

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 208 OF THE ACADEMIC APPEALS COMMITTEE

February 17, April 6 and April 25, 1994

To the Academic Board,
University of Toronto.

Your Committee reports that it held appeal hearings, *in camera*, on February 17, April 6 and April 25, 1994, that a meeting to discuss the decision in this appeal followed on May 4, 1994, and that the Reasons for Decision was released on March 19, 1996. The following were present at the hearings:

Before: Professor A. Weinrib, Vice-Chairman
Professor Joan Brailey
Ms Patti Cross
Professor Ruth Pike
Mr. Michael Teper

Ms Lynn Snowden, Secretary

In attendance: The appellant
Ms Dierdre Newman, counsel for the appellant
Mr. Wong, assistant to Ms Newman
Mr. Timothy Pinos, counsel for the Faculty
Ms Sari Springer, colleague to Mr. Pinos
Mr. Martin Campbell, counsel to Dr. Crapo
Dr. Julia Crapo
Chief Medical Resident (1994), Toronto Hospital
Dr. Elinda Ho
Dr. Neil Lazar, Toronto Hospital
Dr. Katalin Margittai, Women's College Hospital
Mr. Mason, colleague to Mr. Rosenthal
Dr. D.C. Mendelssohn, Toronto Hospital
Dr. Rebeka Moscarello, Women's College Hospital
Mr. Rosenthal, counsel for Drs. Bard, Gupta, Fletcher and Hupel
Dr. Miriam Rossi, Faculty of Medicine
Dr. Maureen Trudeau, Women's College Hospital
Dr. Peter Vignjevic
Dr. Kevin Wood
Three clerks in the appellant's Clinical Clerkship group

Report Number 208 of the Academic Appeals Committee

This is an appeal from a decision in the Faculty of Medicine that the appellant failed her Internal Medicine rotation (Medicine 400Y) at the Toronto General Hospital from November 9, 1992 to January 10, 1993. The appellant is not named in these reasons because she requested a closed hearing, which was granted.

In its decision to give the appellant a failing grade in the rotation, the Board of Examiners of the Faculty of Medicine offered the appellant an 8-week supplementary program in a similar rotation. She subsequently completed the supplemental program with a mark of "B", and was awarded the degree of M.D.

The appellant seeks in this appeal to have the mark of "B" substituted for her failing mark in the original internal medicine rotation and to have the reference on her transcript to the supplemental rotation removed. The ground for this request is that the appellant's learning environment was impaired on account of comments and gestures of the Chief Medical Resident and several of the clinical clerks in her group amounting to sexual harassment. Her counsel argued that this environment prevented a fair evaluation of her performance in the rotation.

This appeal reached this Committee by a somewhat tortured route. The appellant met with the Sexual Harassment Officer of the University and described her experience in the internal medicine rotation. In particular, according to memorandum of the Sexual Harassment Officer, she described the conduct towards her of the Chief Medical Resident. The Officer concluded that the conduct which the appellant alleged is proscribed by the University's Policy and Procedure: Sexual Harassment. She thought that the appellant could have proceeded against the Chief Medical Resident through the Policy. Presumably, although this is not mentioned in her memo, the other students against whom proscribed conduct is alleged could also have been proceeded against.

The Officer then concluded as follows:

However, the Policy and Procedure: Sexual Harassment does not have the capacity to provide academic remedies in this particular case.

I therefore advised [the appellant] that she should instead pursue a remedy through academic channels.

This is a strange conclusion. Section 27 of the Sexual Harassment Policy states that "the complaint shall be accepted by the Officer unless the Officer determines that the complaint does not fall within the definition of sexual harassment in this Policy, or that the Policy is superseded by a collective agreement, or that the respondent is not a person governed by this Policy." None of the exclusions apply here. This is an especially curious conclusion given that the Officer had already agreed that the alleged conduct, if proven, is proscribed under the Policy. The conclusion that the Policy does not have the capacity to provide academic remedies is at least undercut by Section 78 of the Policy which states "The Hearing Board may also order remedies which it deems appropriate to redress any harm or injustice suffered by either party." This Section follows Sections 74 to 77 which deal with penalties for staff

Report Number 208 of the Academic Appeals Committee

members and students and orders for educational counseling and recommendations for dismissal or expulsion.

