

**UNIVERSITY OF TORONTO**  
**THE GOVERNING COUNCIL**

**REPORT NUMBER 184 OF THE ACADEMIC APPEALS COMMITTEE**

**September 16th, 1994**

To the Academic Board,  
University of Toronto.

Your Committee reports that it held a hearing on Friday, September 16th, 1994 at 1:30 p.m. in the Board Room, Simcoe Hall, at which the following were present:

Professor J. B. Dunlop, Chair  
Professor D. Galbraith  
Ms Peggy Haist  
Professor John T. Mayhall  
Mr. D. Morton

In attendance:

Mr. A.H., the appellant  
Mr. E. Lay, Downtown Legal Services, counsel for the appellant  
Dr. R. Swinson, for the Faculty

At a meeting on September 19th, 1994 the Academic Appeals Committee heard and decided the appeal of Mr. A.H. from a decision of the Appeals Committee of the Faculty of Medicine. It had dismissed his appeal against the decision of the Board of Examiners that he had failed and would have to repeat third year. The decision of this Committee is that the appeal must be dismissed.

**THE BACKGROUND AND THIRD YEAR**

The appellant entered the Faculty of Medicine with a B.Sc. in Physiology and Pharmacology and an M.Sc. in Physiology. He passed his first two medical years in 1992 and 1993 but in third year in 1994 he failed Ophthalmology and Medicine. He did a supplemental examination and achieved 88% in Ophthalmology but Medicine is a comprehensive subject including nine subdivisions or topics and the supplemental is an eight-week re-assessment with an examination. The appellant's failure in Medicine which, with surgery, is the core of the third year curriculum, had been in the written examination and the multiple-choice comprehensive test. The latter had produced his worst result. His clinical performance had been good. On the theory that he was having difficulty with the type of test, the education office gave him a diagnostic Multiple Choice test in Medicine and he failed it as well.

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The appellant failed again at the end of the supplemental assessment. His appeal to this Committee asked it to declare that the supplemental process had been unfair and to advance him to fourth year. Doing another eight-week assessment would leave him too far behind the fourth year class for that to be a viable remedy in his, no doubt correct, view. At the same time it would, in the Committee's view, be difficult to justify any other remedy based on unfairness.

### **THE EVIDENCE OF UNFAIRNESS**

The unfairness alleged consisted of the following:

- (a) it was customary for students to be told the topics for which they would be responsible on the examination. The appellant had not been told three weeks before the end of the assessment period. He had studied seven of the nine. He asked the Education Office for information, in particular, whether he would be responsible for Immunology and Pharmacology and was promised it would be forthcoming. A week before the end of the period the appellant telephoned the Education Office to complain that he still had not received the promised information. He was told that there had been an oversight. He was also told that in addition to the two third-year subjects he had inquired about he would be responsible for two second year topics, Cardiology and Respiriology. This affected his preparation, taking time he had planned to use for other topics to work on the two from second year.
- (b) the exam had questions relating to matter not in the course material; for example, a type of skin cancer that was not covered.
- (c) the exam was not as carefully prepared, was a pastiche, questions overlapped and fell short of testing the appellant's knowledge.

The appellant testified from his memory of the examination as he had not been given a copy. Appellant's counsel had asked the Faculty to produce a copy but had been unable to obtain one because it was against Faculty policy to allow students copies of comprehensive examinations. He argued that this should result in a presumption of unfairness for the Faculty to rebut. The Chairman of the Faculty's Board of Examiners, who presented the Faculty's case, asserted that it was a fair examination but the physician in charge of the remedial program was not a witness.

We were told that the examination had been set the previous year (although further questions indicated that there may not have been any students required to write it that year so that absence of complaint was not necessarily evidence of fairness, but at least it had probably received more scrutiny). In addition, the examination will likely be scrapped because of the imminent change in the Faculty's current program. Given the appellant's allegation one might have thought the Faculty would produce the most knowledgeable witness or the paper itself. At the same time, the appellant, if he regarded the actual examination as an essential item would have requested that a summons be issued to the particular individual in charge of the remedial program with notice to produce the examination at the hearing.

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### THE COMMITTEE'S ANALYSIS

The Committee could not see any justification for advancing the appellant to fourth year. While there were evidently individuals including his supervisor during the remedial re-assessment who considered him capable, they were basing their judgments in large measure on the appellant's clinical performance. The appellant in three different attempts at the Medicine examination had not succeeded. If we agreed that his treatment had been unfair, it would still be a considerable leap of logic to the conclusion that he should be treated as though he had passed. Another opportunity to do the remedial program would have been the only remedy the Committee could have seen itself allowing.

The appellant did not want that remedy. If we were unable to grant the advancement to fourth year he would prefer to have the transcript wiped clean and do third year over, he said. That, however, would involve a blatant rewriting of events, an activity in which the Committee does not engage. While it was obvious that this first failure was a source of much distress to the appellant, it was the reason for repeating without which the transcript would misrepresent the facts.

### CONCLUSION

The Committee's view is that the examination may have been less than ideal. The Board of Examiners, however, thought it fair. Our judgment would lack the foundation to find otherwise. It was not an unusual departure from type: a test as part of a remedial program in which, in a short period, one or two students are seeking to strengthen their grasp on a subject that will be in the foundation of much later work. The style might not be as refined as that of the test prepared for the 255 students in third year. If the inclusion of a few questions from second year course material meant that the appellant either had to forego studying his other subjects or abandon hope of answering those few questions effectively, then the choice to most students would seem clear. Furthermore, the Committee felt, a third year medical student should retain some grasp of second year material - enough to face with equanimity a few questions on a much larger test. It is difficult to label an examination that is typical of a particular category unfair and therefore completely invalid. One can demonstrate one's grasp of a subject on a flawed examination. The examiner will see the essential capability.

The appeal is dismissed.

Secretary

J. Bruce Dunlop  
Chairman

September 27th, 1994