

THE GOVERNING COUNCIL

REPORT NUMBER 132 OF THE ACADEMIC APPEALS COMMITTEEMarch 9th, 1990

To the Academic Board,
University of Toronto

Your Committee reports that it held a hearing on Friday, March 9th, 1990 at 10:00 a.m. in the Falconer Room, Simcoe Hall at which the following were present:

Professor J. B. Dunlop (Chairman)
Professor K. G. McNeill
Professor J. Reibetanz
Professor V. G. Smith
Ms J. Strickler

Ms C. Turnbull, Acting Secretary,

In Attendance:

Ms *H.*
Dean C. Morey, Faculty of Music

At a meeting on March 9th, 1990 the Academic Appeals Committee heard the appeal of *MS H.* from decisions of the Appeals Committee of the Faculty of Music refusing her appeals against the grades assessed in three courses: PMU 285Y Applied Music, which she completed in November 1988 by singing a 20 minute program for which the jury awarded her a mark of 70% resulting in a mark for the course of 79%; and PMU 399Y and PMU 499Y, which were recitals judged by at least two and usually three adjudicators, both of which she performed in March of 1989. These produced identical grades of 73%. All three courses were required as part of her Bachelor of Music (Performance) program and PMU 285Y was a prerequisite to the others.

In each case a ground of appeal was bias on the part of the jury. In PMU 285Y the appellant also alleged that she had been required to sing on a day when she was medically assessed as incapable of singing. Otherwise she would have been required to withdraw from all performance subjects and become a part-time student.

The decision of the Committee is that the appeal should be dismissed.

THE CASE BASED ON BIAS

The allegations of bias in each of the three appeals were completely unsubstantiated. The appellant had indicated some time prior to the hearing that she wanted the Faculty of Music to have the jurors for all three courses appear as witnesses, presumably so that she could cross-examine them, or they could be cross-examined on her behalf in an attempt to demonstrate the existence of bias. However, each party has the right to decide which witnesses to call and there was no compulsion on the Faculty to rely on the oral testimony of the jurors in support of the Faculty's position. Proof of the qualifications of the adjudicators to adjudicate along with proof that the appropriate procedures were followed, would ordinarily be an adequate case for the respondent. This is the course followed by Dean Morey who also denied the existence of bias. The results of authorized tests are accepted in the absence of proof by an appellant of some procedural flaw or bias. It was open to the appellant to ask one or more of the jurors to

REPORT NUMBER 132 OF THE ACADEMIC APPEALS COMMITTEE -
March 9th, 1990

attend, and if it had been necessary, a summons to any of these witnesses could have been obtained from the Academic Appeals Committee. This information had been conveyed to the appellant well in advance of the appeal hearing.

The appellant chose not to follow that course. At the hearing she said that this was because she would have been unable to cross-examine them if she had called them as witnesses. While this is essentially true, except in the case of a witness who proves hostile, it is not a satisfactory explanation. It implies that the witnesses could not be expected to give complete and truthful answers when examined directly. In effect, it is a further allegation of bias without any detailed substantiation. The appellant said she had heard that some jurors had made hostile remarks about her, but no witnesses were produced to say what these remarks were. The adjudicators' written reports all contained favourable as well as critical assessments of the appellant, and gave no evidence to the reader of improper bias. Further, the result of the appellant's performance in PMU 285Y was that she was granted advanced standing, allowing her to proceed more rapidly towards the completion of her program than would otherwise have been the case. This decision does not seem consistent with the degree of hostility the adjudicators were said to feel. The fact that one juror had judged an earlier performance by the appellant which had also resulted in an appeal, did not give rise to an inference of bias on the part of that individual, let alone of others. Nor could we infer bias on the part of the adjudicators simply because her grades were below her cumulative G.P.A. of well over 80%. As there had been a total of nine jurors or adjudicators, the lack of precision, detail and substantiation made it difficult for the Committee to give any weight to the allegations. In light of all of this, the Committee cannot conclude that she was a victim of bias.

(SEE
REPORT
#120)

THE TIMING OF THE PMU 285Y EXAM

At first blush one might be concerned over the allegation that the appellant was forced to sing when ill and unprepared under threat of being made to drop all performance courses and become a part-time student. However, the case appears in a different light when one adds the following ingredients: the Faculty regulations provide that a student prevented from completing an Applied Music final examination or recital may petition to have the exam deferred because of a medical condition, the deadline for completion being October 31st of the next academic year. If the medical condition persists beyond that date, the student is required to withdraw from all courses with a performance element, but may petition for special consideration and/or part-time status. In May 1988, the appellant had requested and been granted a deferral of her final in PMU 285Y until the fall; in October she petitioned again and was granted an extension until October 31st. While the letter of November 10th from the Petitions Committee refusing a further petition was somewhat peremptory in style, it was merely applying the established regulation (see the calendar of the Faculty, page 13) to the appellant's case and indeed apparently giving her an extra month to complete. The appellant said there were numerous occasions during the summer of 1989 when she could have presented herself for the PMU 285Y performance, but having asked for a postponement until the fall, she can hardly complain of a lack of proffered opportunities. In any event, given the problem of assembling the appropriate number of qualified adjudicators at the usual time the Faculty tries not to conduct such examinations in the summer. The appellant was "sick with a continuing illness from the end of September and during the month of October when jury dates were offered". As she had been ill all the fall of 1988 when jury dates were offered there was no real case to be made based on a failure by the Faculty to offer adequate opportunity. Indeed, one could say that the Faculty offered unparalleled opportunity.

REPORT NUMBER 132 OF THE ACADEMIC APPEALS COMMITTEE -
March 9th, 1990

The appellant met the challenge of her jury altogether successfully, obtained advanced standing and completed the third and fourth year recitals in March of 1989, a few months after completing PMU 285Y.

The appeals are, therefore, dismissed.

Secretary
May 11th, 1990

Chairman