The Governing Council, in making special provisions for sexual harassment cases and setting up a special tribunal to deal with these cases, seems to have intended the Sexual Harassment Policy to be invoked in all cases where there is an allegation of sexual harassment. If the Hearing Board appointed under the Procedure finds that it does not have the power to invoke a particular academic remedy after a finding of sexual harassment, it then may be possible to invoke the ordinary academic appeal procedure culminating in this Committee. Had the Sexual Harassment Policy and Procedure been invoked starting in February, 1993 this matter may have been resolved earlier than the resolution to this appeal which was filed in September, 1993.

However, the Chair of this Committee decided to allow the appeal to proceed at this level because the appellant depended on the conclusions of the Sexual Harassment Officer as to the remedial possibilities under the Policy. The Chair also thought that since, for an academic appeal, there were an unusually large number of witnesses who had agreed to testify over some specific days during which the hearing took place, that the Committee would take jurisdiction and hear this appeal.

An appeal was launched to the Faculty of Medicine Appeals Committee from the decision of the Board of Examiners that she failed the internal medicine rotation and be given the chance to do the supplemental rotation. In a letter dated June 30th, 1993, the Appeals Committee denied her appeal. The Appeals Committee held that the required Faculty regulations and procedures were followed and that "the Board of Examiners had given appropriate consideration to the impact of the learning environment, created by the unprofessional conduct of some members of your clinic group, on your performance in Medicine." The reference to "the unprofessional conduct" of members of the clinical group is at least unfortunate since none of those individuals were given a chance to testify before the Committee. The appellant then submitted an appeal to this Committee in September, 1993. At that time the appellant stated that details of the nature of the appeal would be provided in the future. The appellant then requested that the Assistant Dean, Student Affairs, of the Faculty have the Faculty reconsider her original mark in the rotation. The Assistant Dean spoke to the Associate Dean, Undergraduate and Medical Education, who informed her (the Assistant Dean) that it would be contrary to Faculty procedures to seek an administrative resolution to change the transcript, but that it would be entirely appropriate for the Board of Examiners to be asked to reconsider its original decision. In October, 1993, counsel for the appellant made written submissions to the Chair of the Board of Examiners with a view towards having the transcript changed in the manner outlined above. The Chair wrote back to counsel for the appellant in late October, in part, as follows:

The Board of Examiners does not determine the content of the transcript and thus I will not be convening the meeting of the Board that you requested.

The idea that the Board does not determine the content of transcripts is simply wrong. It is the function of the Board and of similar committees in other faculties to make decisions about whether students pass or fail. Hence the content of the transcript is determined by such bodies. Indeed the Faculty of Medicine calendar for 1993-94 states on page 32 that "The

Report Number 208 of the Academic Appeals Committee

Board is responsible, after assessment of all relevant evidence, for recommendations on promotions, failure and supplemental privileges, subject to approval by Council. The Chairman prepares statistical reports regarding the recommendations of the Board for submission to the Faculty and Governing Councils." Unless there is an appeal, the Board's recommendations are the decisions of the Faculty. Therefore, as indicated above, the Chair of the Board of Examiners reached the wrong conclusion as to the power of the Board.

The decision of the Chair not to convene a meeting of the Board of Examiners was a decision which could have been appealed to the Appeals Committee of the Faculty. However, it was not. Ordinarily the Governing Council Academic Appeals Committee would not hear an appeal until the Faculty's appeal procedure had been carried out in full. However, in this particular case, for reasons similar to the reasons outlined above in relation to our jurisdiction, the Chair of this Committee decided that procedures not be multiplied by sending this back to the Faculty.

