ask that the Governing Council approve a change in its terms of reference. It would be possible to make such a change because under the University of Toronto Act, 1947, as amended, the Senate could "hear and determine appeals from decisions of the faculty and school councils upon applications and memorials by students and others." Along these lines, he pointed out that the Board had always given a fairly broad interpretation to the term "student". According to the University of Toronto Act, 1971, as amended, "'student' means any person registered at the University for full-time or part-time study in a programme that leads to a degree or post-secondary diploma or certificate of the University or in a programme designated by the Governing Council as a programme of post-secondary study at the University." Therefore, in the strictest interpretation, a student must be registered. In practice, the Board had heard appeals from students who had failed or been suspended, or who were between sessions. The Board might wish at some time, however, to give consideration to the question of broadening its jurisdiction to include "students and others".

The Chairman welcomed Mr. Paul Calarco and Mr. Eric McKee to the meeting and thanked them for attending to give the Board the benefit of their advice on these issues.

i) Costs

To open the discussion of the award of costs, the Chairman commented that a good proportion of the appellants heard by the Board might well have incurred costs. If the student was represented by legal counsel, the fee would be based on the amount of time spent on a case. The average length of an appeal hearing was from one to two hours, and there might also be several hours of preparation involved. Many of those appearing before the

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Board were represented by Toronto Community Legal Assistance Services. Mr. Calarco, who emphasized that he was not representing an official TCLAS viewpoint, explained that TCLAS did not charge a fee, but if there were disbursements, the client would have to pay. He then compared this with the kind of costs that would be involved if the appellant decided to obtain regular legal counsel.

Mr. McKee noted that he had been prompted to raise the issue of costs with the Board because of a particular case with which he had dealt. The case had illustrated to him the importance of the principle that if costs were to be awarded, this must be done by the hearing bodies involved. In his experience, there had been a number of instances where claims for compensation were made and these had been settled in a variety of ways. His concern was that the individual was required to bear the costs when it was necessary for them to seek legal advice on matters of importance. He added that on the other hand, it would not be possible to allow cost awards to the appellant and not to the division. This could have an inhibiting effect on student appeals and it also introduced another element into the adjudication. In his own view, the appeals process had been very successful because it had concentrated on remedies and not on fault. Cost awards would lead directly to findings of fault.

Mr. Calarco observed that he did not believe that the Academic Appeals Board had any ability to award costs at the present time. He agreed with Mr. McKee's observation that if costs were awarded to an appellant, the Board would also have to consider awarding costs to the respondent (the division) and most students were not in a position to pay costs if they lost the appeal.

A member asked whether it was thought that any individuals were being prevented from appealing because of legal costs. Mr. McKee replied that there might be some difficulty for students in the School of Graduate Studies who might have a lot at stake and who might not be at an income level where they would be granted legal aid. The Chairman then commented briefly on the valuable assistance rendered to appellants over the years by law students from TCLAS at no charge.

After some further brief discussion, the Board agreed to leave this question for further consideration at a later meeting.

(ii) Rights of Instructors in Appeals

The Chairman introduced the question of the rights of instructors who were involved in appeal cases. He observed that in most cases, an instructor had little, if anything, at stake. However, a situation could arise in which there could be some adverse effects. He asked Mr. McKee to elaborate on this.

Mr. McKee outlined a situation which had been brought to his attention where the Academic Appeals Board of the Faculty of Arts and Science had, in its decision, made some criticisms of an instructor. The instructor was not able to answer the criticisms because he was not a respondent and could only answer the questions put to him. The criticisms made by the Appeals Board later became an issue during consideration of the instructor for tenure. Mr. McKee added that he was not suggesting that everyone involved in an appeal be allowed full participation, but where an instructor's conduct was at issue, he or she should have certain rights.

The Chairman suggested that some statement might be added to the Guidelines for Academic Appeals Within Divisions that wherever criticism of an individual instructor was likely to result, that person should be allowed to defend himself. Another possibility would be to word a section of the Guidelines to the effect that appeal bodies should not make critical judgement of individuals who had not had an opportunity to address the issue. He stated that he would draft a statement for consideration by the Board.

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The Board briefly discussed the question of whether or not it was entitled to hear appeals from individuals who were not registered students. The Chairman suggested that the wording of the terms of reference might be expanded slightly, but this would have to be done with some care in order not to create additional problems.

The Board adjourned at this point.

The Board held another brief discussion of the above issues at its meeting on June 23rd, 1981.

On the question of costs, members of the Board were agreed that there should be no change at this time.

After a brief discussion of the rights of members of the teaching staff in appeals, the Chairman offered to draft a statement to be discussed at a later meeting. He wished first to research the question in other areas such as labour arbitration.

The Chairman proposed to write a letter to the Ombudsman on both of the points raised in the letter of April 3rd, 1981, and noted that the Board would discuss the question of the rights of instructors again at a later date.

Secretary
September 17th, 1981

Chairman

