

UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL

REPORT NUMBER 218 OF THE ACADEMIC APPEALS COMMITTEE

January 9, 1997

To the Academic Board,
University of Toronto.

Your Committee reports that it met on September 11, 13, 18, 20, 25, and 27, and on October 2, 10, 23, 30 and 31, 1996, to hear evidence, and on November 13, 15 and 18, 1996, to consider its decision herein. In addition, the Chair attended on October 7, 1996 to hear submissions of counsel on certain legal issues raised in the appeal. The following members were present at the hearing of evidence and at the deliberations as to the decision:

Professor Ralph Scane (Acting Chair)
Mrs. Ruth Alexander
Mr. Emmanuel Chomski
Professor Donald Galbraith
Professor Emmet Robbins

Secretaries to the Committee were:

Ms Rosanne Lopers-Sweetman, Secretary
Ms Susan Girard, Acting Secretary

In Attendance:

The Student
Mr. Eric P. Polten, Counsel for the student appellant

Mr. Timothy Pinos, Counsel for the Faculty of Medicine
Dr. Rick Frecker, Assoc. Dean, Undergraduate Medical Education, Faculty of Medicine

This is an appeal from a decision of the Appeals Committee of the Faculty of Medicine, dated December 20, 1995, dismissing an appeal from decisions of the Board of Medical Examiners, dated October 27, 1995 and November 10, 1995. The effect of the latter decisions was that the Student be failed in his rotation in Paediatrics in the Third Year, and that he not be allowed to repeat his Third Year until the Student had undergone psychiatric, psychological and medical assessments, and the results of these examinations had been received, discussed and a recommendation made by the Board of Examiners.

Report Number 218 of the Academic Appeals Committee

This Appeal raises some grounds of appeal that are purely questions of law, namely, the jurisdiction of the Faculty of Medicine's Board of Examiners and of its Appeals Committee to make the decisions complained of in these proceedings, and the applicability of the "automatic stay" provisions of s. 25(1) of the *Statutory Powers Procedure Act* to those decisions. Therefore, the Committee agreed, with the consent of counsel, to have these legal issues heard and determined by the Chair, with the intent that the Committee would adopt the Chair's holdings on these matters as decisions of the Committee. Part I of this Report contains the ruling of the Chair on the issues described above, adopted by the Committee. Part II contains the decision of the Committee on the substantive issues before it. The Committee determined that it would decide these substantive issues without regard to the holdings in Part I on jurisdiction, as, should the Chair hold that there was a lack of jurisdiction, and be reversed upon judicial review, the substantive decision would be available and might thereby avoid the very great costs and further delay of a rehearing of the entire matter.

At the opening of the appeal to this Committee, counsel for both parties agreed that this Committee has jurisdiction to determine the matters raised in the appeal.

PART I

The Issue of Jurisdiction

The Student submits that the decisions of the Board of Examiners of the Faculty of Medicine dated August 18, September 29, October 27 and November 10, 1995, and the decision of the Appeals Committee of the Faculty of Medicine are void. The core of the Student's argument is that the powers to appoint examiners, conduct examinations and determine the results thereof, and the power to deal with and decide upon "applications and memorials by students" (i.e., to decide academic appeals) are vested in the councils of the various schools and faculties, subject to approval of, or appeal to, the Governing Council, by the *University of Toronto Act, 1971*, as amended by the *University of Toronto Amendment Act, 1978*. The legislation does not expressly confer power to delegate these functions to any subordinate body, such as the Board of Examiners or the Appeals Committee, and, as the powers are at least quasi-judicial in their nature, no such power to delegate will be implied. Such decisions must be made by the full council. A council can neither ratify nor approve a nullity.

The Chair holds that both the Board of Examiners and the Appeals Committee of the Faculty of Medicine were properly constituted with the authority and jurisdiction to make the kinds of decisions at issue in this appeal. In each case, the power of the Council of the Faculty to delegate the jurisdiction in question to those subordinate bodies is authorized either expressly or by necessary implication by the Provincial legislation or by the acts of the Governing Council exercising powers conferred upon it by that legislation. In expanding upon this holding, it is convenient to deal with the two subordinate bodies separately, as the reasons for the holding are not wholly identical in each case.