In December, 1993, counsel for the appellant wrote to the secretary of the Governing Council Academic Appeals Committee that the appellant intended to proceed to this level. In late January, 1994, counsel submitted written submissions in support of the Notice of Appeal. The appeal was then scheduled for early February, 1994. Nine days before the appeal was to be heard, counsel for the Faculty requested an adjournment basically on the ground that he had just been retained by the Faculty and that there was insufficient time to investigate the appeal and provide a proper written submission for the Faculty. Counsel also indicated that he had a trial scheduled in the Ontario Court of Justice. Counsel for the appellant claimed that the adjournment ought not to be granted since the Faculty was aware of the allegations and the issues in the appeal for over six months, and that she had followed the procedures set out by the secretary to the Committee. After hearing argument from both counsel by way of a conference call, the Chair ruled that the hearing would be postponed for two weeks on condition that the University pay any reasonable extra legal expenses relating to the fact that there was an adjournment and that the University pay all reasonable out-of-pocket expenditures related to the adjournment in terms of the appellant and two of the appellant's witnesses. There were also conditions relating to the service of documents by counsel for the Faculty.

When the hearing finally got underway, requests were made by two lawyers for standing at the hearing. The first request was by counsel for the Chief Medical Resident and the three members of the appellant's clinical group whose conduct was at issue in this hearing. Counsel for the appellant argued against the granting of standing on the ground that the appeal was against the Faculty and not any individuals. The Chair ruled that the allegations which amounted to charges of sexual harassment were sufficiently serious in terms of potential consequences to their careers that their counsel did have standing insofar as allegations concerning the conduct of the four individuals were before the Committee.

The second request for standing was from counsel for one of the potential witnesses for the appellant. The Chair ruled that he would decide on the standing issue as it related to this client when the client came to testify. In any event, as will be seen below, the Chair did not allow this witness to testify.

Report Number 208 of the Academic Appeals Committee

At the relevant time the appellant's clerkship group consisted of herself and eight male doctors. The appellant alleged that the Chief Medical Resident and three of the clerks in her group behaved unprofessionally and, in effect, sexually harassed her. The appellant testified that a group of three clerks behaved in an entirely inappropriate manner towards her. She said that there were inappropriate sexual comments and jokes relating to women and homosexuals during the teaching rounds run by the Chief Medical Resident. She said that there were also inappropriate actions relating to women and homosexuals during these sessions as well. She testified that the Chief Medical Resident condoned the sexual jokes made by the three clerks and made similar comments to the clerks. One example which was much discussed at the hearing involved the use of the term "squamous bougie" in reference to a penis.

The appellant also testified that the behaviour of the three clerks and the Chief Medical Resident made her feel uncomfortable and excluded and had a negative impact on her self-esteem and confidence. She said that during rounds her remarks and questions were received negatively by the three clerks. They made facial gestures which indicated disbelief in her answers and she said they were quick to jump on any of her answers with which they disagreed. All of this impaired the learning environment for her.

The appellant testified that about ten days into the rotation she approached the Chief Medical Resident about the sexual jokes and other behaviour and her discomfort with the situation. The Chief Medical Resident during the first part of the rotation was also her attending physician and hence she had contact with him daily during that period and saw him every day during the rotation during rounds.

It is the practice in the rotation that the Chief Medical Resident meets with each clinical clerk half way through the rotation in order to evaluate the progress of the clerks. However, he met with the appellant about two and one-half weeks into the rotation in order to make this evaluation. He later testified that because of the upcoming holiday season it was awkward to meet with all of the clerks closer to the four week, half-way point of the rotation. During the discussion of her strengths and weaknesses, she said that he told her that she should not worry if she failed the rotation, as she would only have to do another rotation of a remedial nature. She testified that she was surprised by these remarks.

