

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 114 OF THE ACADEMIC APPEALS BOARD

January 14th, 1988

To the Academic Affairs Committee,
University of Toronto.

Your Board reports that it held a hearing on Thursday, January 14th, 1988 at 4:00 p.m., in the Board Room, Simcoe Hall, at which the following were present:

Professor J. B. Dunlop (In the Chair)
Ms. R. Barney
Professor C. Berger
Mrs. J. R. Randall
Professor F. A. Sherk

Ms. Irene Birrell, Secretary

In Attendance:

Ms. ^{F3} appellant
Mr. S. Zucker, counsel for the appellant
Dean A. R. Ten Cate, Faculty of Dentistry
Mr. Ian Blue, counsel for the Faculty

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

(SEE REPORT #113) At a meeting on January 14th, 1988, the Academic Appeals Board resumed its hearing of the appeal of *MS F.* against a decision of the Academic Appeals Committee of the Faculty of Dentistry. The hearing had commenced on December 17th, 1987 at which time the Board ruled that the appellant should be allowed to continue to attend classes pending the final disposition of the appeal and fixed the date for continuing the appeal. The Board's decision is to allow the appeal and refer the case to the Academic Appeals Committee of the Faculty to be considered as outlined in these reasons.

The appellant, a second year student in 1986-87, had failed Restorative Dentistry during the year and again on the supplemental assessment. Because of the critical importance of this subject, the regulations provide that a failure results in denial of credit for the year and refusal of further registration. The appellant, whose record otherwise consisted of five A's and two C's, appealed.

Before the Academic Appeals Committee of the Faculty, the appellant presented the evidence of an ophthalmologist, Dr. Goldberg, of a "convergence" problem that could be corrected by a course of exercise along with corrective lenses. She also presented psychological evidence from Dr. Turrall, a doctor of education and diplomate in clinical psychology, of "examination anxiety" caused, in part, by her vision problem. Dr. Turrall thought the two conditions were primarily responsible for her failure and offered to assist the appellant to overcome the problem. Dean Ten Cate reported many references in the appellant's file to lack of emotional control and doubted whether these could be attributed to visual problems. He requested that second assessments be sought.

The Academic Appeals Committee made the following decision:

[It] agreed that [the appellant's] appeal to repeat all clinical and preclinical courses of the Second Year Dentistry program should be granted on the following conditions: that the Faculty choose appropriate authorities to reassess her visual and emotional situation prior to her registration in Second Year. If these authorities do not substantiate those assessments submitted as evidence at her appeal hearing, the appeal is denied.

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The meaning of this passage is perhaps not altogether certain, but the Board takes it to mean that the Committee was prepared to permit the appellant to repeat her year provided it was satisfied as to the validity of the medical and psychological grounds advanced in possible explanation of her failure, and that until the issue was settled to the Committee's satisfaction she was to be allowed to attend classes. It was this status that the Board intended to preserve by its decision of December 17th and which should continue as a result of this decision.

The Faculty's chosen ophthalmologist, Dr. Kraft, confirmed Dr. Goldberg's assessment. The psychologist, Dr. Whitney, found "weak aptitudes in the visual area" and "behaviour that is inappropriate and somewhat impulsive", concluding that the appellant was in the wrong programme.

Dean Ten Cate then informed the appellant by letter on November 18th, 1987 that, according to the decision of the Appeals Committee, she was not entitled to continue. Dr. Pownall, the chairman of the Committee, responding on December 7th, 1987 to a letter of November 30th, 1987 from the appellant's lawyer, Mr. Zucker, agreed that the report of Dr. Whitney meant that, according to the Committee's decision, the appeal was denied. The Committee did not meet again, did not assess the additional evidence and, consequently did not hear any further argument.

The appellant's notice of appeal listed five specific errors by the Committee as grounds of appeal: (1) considering evidence outside the scope of the proceedings; (2) failing to permit the student to reply to the evidence used against her; (3) relying on untested and unqualified evidence; (4) denying counsel an opportunity to deal with the alleged adverse evidence; (5) failing to follow their own decision of September 4th, 1987 which only required the new experts to confirm or reject the evidence before the Committee. These are, in the Board's view, allegations of procedural error.

Following the setting of the January 14th hearing date the Faculty, on the advice of counsel, Mr. Blue, offered to consent to an order that the case be referred to the Appeals Committee for further consideration in accordance with any conditions imposed by the Board. Mr. Zucker preferred to proceed before the Board on the substantive merits of the case. Mr. Blue indicated that he would argue for referral and if unsuccessful would seek an adjournment to prepare the substance.

At the hearing Mr. Blue conceded, on behalf of the Faculty, procedural error in not referring the second opinions concerning the appellant's problems to the Committee, and said the Faculty would consent to a decision referring the matter to the Committee, with a direction that the appellant have the right to confront, cross-examine and contradict Dr. Whitney and to submit that her report ought to be disregarded. In the event the Board did not accept this proposal, he asked for an adjournment. Mr. Zucker opposed both requests and asked the Board to embark immediately on a hearing of the case de novo. It was his submission that the appellant should not be put to the further delay and possible increased expense of referral.

The Board decided that the appropriate disposition of the matter at this stage was referral. The Faculty's Committee was, as Mr. Blue had argued, well qualified to assess the relationship between psychological findings and dental skills. The Board's view is that where procedural errors can be rectified by the divisional appeal body it is appropriate that the matter should be dealt with in that fashion. Then, if the case should later come before the Board on appeal, it would have the benefit of the divisional committee's view of the merits. Mr. Zucker was quick to say that, with the exception of Dr. Pownall, whose letter, he felt, disqualified him, he had no objection to the existing Committee hearing the matter provided that none of the other members had discussed the new evidence with the chairman. Dean Ten Cate believed that they had not. Mr. Blue indicated that he and Mr. Zucker would have no difficulty agreeing on a chairman. Thus it seems appropriate to refer the case on those terms. In light of the agreement, the Board was not required to address the issue of actual or apparent bias.

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It is not obvious to the Board that the appellant will be burdened with additional costs or further delay as a result of this disposition since the Board would, in any event, have granted a further adjournment to the Faculty to prepare the substance of the case. The appellant was promised that the Faculty would be ready to proceed before its Committee at an early date. If she should be successful before that Committee the time lapse may be even shorter than had the Board set a date to hear the case de novo. Should she not be successful, she will have, of course, a right of appeal to this Board. In that event she would suffer an additional burden.

The appeal is allowed, the matter is referred to the Academic Appeals Committee of the Faculty on the agreed terms. The appellant should be permitted to attend classes as she has hitherto been permitted to do.

Secretary
January 18th, 1988

Chairman