Report Number 218 of the Academic Appeals Committee

The Board of Examiners

Although *The University of Toronto Act, 1947* was repealed by the 1971 legislation, it is necessary to refer to it because s. 9(1) of the 1971 *Act* states:

Unless and until otherwise provided by the Governing Council, the councils.... under *The University of Toronto Act, 1947* and their respective powers are continued.

Section 70 of the 1947 *Act* provides that the powers and duties of the councils shall be to

(d) subject to approval and confirmation by the Senate, appoint the examiners for, and conduct the examinations of the courses in the faculty or school and determine the results of such examinations.

Section 48 of the 1947 *Act*, dealing with the powers and duties of the then Senate, provided that they shall be to

(l) consider and determine on the report of the respective faculty and school councils as to the appointment of examiners, and the conduct and results of the examinations in all the faculties and schools.

The terms of s. 48 were not repeated *verbatim* in the examples of Governing Council power given by s. 2(14) of the 1971 *Act*, as amended. That section simply refers to power to

(g) conduct examinations and appoint examiners.

The difference in wording may be significant in that, if s. 48(l) of the 1947 *Act* could be read as requiring a decision of the former Senate approving the results of all examinations before they became official, that requirement has not been repeated in the 1971 *Act*, as amended. Although s. 2(14) of the 1971 legislation carries forward the powers and duties of the Senate under the 1947 *Act* to the Governing Council, the change in wording found in s. 2(14)(g) of the present legislation removes such requirement, if it existed. Thus there is no statutory requirement that Governing Council formally approve all results of examinations conducted by schools and faculties, although it can itself impose that requirement if it wishes.

The statutory powers of the Governing Council and of the various councils of schools and faculties with respect to the appointment of examiners and the conduct of examinations are not inconsistent. There may be examinations within the University that are not within the jurisdiction of any particular faculty or school. In theory, Governing Council may, at some time, through the exercise of other of its powers, remove the examining jurisdiction from faculties and schools and take it upon itself. Even while the co-jurisdictions continue to exist, that of the councils and schools is clearly subordinate, and Governing Council could intervene in any particular case, or generally, to assert its superior jurisdiction, however unlikely that may be. Finally, and more likely, it can impose controls upon the manner in which the councils carry out their examination jurisdiction.

Report Number 218 of the Academic Appeals Committee

The Council of the Faculty of Medicine, then, does not exercise its examining function only by delegation from Governing Council, but has that power conferred directly by statute. "Appointing examiners", by necessary implication, involves the marking of the "examinations" by those examiners. To this extent, there is no "delegation" of a council's powers. There is merely an exercise of them. Although "examiner" evokes an image of a solitary marker with a stack of scripts, it need not be so, and the Faculty of Medicine has determined that, for its programme, a board, receiving and weighing input not only from instructors in more traditionally structured courses, but also from the very many supervisors and instructors involved, to greater or lesser extent, in clinical components of the programme, is best for its needs.

By its By-law establishing the Board of Examiners, Council of the Faculty of Medicine did not go beyond the exercise of its undoubted statutory power to appoint examiners. The Board of Examiners does not have the final say on passing or failing of any student. It may only "recommend to Council for its ratification" on "Student promotion, failure and supplemental privileges". That is, it marks, weighs the results of the marks, and formulates its recommendations for the final approval of Council. It is that final approval which makes the marks and pass/fail decisions the decisions of the University, always subject to the appeal process and the possibility that Governing Council will intervene at a later stage.

By some slip, although the results of the decisions of the Board of Examiners were duly reported to Council, Council did not formally pass a resolution adopting and ratifying the recommended results for the 1994 and 1995 academic years until April 15, 1996, which was after this appeal had been instituted. This delay does not assist the Student. With respect to students who received a recommendation of the Board that they be passed (and indeed, with respect to the Student appealing in this Appeal, with respect to the passing marks assigned to him by the Board in those years), the University would be estopped from using the delay in formal ratification to refuse to recognize the results recommended by the Board. The Student has not been prejudiced by the delay so as to estop the University from treating the Board of Examiners' "fail" recommendation in his case as now official, as approved by Council. The Student received timely knowledge of the contents of the Board's recommendation in his case, and was aware that the University was (even if mistakenly), acting on it as an official decision as to his status. There was no action that the Student took, or failed to take, as a result of the delay in ratification of the Board's adverse recommendations with respect to his Third-Year results, that could constitute detrimental reliance on the Student's part.