The mark for the rotation in Internal Medicine is made up of a written exam three days from the end of the rotation worth 25%, an oral examination on the last day of the rotation worth 25%, and a mark for clinical work on the ward worth 50%. The appellant received a failing grade on each element of her mark. She received 49% on the written exam, 56% on the oral exam and 55% for her ward work, for an overall average of 54%. A passing grade is 60%. The next lowest student in her group of nine clinical clerks had 63% on the written exam, 69% on the oral exam and 75% for ward work, making a final average of 71%.

One of the other clerks on the rotation testified along the same lines as the appellant. He says that the three clerks in question formed a clique whose objective seemed to be to treat the appellant with disrespect. This witness attempted to give evidence of the attitudes of the group of three clerks to the appellant prior to the rotation. The Chair disallowed the giving of this evidence on the ground that it was not relevant to the question of whether or not the activities of the three clerks poisoned the learning environment for the appellant during this

Report Number 208 of the Academic Appeals Committee

rotation. This witness described one of the three clerks as the ring leader in terms of the making of sexual comments which were demeaning to women and homosexuals. He testified that when the appellant walked into the room prior to morning rounds the three would nudge each other, roll their eyes and make quiet comments about her. They would jump on her wrong answers at great length to attempt to prove that she was an inferior student. He said that this sort of activity happened on a daily basis. During the meeting which the whole group had with the clinical coordinator on the second last day of the rotation, the witness said that nearly every time the appellant spoke one of the group jumped in to disagree with whatever she said. He felt that she had been humiliated. He also recounted that the term "squamous bougie" and the phrase "mental masturbation" had been used in a sexual context.

Counsel for the appellant called as a witness a woman who had been in the same class as the appellant and the three members of the clinical group during part of the M.D. program. She wished to give evidence as to her feelings that the three clerks in question were a cause of an impaired learning environment which impacted negatively on her while they were all in medical school. This evidence would be irrelevant in terms of the activities of the three clerks vis à vis the appellant in a later year, according to counsel for the Faculty and counsel for the three individuals. Counsel for the appellant and counsel for the witness argued that her evidence on what is a learning-impaired environment would be valuable. Counsel also argued that the evidence ought to be admitted under the similar fact doctrine. The Chair ruled that the evidence that this witness wished to give was inadmissible. It was clearly irrelevant to what went on or did not go on during the rotation in question. Even under the similar fact doctrine, it is not sufficient to show a general similarity of activities between what is alleged to have happened in the case in question and what was alleged to have happened on some previous occasion.

The Committee also heard evidence from Dr. D. Mendelsohn who was the appellant's preceptor and the Ward Chief of the In-Patient Unit. As her preceptor, he met with the appellant six times for roughly an hour and one-half each time during the eight-week rotation. They talked generally about the handling of cases and her work on the ward. He testified that the appellant responded adequately for her level of training to his questions. After two or three weeks he said that he heard from other doctors that there was some concern about her work. He said he paid particular attention to their sessions after that point, but his opinion of her work, as satisfactory, remained unchanged. He gave his opinion of her to the committee which decided on her ward mark.

As noted earlier, the appellant undertook an eight-week remedial rotation in Internal Medicine during the summer of 1993 at Women's College Hospital. This time her average was 70% over the three elements of the evaluation. Of the five students on this rotation at Women's College Hospital the appellant had the fourth highest average. Dr. Maureen Trudeau, an oncologist at the hospital and her team leader and supervisor during this rotation, testified that she found the appellant intelligent, courteous and competent. She said that she understood that the rotation was a remedial one for the appellant who was ending her clerkship with this rotation. She said that she had higher expectations of the appellant because of this than she had of clerks doing the rotation for the first time.

Report Number 208 of the Academic Appeals Committee

Dr. Rebeka Moscarello, who teaches in the Department of Psychiatry and is Co-ordinator of the Psychiatric Outpatient Clinics at Women's College Hospital, testified as an expert about sexual harassment and the effect of such harassment on the individual. During her examination and cross-examination there was some discussion of the definition of sexual harassment. Dr. Moscarello is a co-author of a paper entitled "Differences and Abuse Reported by Female and Male Canadian Medical Students" 1994 C.M.A.J. 357, in which sexual harassment is defined as unwanted sexual advances, request for sexual favours or other verbal or physical conduct of a sexual nature in a setting in which non-compliance, refusal or protest could have a negative effect on academic standing (e.g. marks).

