

UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL

REPORT NUMBER 158 OF THE ACADEMIC APPEALS COMMITTEE

October 2nd, 1992

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Friday, October 23rd, 1992 at 9:30 p.m. in the Board Room, Simcoe Hall, at which the following were present:

Professor J. B. Dunlop
Professor C. C. Brodeur
Mr. E. de Gale
Professor J. T. Mayhall
Mr. A. Waugh

Ms L. Snowden, Secretary

In attendance:

Mr. D.B., the appellant
Ms D.A. Newman, Downtown Legal Services, counsel for the appellant
Dr. W. H. Francombe, Faculty of Medicine

On Friday, October 23rd, 1992 the Academic Appeals Committee heard the appeal of Mr. D.B. from a decision of the Appeals Committee of the Faculty of Medicine refusing his request to be allowed to repeat first year. Although the year is well under way and the curriculum in first year differs from last year's, the appellant has been permitted to audit the courses and is in a position, he believes, to undertake regular attendance without facing a significant disadvantage. It is the Committee's decision that the appeal should be allowed and the appellant be permitted to register in the first year. The appellant might be wiser to wait until next year and begin the course afresh but he should have the opportunity to do so this year if he chooses.

FACTS FOUND

The appellant, who had just been granted permanent residence status, was accepted into the Faculty of Medicine in July 1991. He was at the time a Ph.D. candidate in the University of Calgary and his admission was made conditional on completing the degree requirements, which he has since done. As a result of difficulties his mother and sister were having with immigration procedures in Calgary and Vancouver, the appellant did not come to Toronto to attend classes in the Faculty until October 22nd, just prior to midterm exams in two fall term courses, Histology and Anatomy. He had registered at the beginning of September but had returned to Calgary to assist his mother and sister. He was allowed to begin classes although he had missed 42% of the

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first term. He was not told of the possibility that he could defer his acceptance until the following year and start on time.

It appears to have been recognized that there would be little point in requiring the appellant to write the midterm tests. There was some difference in understanding as to how the deficiency would be made up. The appellant believed he would be tested at some point on the work covered by the midterms. Doctor Ian Taylor, who had given the appellant a good deal of advice and assistance said his understanding was that the appellant's first term marks would be re-evaluated at the end of the year to determine what ought to be done. At the end of the first term the appellant wrote the final exams in the two courses but in the absence of a midterm mark he could not achieve a passing grade.

The appellant was aware of the results of the examinations but did not realize that the Board of Examiners considered he had failed the two courses. Neither was it drawn to his attention that he could, before a fixed date, withdraw from the year without academic penalty.

The appellant had been granted exemption from Biochemistry and Pharmacology on the basis of previous work. He passed Medical Ethics and Interviewing Skills, obtained C's in Neuroscience and Physiology and A in Core Selectives. At the end of the first year, therefore, Anatomy (Gross Anatomy/Embryology) and Histology were his only failures. Having asked for special examinations in those two subjects he was granted permission to write supplementals. These he failed. He told the Committee that he thought he would be examined only on the work he had missed before the midterms. He said that not having had classes and labs proved a handicap. Dr. Taylor said that he had made himself available and been consulted frequently by the appellant, and that he had provided access to facilities to the extent possible.

EVALUATING THE APPELLANT

The Board of Examiners decided that he had failed and should be required to withdraw. Doctor William Francombe, who represented the Faculty told us, in answer to our question, that it is more common to permit repetition of the year but the appellant, who seemed not to recognize the inadequacy of his knowledge, seemed to think he could be promoted to second year. Dr. Taylor, in a letter, wrote that the appellant was surprised not to have passed the supplementals, although his performance had been worse than on any previous occasion, and the worst performance the examiners had ever seen. The appellant seemed nevertheless to believe his knowledge to be adequate, offering to demonstrate on another examination.

Because the appellant intended to appeal to this Committee Dr. Taylor had, he wrote, arranged for him to audit "course one" of the new curriculum. The letter described, and the same points were made to us orally, how the appellant's behaviour and attitude caused concern to Dr. Taylor, his examiners and his tutor in the new course. He "looked down" on classmates and spoke equally confidently whether talking sense or nonsense. He was "manipulative".

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THIS COMMITTEE'S CONCERNS

Dr. Francombe told the Committee that the Appellant's failure and the decision to require him to withdraw was entirely determined by his grades. Even in the courses he passed (except for the core selectives) he had been near the bottom of the class and his work seemed to deteriorate rather than to improve. The evidence of his attitude was not a factor.

An acceptable attitude - although this is an issue that would require exploration - may be a relevant facet of a professional course such as Medicine in which service to the community is the object. One would expect, if this were so, that published criteria would inform students of expectations and that timely comments would be as important as the other *indicia* of success or failure that are a formal requirement as well as a practical element in the learning process. One should not be judged on an attitude that has never been the subject of comment.

The Appeals Committee, which evidently does not hear and evaluate evidence first hand but reviews the proceedings of the board of Examiners, said it was satisfied that the Board had considered all the relevant evidence and proceeded fairly. The difficulty with a limited appeal by way of review lies in the absence of a complete record of what occurred at the hearing and otherwise in the proceedings under review. This, this committee has no way of verifying the conclusions reached by the Faculty Appeals Committee. This is the reason proceedings before this Committee are by way of trial *de novo*. It may seem inappropriate at a third level of decision to permit evidence which duplicates or even differs from evidence heard by the original decision making body. It is, however, preferable as a method of ensuring compliance with the *Statutory Powers Procedure Act* since the alternative would be the maintenance of records throughout the University too elaborate and expensive to be justified by the number of appeals that reach this Committee in a year.

CONCLUSIONS

The Committee's decision differs from the decision appealed from on the question of permission to repeat for several reasons. As repeating is the norm, notwithstanding that the grades of a candidate may be so bad as to make repeating seem pointless, where a number of factors prejudice the student's opportunity to perform optimally, the opportunity to have a second chance is, in our view, justified.

Missing 42% of the first term creates a considerable barrier to success no matter how well grounded the student is in pre-medical requirements. It can be said that he made a decision to proceed with full knowledge, but he was not aware of the possible alternative of deferring his admission for a year. Again, when he had completed first term and was under the misapprehension that his two first term failures were merely incomplete, he missed the opportunity to withdraw without academic penalty. He might not have availed himself of either of these remedies, but we cannot be sure.

In addition, while Dr. Francombe said he was not influenced by information as to attitude, given the strength and the pervasiveness of these opinions it is difficult to be certain that the appellant's attitude was not a factor in anyone's decision. His failure is clear, but the grounds for refusing the usual privilege to repeat are not as convincing.

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Thus our view is that the appellant, although he might be wiser to wait until next year, especially given the curriculum changes, should be given another opportunity to undertake the first year program.

The appeal is allowed.

Ms L. Snowden
Secretary

Professor J. B. Dunlop
Chairman

November 11th, 1992