

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 176 OF THE ACADEMIC APPEALS COMMITTEE*

May 9th, 1994

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Monday, May 9th, 1994 at 1:30 p.m. in the Flavelle Room, Faculty of Law, 78 Queen's Park Crescent at which the following were present:

Professor A. Weinrib (Vice-Chair)
Ms Patti Cross
Professor Eric Mendelsohn
Ms Peggy Haist
Professor John Mayhall

In attendance:

Dr. Y, the appellant
Mr. R. Lepore, counsel for the appellant
Ms S. Springer, counsel for the Faculty

This is an appeal by Dr. Y from a decision of the Appeals Committee of the Faculty of Medicine dismissing her appeal of the decision of the Department of Pathology which dismissed Dr. Y from the Pre-Residency Program.

The first, and as it turns out the only question which this Committee has to consider is whether or not it has jurisdiction to hear an appeal from this particular person. Under The University of Toronto Act, 1971, a student is defined as "any person registered at the University for full-time or part-time study in a program that leads to a degree or post-secondary diploma or certificate of the University or in a program designated by the Governing Council as a program of post-secondary study at the University". This Committee only hears appeals by students of the University.

Dr. Y is a graduate student at the University of Toronto in a Masters of Science degree program. However, this appeal is taken in her capacity as a member of the Pre-Residency Program in Pathology. The question to be determined is whether or not students in Pre-Residency Programs

* **Editor's Note:** Following the release of this Report, Dr. Y applied to the Ontario Court (General Division) Divisional Court, which held that the University should deal with the case on its merits: [1994] O.J. 1866. If jurisdiction did not lie with this Committee, then the Governing Council should provide some other forum. See Report Number 191 of the Academic Appeals Committee.

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are University of Toronto students. If they are not, then this appeal process is not open to them. Mr. Lepore, counsel for Dr. Y, argued that the program involved training and assessment and hence Dr. Y must be a student. He drew our attention to two memos of Dr. M. D. Silver, the Chair of the Department of Pathology, in which Dr. Silver referred to "training" and to a letter from Dr. Kapusta of the Department of Pathology at Sunnybrook Health Science Centre referring to Dr. Y's "pre-residency training program". He also referred us to documents of the Faculty of Medicine referring to Pre-Residency Program trainees and "assessment and training". He argued that those in the Pre-Residency Program are registered with the Faculty of Medicine and that the same faculty are involved in the Pre-Residency Programs as are involved in the Residency Programs.

The Pre-Residency Program is a requirement of the College of Physicians and Surgeons, the professional licensing body, that foreign trained doctors such as Dr. Y be assessed before they can enter a Residency Program. The Faculty's representative stated that the program was an assessment program and not a teaching program. Our attention was drawn to the Pre-Residency Program Guidelines which state that "During the program the candidates' clinical skills are assessed to verify that they can function at the level that they have been assigned, in the specialty they have been appointed". The College of Physicians and Surgeons does not recognize any of the time spent in the program towards certification.

The Committee, with one dissent, has decided that those in Pre-Residency Programs are not students at the University of Toronto. We agree that this is an assessment program and not a training program. Of course, it is obvious that over the period of the program some teaching and learning must of necessity, given the context, go on. However, the focus of the program, is to provide an opportunity to those in it to be assessed as to whether or not they are capable of actually entering into a Residency Program. Those who succeed in a Pre-Residency Program are then admitted to a Residency Program, and become students at the Faculty. The various documents mentioned by counsel for the appellant using the work "training" must be read in the context referred to above, that is, as training which is incidental to an assessment process. In any event, whether there is training involved in the program or not, a person in the program at question is not in a program leading to a degree, diploma, or certificate or in a program designated by the Governing Council as one of post-secondary study at the University. Successful members of Pre-Residency Programs do not receive credit towards the Residency Programs which do result in certification. Pre-Residency Programs are not University of Toronto programs; they are simply professional requirements of the College of Physicians and Surgeons during which Faculty of Medicine faculty act as assessors.

Therefore, on the above noted grounds, this Committee declines to hear the appeal.

Appeal dismissed.

Secretary

Professor A. Weinrib
Vice-Chairman

May 16th, 1994