The Chair ruled that as an expert she could comment on her own study. The study showed that 46% of the female respondents said that they had been sexually harassed.

The appellant's next witness was Dr. Katalin Margittai, who also teaches in the Department of Psychiatry and is a co-author of the paper mentioned in the preceding paragraph. She is also the Co-ordinator, Consultation-Liaison Service in Psychiatry at Women's College Hospital. She testified that based on the evidence she had heard so far at the hearing that the learning environment was a hostile, unsupportive one during the rotation. Counsel for both the Faculty and the four doctors objected to this evidence on the grounds that she would simply characterize evidence she heard and as an expert she can only give an opinion based on what she saw. She then went on to tell us that she had seen the appellant twice, once on February 17, 1994, the day the hearing started, and once a week later for about an hour each time. She testified that the appellant had a major depression within two weeks of the beginning of the Internal Medicine rotation starting in November, 1992. She gave her opinion that the depression continues to the present as a mild/moderate one.

The last witness for the appellant was Dr. Miriam Rossi, also a co-author of the article referred to above and at that time Assistant Dean of Student Affairs in the Faculty. She heard of the appellant's problem from the Co-ordinator of the Internal Medicine rotation towards the end of the rotation. She had also heard, at the end of November, 1992, that there might be problems. She was aware of the memorandum of Dr. B. Goldlist, the Clerkship Co-ordinator in Medicine at the Toronto General Hospital, which indicated that the appellant failed all three elements of the rotation. In that memorandum Dr. Goldlist spells out the rationales for the failing grades in the oral examination and the ward mark. When she met with the appellant in January, the appellant mentioned the problem she was having in the learning environment described above. Assistant Dean Rossi advised the appellant of the procedures for pursuing a sexual harassment complaint. In February, 1993, she informed the Board of Examiners of the appellant's problems. She said that the Board decided not to act until it received all of her grades at its May meeting. Assistant Dean Rossi said that she was surprised when the appellant raised the concerns she had about the Internal Medicine rotation, and she was also surprised that they were not raised earlier. She had met the appellant the previous year in connection with the appellant's duties in student government at the Faculty. She characterized the appellant as a good but not exceptional student who had been very active in extra-curricular activities.

The Faculty's first witness was Dr. Elinda Ho. Dr. Ho did an elective in general internal medicine between November 9 and December 7, 1992. For that month she was a member of the same team as the appellant at the Toronto General Hospital. The Chief Medical Resident

Report Number 208 of the Academic Appeals Committee

was her supervisor. She gave evidence about the daily routine on the ward. She testified that she never saw or heard the Chief Medical Resident make any remarks of a sexual nature towards the appellant or any other member of the group. She said that she used the term "intellectual masturbation" and she did not find it offensive. The Chief Medical Resident never spoke negatively about women and Dr. Ho never saw him be rude to the appellant or treat any of her questions disrespectfully. She testified that in her opinion the Chief Medical Resident created a positive open learning environment. As to the three clerks in the appellant's rotation, she testified that they are obviously a close group and jokes of a sexual or homosexual nature were made but always in a group context and directed to each other and not at anyone else. She said that they were not rude to the appellant. Dr. Ho admitted that she had only been in the rotation for half of it and that she had not gone to the teaching sessions.

