

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 148 OF THE ACADEMIC APPEALS COMMITTEE

January 31st, 1992

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Friday, January 31st, 1992 at 1:00 p.m. in the Flavelle Room, 78 Queen's Park Crescent, at which the following were present:

Professor J. B. Dunlop, Chairman
Professor C. C. Brodeur
Mrs. D. Hellebust
Mr. A. Lim
Professor J. T. Mayhall

Ms S. Girard, Secretary

In Attendance:

Ms D.Z., the appellant
Mr. S. Zucker, Danson & Zucker, counsel for the appellant
Dr. W. H. Francombe, for the Faculty
Mr. T. Pinos, Cassels, Brock & Blackwell, counsel for the Faculty

At a meeting on July 31st, 1991, the Academic Appeals Committee began hearing the appeal of Ms D.Z., a fourth year student, against a decision of the Appeals Committee of the Faculty of Medicine which allowed her appeal from a decision of the Board of Examiners that had required her to withdraw from the Faculty. The Appeals Committee of the Faculty however, set this decision aside and proposed that instead of withdrawing she take counseling with a view to resuming her studies, if the counseling were effective, in June 1992 - that is, a year later.

The relief requested in the appeal to this Committee was permission to commence the fourth year as clinical clerk in August, 1991 rather than in June, 1992. The appellant's psychotherapist expressed the opinion that she was ready to take on the stresses of the programme and that if she were permitted to do so it would assist him in counseling her. To help him assess her progress and thus help her to learn how to deal with certain stressors it would be best to have her functioning under the prevailing clinical conditions of the fourth year programme.

We reached no decision on this issue because in the course of our hearing an agreement was worked out between the appellant and the Faculty which appeared to settle the dispute on the basis of a compromise. While the Committee participated in a limited way in the process, we were not asked to adopt this settlement as our decision nor to sign it as an order. When we adjourned the hearing the agreement had not yet been reduced to writing but no difficulty was anticipated in this regard.

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The written version of the agreement was contained in a letter dated August 14th, 1991 from Lesley M. Cameron, the Faculty's counsel to Symon Zucker, the appellant's counsel. It contained ten clauses. It called for a letter from the psychotherapist confirming his opinion expressed at the hearing. A remedial programme was to be arranged for the appellant, to consist of at least two rotations totaling 12 weeks, to involve increased supervision, periodic assessments and a final judgment on the basis of a 60% pass mark "(as in the regular clinical clerkship program)." The appellant was to continue regular psychotherapy during the programme and periodic reports were to be made to the Faculty. Her successful completion of the rotations would entitle the appellant to re-enter the regular programme with credit for the two rotations. Failure would lead to termination.

The Board of Examiners decided on November 29th, 1991 that the appellant had failed the remedial programme and that she should, for the second time, be required to withdraw from the Faculty. Accordingly, the appellant was informed by letter sent December 2nd, 1991.

DOES THIS COMMITTEE HAVE JURISDICTION?

At a meeting on January 31st, 1992 this Committee heard submissions concerning an alleged breach of agreement by the Faculty. We were said to have jurisdiction because the issue arose out of, and required interpretation of, the agreement by which the dispute had earlier been settled. It was a continued proceeding rather than a new and different one.

The fourth year in medicine is a year of clinical "rotations" in various hospital departments dealing with patients. The appellant considered that the decision to fail her and require her to withdraw was a breach by the Faculty of the agreement. The Faculty contended that she had not measured up to requirements in the rotations that were part of her remedial programme, had abandoned the agreed psychotherapy and had thus provided grounds for terminating her programme.

The psychotherapy programme was not a matter we had to consider because complete evidence and full argument on the point were not presented to us. The appellant's letter requesting our further consideration of the case had identified breach of agreement by the Faculty as the sole issue. When Mr. Zucker in a subsequent letter suggested that evidence of the appellant's intentions regarding psychotherapy might be led to contradict the Faculty's contention the Faculty, through Mr. Timothy Pinos as counsel, objected. The Faculty would be ready on the date set for our hearing to contest the breach of agreement but insistence on adding an issue would result in a request for adjournment or postponement to permit additional preparation.

The facts presented to us related to the rotations undertaken by the appellant in her remedial programme and the assessment of her performance. The argument on her behalf was that she had passed. The Faculty's position was that she had, as decreed by the Board of Examiners, failed. Was the evidence so equivocal that it supported such a dispute? We discovered that it was not, in any event, crystalline. Could a solution be found? It was not a question we found we could answer with easy assurance. The reason for uncertainty lay in what appeared to be ambiguous assessments of the appellant by her remedial supervisors.

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Dr. Fay Dirks reported the conclusions of her group of supervisors, the last two sentences reading "If [the appellant] were to be assessed as a clinical clerk she could not be given a passing grade. Overall, in view of her progress, the consensus was that she be given a passing grade with a recommendation that she be allowed to begin clerkship."

Dr. Rayfel Schneider reported for his group that the appellant had passed a test "at the third year level" with a score of 70% and that on the matter of "her clinical performance...it was agreed that she should be given a passing grade for a third year level performance".

Our conclusion, however, is that the assessors were making the only judgment they could reasonably have been expected to make: that the appellant was engaged in a closely supervised remedial programme because she had not been considered to have the present ability to carry out the requirements of fourth year clinical clerkship. Her remedial programme would be deemed successful when her supervisors felt she was able to undertake fourth year work. The idea that she should be assessed as though she were already a fourth year clerk was inconsistent with the remedial concept. So, too, was the idea that she should be given credit for remedial work when the rationale of remedial work is improvement to the level at which one could begin to work towards credit.

The Faculty, having required that the programme be remedial and closely supervised, could hardly take the position that the failure to perform at a higher level should result in termination. It was, of course, the appellant who originally argued that success should lead to credit and that the programme should be treated not as remedial but as a test of fourth year ability.

But the two positions could not be accommodated consistently in the same agreement and the Faculty having won the day on the remedial nature of the programme was in fact well served by the careful, time consuming supervision and assessment of a single student performed by a number of busy specialists. The appellant abandoned the claim that a pass included credit at the February 5th hearing.

Given the importance of this opportunity to the appellant, the devastating consequence for her if it be unsuccessful, we conclude that she should not lose out when her supervisors recommended another chance. It is the Committee's view that the appellant should be entitled to the benefit of a favourable interpretation of the assessments of her performance.

The Board of Examiners was unequivocal in its interpretation, but it would be conceivable that, having decided on one occasion that the appellant was inadequate, the members might be skeptical of the whole programme and of appellant's chances of proving herself. The Board might therefore have construed the assessments strictly, without a sense that their interpretation might not be the only reasonable one.

Consequently the failure and termination could not be justified on these assessments. The Committee's conclusion, founded on the remedial nature of the programme, is that the appellant ought now to be permitted to resume clerkship when the new round of clinical rotations commences.

It is, in our view, essential that she continue psychotherapy in the meantime.

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Secretary

Chairman

February 28th, 1992