

CONFIDENTIAL

UNIVERSITY OF TORONTO

Item 9

THE GOVERNING COUNCIL

REPORT NUMBER 96 OF THE ACADEMIC APPEALS BOARD

January 11th, 1985 and October 30th, 1985

To the Academic Affairs Committee,  
University of Toronto.

Your Board reports that it held hearings on Friday, January 11th, 1985 at 11:00 a.m. in the Conference Room, Faculty of Pharmacy and on Wednesday, October 30th, 1985 at 2:00 p.m. in the Board Room, Simcoe Hall. The following were present at the January 11th, 1985 meeting:

Professor J. B. Dunlop (In the Chair)	Ms. M. Meyer
Professor W. J. Callahan	Mrs. J. Uyede
Professor J. T. Mayhall	
Professor K. G. McNeill	Ms. Irene Birrell, Secretary

The following were present at the October 30th, 1985 meeting:

Professor J. B. Dunlop (In the Chair)	Mrs. J. Uyede
Professor W. J. Callahan	
Mr. M. Evans	Mrs. Susan Girard, Governing Council Secretariat
Professor P. W. Fox	
Professor J. T. Mayhall	

In Attendance: January 11th

Mr. *H.*  
Mr. Larry Theall, Downtown  
Legal Services

Mr. Ian Blue, Cassels, Brock  
and Blackwell, for the Faculty  
Professor J. J. B. Smith,  
Faculty of Arts and Science

In Attendance: October 30th

Mr. *H.*  
Ms. Sharon Wong, Downtown  
Legal Services

Mr. Ian Blue, Cassels, Brock  
and Blackwell, for the Faculty  
Professor J. J. B. Smith,  
Faculty of Arts and Science  
Professor P. C. Greiner,  
Department of Mathematics

THE MEETINGS WERE HELD IN CLOSED SESSION

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

On January 11th, 1985 the Academic Appeals Board commenced hearing an appeal by *MR. H.* from a decision of the Academic Appeals Board of the Faculty of Arts and Science dismissing his appeal against the refusal of the Department of Mathematics to grade his MAT 250Y examination for the academic year 1979-80. A preliminary issue arose at the hearing and the Board reserved its decision and adjourned the matter until it could make a ruling. The ruling was made on April 23rd, 1985 but the parties did not move to resume the hearing until the fall and the case was not completed until November 20th, 1985. The decision of the Board is that the appeal should be allowed and that the examination should be graded.

In effect, the case of the Faculty was that one of the examination books written by the appellant had not been written in the examination room but had been introduced at a later time into the office of the professor who was responsible for the course. The appellant had been charged before the University Tribunal with an offence under the Code of Behaviour on Academic Matters in connection with the examination. It was alleged that he had knowingly attempted to use unauthorized aids or to obtain unauthorized assistance in that, at some time following the writing of the examination, he had gained access to the professor's office for the purpose of submitting an additional examination booklet to be used for

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credit in MAT 250Y. The University Tribunal had acquitted the appellant of the charge on March 20th, 1981. The preliminary issue was thus whether or not the Faculty was entitled to ask this Board in effect, to re-try the issue of whether the appellant had misconducted himself on the examination. The decision of the Board was that the issue had been settled by the decision of the University Tribunal and that this decision was binding on the Faculty.

Counsel for the Faculty, while accepting that the Faculty was bound by the Tribunal's decision, took the position that the evidence he proposed to present did not challenge the Tribunal's decision and should therefore be heard. He argued that the Tribunal's decision did not necessarily amount to a finding that the disputed book had been written in the examination room rather than substituted later. Another possible explanation for the Tribunal's decision, he suggested, was that it considered it possible for someone other than the appellant to have entered the professor's office with the disputed book. There was no evidence, however, that such a suggestion had been made to the Tribunal and the Board did not feel it could regard this as a realistic possibility. The prosecution's evidence before the Tribunal was intended to prove that the book had been substituted. The defence evidence was that it had been written during the examination. Thus in the Board's view the issue squarely before the Tribunal was whether the appellant wrote the disputed book in the examination room or whether he substituted it later and the Tribunal resolved that in favour of the appellant.

Another argument was that the evidence being offered before the Board was not aimed at establishing an offence but merely that the examination was not written under "secure conditions". This is merely another way of saying, however, in vaguer terms that the appellant did not write the examination book in the examination room.

It has been obvious to the Board that the Department of Mathematics and the Faculty of Arts and Science do not believe that the Tribunal reached the right conclusion. However, when a body has been given authority to make decisions of this sort on behalf of the University those decisions must be accepted. One cannot accept only those with which one agrees and ignore those with which one disagrees. Had the appellant been convicted of the offence he could not have challenged the result in subsequent proceedings. The policy must apply to both parties to a dispute.

While the Board felt at the time it made the preliminary ruling that this might be the conclusive issue in the case it was nevertheless necessary to schedule a further hearing if either of the parties wished it. It was possible that there might be other issues. In the event, there was no other issue. While counsel for the Faculty called and examined the professor who had been responsible for the course it became clear that the evidence was designed to establish that the examination had not been written in "secure conditions", and that an effort was being made to ignore our preliminary ruling. Thus the preliminary ruling was conclusive and the appeal had to be resolved in favour of the appellant.

Between the time that the preliminary ruling was made and the resumed hearing took place, two members of the Board's hearing panel left the Board. Since the only issue raised at the first hearing had been concluded and since any further issues would have been the subject of evidence and argument at the resumed hearing, the Board decided it would be appropriate to replace the former members and continue the case rather than to start again. These two new members, in fact, had nothing to decide because there were no further issues and the result thus had been dictated by the preliminary ruling. These two members, not having participated in the preliminary ruling, wished to be dissociated from it.

In the result, the appeal is allowed. The paper, including the disputed book, should be given a grade.

Secretary  
December 5th, 1985

Chairman