The Chief Medical Resident testified next. His role was as an educator, and administrator and as an attending physician. He was then a 4th-year resident. In all three capacities he had some degree of interaction with the appellant. For half of the rotation he was the attending physician to whom the appellant reported. He denied that he had ever made any homosexual jokes or jokes of a sexual nature. He said that he recalled using the term "mental masturbation" and referring to "squamous bougie". On cross-examination he insisted that he had not meant any jokes that he made to be sexual ones. He said that he did not recall specific circumstances in which he used the term "squamous bougie" and he agreed that using the term as or in a joke was in bad taste. He said that he had no recall of any meeting between himself and the appellant in relation to complaints about the conduct of the three clinical clerks and the alleged hostile learning environment. He believes that if the meeting had happened and he had been informed of the appellant's opinion he would have taken every step to resolve any problems, partly because he believes any problem of this nature should be resolved so that the teaching environment is not hostile and partly for the sake of his own reputation as a present and future teacher. He said that he never felt any strain develop in his relationship with the appellant. He testified that he was on occasion angry with the appellant if he thought she was missing too much duty because of interviews for positions in the next academic year for post-graduate training. He denied that this was a factor in her subsequent evaluation. In a memorandum dated January 27, 1993, the Chief Medical Resident in justifying the failing ward mark indicated that at the November 25, 1992 interim evaluation he expressed concerns regarding her work on the ward. He wrote that the appellant was told that without improvement, failure was a possibility. He testified that, although he had less contact with her in the second half of the rotation, he did not see objective improvement. He testified that he was first made aware of the allegations of the appellant months after the rotation ended.

The third witness for the Faculty was Dr. Neil Lazar, the Clinical Service Chief in the ward. He was also the attending physician for the appellant's group for the second half of the rotation. He described his interaction with his group which consisted of two second-year residents, an intern and two clerks, the appellant and one of the group of three clerks whose conduct is in question here. Dr. Lazar testified that he never witnessed inappropriate interactions between any members of his team. The appellant never spoke of her problems with the other clerks to Dr. Lazar. He said he saw the other two clerks at morning report and some of their rounds and he never saw them treat the appellant with hostility. Dr. Lazar referred to a letter he had written to Dr. Goldlist on January 27, 1993 explaining her failure.

Report Number 208 of the Academic Appeals Committee

The letter indicated that as Clinical Service Chief he assigned a final ward evaluation to the appellant based on direct feedback from her supervising attending medical staff, her preceptor, and the resident staff with whom she worked during this rotation including the Chief Medical Resident. His letter states that the appellant appeared unsure of herself and was most often incapable of working out clinical problems using either historical information or by choosing appropriate laboratory investigations. He listed other examples of her work in the ward of an unsatisfactory nature. He concluded that she had failed to significantly improve during the rotation. Dr. Lazar also noted that the appellant had fewer patients than the other clerks.

The next three witnesses of the Faculty were the three clerks to whom reference has been made. All of them described their daily schedules and the times when they interacted with the appellant. They testified that there were jokes of a sexual nature made only within the group. They all said that no jokes were directed at the appellant or even meant to be overheard by her. They said that the appellant never objected to the jokes or told them that she was disturbed or upset by them. They all insisted that no inappropriate remarks were made during the teaching sessions; all of the joking was before the sessions actually got started or in the hallways afterwards. There was evidence that they first heard of the appellant's allegations about a year after the rotation actually ended. One of the clerks said that he used the word "shwing" in relation to cases being discussed but he never made any accompanying gestures. Another clerk said that he used the same word to express excitement about things but the word was not used in a sexual manner. All three clerks admitted that they rolled their eyes upward when they thought the appellant was asking inappropriate questions or was not paying attention to an answer to a question she had asked. One of the clerks, on questioning, said that he regrets having rolled his eyes during the appellant's questions. The clerks said that they did not have a special relationship with the Chief Medical Resident and they did not hear any demeaning remarks in any situation from him.

