

UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL

REPORT NUMBER 186 OF THE ACADEMIC APPEALS COMMITTEE

October 20th, 1994

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Thursday, October 20th, 1994 at 12:30 p.m. in the Flavelle Room, Faculty of Law, 78 Queen's Park Crescent, at which the following were present:

Professor J. B. Dunlop, Chairman
Professor B. Brown
Ms P. Cross
Professor R. Pike
Dr. K. Shulman

Ms L. Snowden, Secretary

In attendance:

Mr. T.L., the appellant
Mr. S. Zucker, Danson, Zucker & Connelly, counsel for the appellant
Professor D. Perrier, Dean, Faculty of Pharmacy
Mr. T. Pinos, Cassels, Brock & Blackwell, counsel for the Faculty

At a meeting on October 20th, 1994 the Academic Appeals Committee heard the appeal of Mr. T.L. from a decision of the Appeals Committee of the Council of the Faculty of Pharmacy. The appellant had failed Fourth Year in 1993-94. Although he had not filed his petition within the prescribed time, the Appeals Committee waived the requirement and heard the appeal, which was on compassionate grounds. They allowed the appeal and the remedy they granted was permission to repeat the year "subject to available space." The appellant later received notice that space was not available. He appealed to this Committee.

THE ISSUE

The decision on accommodation was made by the Admissions Committee of the Faculty and it was argued that we had no jurisdiction to review its decisions. This was an admissions decision, we were told, and admissions decisions have not been, are not now and will never be appealable.

We were informed that "admissions decisions" respecting fourth Year arise every academic year. There is a limited number of places in the Fourth Year and often more "applicants" than

Report Number 186 of the Academic Appeals Committee

spaces. The number vary but this year there were said to be three spaces still available after all Third Year students who had passed, and intended to continue, had been accommodated. Appellant was said to be one of four "applicants" for the three places. The others were two returning students who had stepped out of the program for a year and one student who had failed and wanted to repeat. These three were admitted. The appellant was not.

ANALYSIS

There is nothing in this Committee's terms of reference imposing the limitation urged on us. This Committee hears and determines appeals by students against decisions of college, faculty or school councils "or committees thereof" concerning the application of academic regulations and requirements. Conceding that admissions decisions are unappealable, we do not accept the conclusion that putting an issue in the hands of the Admissions Committee makes it an admissions issue. We take the position that a decision must be characterized first and assigned to a committee on the basis that the Committee is appropriate for the issue. The decision we are considering is in essence a decision on whether the appellant should be allowed to repeat the year. It is a decision as to an academic requirement or regulation. Thus, it is within our jurisdiction although made by the Admissions Committee.

The compassionate grounds were convincing to the Faculty Appeals Committee as they are to this Committee. The appellant's family scraped a modest living from a convenience store. They had to be open until midnight seven days of the week. Illness of a family member devastated their operating capacity. In successive years, appellant had been affected by the serious illness of a parent. The appellant's lot, in addition to the stress and anguish, was the inevitable need to work long hours in the store to maintain the family income. The Faculty Appeals Committee had granted his appeal in Third Year and as a result appellant had gone on to the fourth Year having promised, and his family having promised on his behalf, to avoid stress that was not "academically rooted". There were also conditions to be met concerning academic counseling and reviewing certain course material.

REMEDY

The Faculty Committee was moved by the circumstances to allow the appeal in Fourth Year as well although they found "disconcerting" the appellant's failure to comply with conditions laid down on that occasion. "It would appear" they said "that the experience you had in Third Year has had no meaningful effect in terms of improving your judgment." This seems a trifle unsympathetic considering the events of the year. The Committee concluded that the appeal should be allowed. It is difficult, however, to see the value in the remedy it awarded when one is the only "applicant" denied a place in the Fourth Year.

In the course of the hearing, this Committee was told that there were usually more students in the Third Year than there were places in the Fourth Year but that drop-outs, stop-outs and failures brought the number down to, or below, the number of places. An attempt to find out what the Faculty would do if the number of students passing the Third Year

Report Number 186 of the Academic Appeals Committee

exceeded the Fourth Year places was unsuccessful. This had never happened. We were told, and the Faculty declined to speculate on how such a problem would be solved.

The Committee takes the view that the Faculty Appeals Committee could have ordered the appellant to be accommodated. Our conclusion is that it is the only meaningful remedy available. This Committee is not prepared to accept that a decision in respect of a student, already in attendance for four years in the Faculty, who fails the Fourth Year and appeals his failure, can be lumped with the usual applicants to the University or the Faculty as "an admissions issue" and thus deprived of a remedy to go with his successful appeal. The Committee does not believe the accommodation of one more student in Fourth Year can be an insuperable problem for the Faculty. It may well be an inconvenient decision. But in the absence of more precise evidence to the contrary, we cannot suppose it to be anything more.

We therefore allow the appeal and direct that the appellant be permitted to join the Fourth Year program immediately.

Appeal allowed.

J. Bruce Dunlop
Chairman

November 7th, 1994