

CONFIDENTIAL

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 93 OF THE ACADEMIC APPEALS BOARD

September 6th, 1985

To the Academic Affairs Committee,
University of Toronto.

Your Board reports that it held a hearing on Friday, September 6th, 1985 at 3:00 p.m. in the Board Room, Simcoe Hall at which the following were present:

Professor J. B. Dunlop (In the Chair)	Mrs. D. Hellebust
Professor S. Aster	Professor J. Mayhall
Ms. F. Currey	
Mr. M. Evans	Ms. Irene Macpherson, Secretary
Principal P. Fox	

In Attendance:

Mr. F.
Professor G. T. Will, Associate Dean, Academic, Faculty of Applied Science and Engineering

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

(SEE —
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By reasons dated May 31, 1985 the Academic Appeals Board dismissed an appeal by *MR. F.* from a decision of the Ombudsman Committee of the Faculty of Applied Science and Engineering upholding the refusal of his petition to transfer to Mechanical Engineering. The number of places in the programme was limited and although the appellant's record in the term immediately preceding his application was better than that of several individuals who were admitted, his overall record was not as strong as theirs. In the circumstances, the Board did not feel that the appellant had been unfairly treated. After the decision had been released the appellant communicated with the Board, indicating that subsequent events had led him to believe that if he had not appealed the Ombudsman Committee's decision he would have been granted admission to Mechanical Engineering. He wanted to place additional information before the Board and the Board convened a hearing for the purpose.

The appellant testified that after the hearing by the Board on May 2nd he had been informed by the "assistant chairman" of the Mechanical Engineering Department that they had decided to admit him to the programme, that a letter of acceptance was being sent to the Faculty and that he should go to the Department's office to discuss his course selection. When he went to the office for that purpose he said he was told that because of the pending appeal the offer of admission was being withdrawn.

The appellant felt that the department had been willing to admit him on the basis of his past record and that the appeal should have had no bearing on that decision.

Professor G. T. Will, Associate Dean, Academic, represented the Faculty at this second hearing. He had been appointed on July 1st which was, of course, subsequent to the first appeal, the ensuing events described by the appellant and the release of the Board's decision. Thus he possessed no first-hand information concerning what the Board felt were some of the important facts.

As Professor Will understood it, the appellant had indeed received a call from the Department. However, he explained to the Board that the Department had no authority to grant advanced standing and therefore it was inaccurate to say that an offer had been made and withdrawn. Transfers are under the jurisdiction of the Advanced Standing Committee. He went on to say that the appellant had discussed his

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situation with Professor Tennyson and Professor Venter, who was the Chairman of the Department, that on May 13th a letter had gone from Professor Venter to the Associate Chairman suggesting that admission be granted and that on the 15th the Associate Chairman had sent a letter to the registrar's office. This, according to Professor Will, was a procedural error on the part of the Department. The then Associate Dean, Professor Wright, intercepted the department's request, met with Professors Venter and Tennyson and informed them that the case was before the Appeals Board. Professor Venter had not known this previously. It was suggested that they await the decision of the Board before making a final admission decision. Ultimate control of numbers admitted to particular programmes rests in the Office of the Dean where ultimate responsibility for the allocation of resources to the different departments also resides.

Professor Will agreed with the proposition that Professor Wright would have preferred that the appellant's admission not occur unless it were ordered by the Board as a result of the appeal. Dean Wright thought that the original decision by the Advanced Standing Committee had been proper and that the Department ought not to have changed its mind without a significant change in the facts. Thus Dean Will thought that the appeal had had no bearing on the outcome of the appellant's case because the decision not to admit would have been maintained whether the appellant had launched an appeal or not.

There is, of course, an argument (not advanced by the appellant who was unrepresented by counsel) that an offer of admission made by the Associate Chairman of the Department would be binding notwithstanding the absence of actual authority. It might well appear to someone unfamiliar with the distribution of decision-making authority within a faculty that admission to a department could be granted by the chairman or associate chairman. Apparent authority can be enough to make an offer valid. Because of the timing of events the appellant was not in a position to ask for a remedy for the academic year 1985-86. At the date of the second hearing he had already enrolled at the University of Western Ontario, paid fees and entered into a lease on accommodation. Thus he did not feel it would be possible for him to go to the University of Toronto this year. He indicated that he would like to be able to enter the Mechanical Engineering programme in 1986-87 at the same level at which he had wanted to enter it this year, namely, second year. In the Board's view, however, it would not be appropriate to decide, on the basis of a legal principle that was not the subject of argument before the Board, what should happen a year hence.

Professor Will assured the Board that it would be possible for the appellant to apply for admission in 1986-87 and that his application would be considered on the merits at the time.

As already indicated, it was Professor Will's opinion that the appeal to this Board had not affected the decision as to the appellant's advanced standing. Nevertheless the Board was troubled by the fact that no one with personal knowledge of the matter had come before the Board and given evidence to this effect. Certainly, it appeared to the appellant, not unreasonably, that there might have been a connection. The Board would suggest that, if the appellant should reapply for the 1986-87 academic year, there should be no opportunity for reasonable doubt as to the fullness and fairness of the consideration given to his application.

Secretary
October 17th, 1985

Chairman