The last witness for the Faculty was Dr. Tim Cook, who was then a second-year resident during the Internal Medicine rotation. He was the leader of the medical team which included the appellant and other clerks who rotated through. He testified that the appellant seemed uncomfortable on the rotation. He did not see inappropriate behaviour at morning report or at other times. He said that occasionally he would see the rolling of eyes or gestures in response to the appellant's questions. He never detected any tension or hostility between the appellant and one of the other clerks who was on the team with the appellant. He thought that any discomfort that the appellant felt stemmed from the subject of internal medicine itself. He was referred to a memorandum he wrote on January 27, 1993 in relation to the appellant's medical activities. He was very critical of the appellant's ability to function in internal medicine. He concluded as follows:

Over all, her deficiencies and knowledge base, clinical skills and problem analysis, combined with her lack of insight into these issues made her safety of the practice of medicine on an independent basis questionable.

He stood by this comment during questioning. He felt that the appellant became very defensive when questioned and was not receptive to constructive criticism.

Report Number 208 of the Academic Appeals Committee

The Committee then heard the submissions and arguments of counsel for the appellant, the Faculty, and the doctors involved. In the end, we had to decide whether or not there was sexual harassment or a learning-impaired environment such that the appellant did not receive a proper mark. The Committee concluded unanimously, that on the facts of this case, as seen through all of the evidence, that the Chief Medical Resident was not implicated in any inappropriate behaviour. The appellant's three fellow clerks engaged over the period in question in behaviour which was boorish and perhaps unprofessional, but the Committee concluded, with one member dissenting, that the conduct could not be characterized as sexual harassment under s.1 of the Policy, or the imposition of a learning-impaired environment. One member of the Committee would have found that there was a poisoned learning environment which directly affected the mark in question. The Committee does not intend to rehearse the days of evidence, but it notes what was said above about the behaviour. There was clear credible testimony by those not directly involved in the problem that as far as they could see there was no inappropriate conduct. The Committee has come to the conclusion that even if the versions of the three clerks amounted to sexual harassment which created a hostile learning environment there was no causal relationship with her mark in the course. The evidence was that she simply did not perform well during the rotation. There was evidence that other factors, such as her interview schedule, may have caused her stress and so hindered her performance. In any event, all but one member of the Committee concluded that the mark in question was justifiable. The Committee also notes that of the five students on her remedial rotation at Woman's College Hospital she ranked fourth. Even taking into account that higher standards were applied to the appellant because she was doing the rotation for the second time, the Committee felt that this result provides some evidence that the original mark was largely unaffected by the behaviour in question. On the written part of the remedial course at Woman's College Hospital the appellant received a grade just above passing.

In the end, as noted above, **we would reject the appeal**. But the Committee would be remiss if it did not express the unanimous view that this was a difficult case for the Committee as well as for those involved. We would like to thank counsel for the appellant, the faculty and the doctors involved for the clarity and professionalism with which they conducted the case.

The Committee would also like to add some comments about the general circumstances. First, we urge the Faculty to ensure that mid-term evaluations are timed in such a way that the students receive feed-back on their performance which is both specific and early enough so that they have a chance to improve any weaknesses. Second, the Committee has some discomfort with the procedure of the final evaluation. The Faculty should ensure that there are clear rules involving the presence of any oral examiners during the final evaluation. Third, we note that the appellant was the only woman in the extended group of nine students. The Faculty and the hospitals should attempt to replicate the makeup of the class, so that there is the sort of gender balance that students are ordinarily used to. Fourth, we have noted that the Faculty of Medicine Appeals Committee indicated that there had been unprofessional conduct of some members of the clinical group. None of the individuals involved were asked to appear before the Faculty of Medicine Appeals Committee and to give evidence of their version of events. This is an important matter which can obviously affect the careers of the people involved. Therefore, before such findings are made by a Faculty Appeals Committee it should hear those individuals. Finally this Committee has said on other occasions that an internal Faculty Appeals Committee must do more than merely

Report Number 208 of the Academic Appeals Committee

find whether or not the required faculty regulations and procedures were followed. Appeals within faculties are meant to be as substantive as are appeals to this Committee.

Ms Lynn Snowden
Secretary

Professor A. Weinrib
Vice-Chairman

Date of Release of Decision: March 19, 1996