The Appeals Committee

The Student argues that, by reason of ss. 7 and 9 of the 1971 *Act*, as amended, which continue the "faculties and schools" of the University, and their powers, the power to "deal with and decide upon all applications and memorials by students", conferred upon such councils by s. 70 of the 1947 *Act* remains vested in them, "unless and until otherwise provided by the Governing Council". The *Acts* do not expressly confer any power upon the councils to delegate this function to a committee or a subset of a council or school. The power is quasi-judicial in nature, and, it is argued, is not susceptible to delegation without such express authority. Therefore, the Appeals Committee of the Faculty of Medicine had no jurisdiction to determine the Student's appeal. If this argument is correct, any academic appeal at the level of a faculty or

Report Number 218 of the Academic Appeals Committee

school could only be determined by the full council. As, admittedly, that did not happen here, it is argued that the purported decision of the Appeals Committee in this case was a nullity.

The Chair's first difficulty with this argument is understanding how the argument, if correct, helps the Student at this stage of the proceedings. Quashing, for want of jurisdiction, a decision dismissing an appeal is not the same as allowing the appeal. If the Student's argument is correct, the appropriate remedy, if one were to be granted, would be to remit the appeal for rehearing by the full Faculty Council. At this stage, that would simply waste huge amounts of time and money. This Committee, which admittedly does have jurisdiction, is now fully seized of the matter, and will determine it. Subject to the Student's argument as to the effect of s. 25 of the *Statutory Powers Procedure Act*, the decisions appealed from, that the Student did not pass the rotations in paediatrics, and accordingly did not pass the Third Year, must still stand until some University body with jurisdiction to change them does so.

In any event, as previously indicated, the Chair holds that the Appeals Committee of the Faculty of Medicine did and does have jurisdiction to determine appeals of the nature of the present one. The Faculty was properly and validly enabled by the Governing Council to constitute the Appeals Committee and to confer upon it the powers which it did confer.

The Appeals Committee purports to exist and to receive its powers by virtue of the Constitution of the Faculty, which contains the following provision:

B(vi) Council shall deal with and decide upon all applications and memorials by students and others and may delegate this responsibility to a committee or committees of Council.

This purported power to delegate was exercised by a Faculty by-law establishing the Appeals Committee.

The question is whether the Faculty had the power to delegate this appellate jurisdiction to which its Constitution refers. It could not confer such power upon itself, and neither the *University of Toronto Act, 1971*, as amended, nor the predecessor *Act* expressly confer such power upon it. The cases cited by the Student make it clear that, unless the power to delegate a quasi-judicial function to a subordinate body is granted to the body purporting to so delegate that function, the act of delegation is a nullity, and decisions of the subordinate body are likewise nullities.

The Chair holds that this power to delegate the academic appeal powers of Faculty Council was conferred upon that Council by the approval of the Constitution by Governing Council. The effect of that approval was the same as if Governing Council had originated and legislated into existence the text of that Constitution for the Faculty of Medicine, instead of reviewing and approving a text created and approved within that Faculty. The question, then, is whether Governing Council could confer such power.

The Student submitted that, as s. 9(1) of the 1971 *Act* provides that "Unless and until otherwise provided by the Governing Council, the councils and their respective powers are *continued*",

Report Number 218 of the Academic Appeals Committee

the only power which Governing Council has in this regard is either to continue a council, with the powers it enjoyed under the 1947 *Act*, or to terminate that council. There is no power, it is argued, to alter that council or its powers.

The Chair holds that this argument on behalf of the Student is defeated by the provisions of s. 2(14)(i) of the 1971 *Act*, which provides that, without limiting the generality of the broad powers conferred upon Governing Council by the opening portion of s. 2(14), Governing Council has power to

- (i) establish, change and, subject to subsection 2 of section 12, terminate councils within the University and determine the composition, powers and duties of any such council.

Section 12(2) deals with the "constituent colleges" of the University, and does not affect the application of s. 2(14)(i) to Governing Council's powers with respect to the Faculty Council of the Faculty of Medicine.

This provision of the *Act* is really a more concise version of the Board of Governors' power under s. 33 of the 1947 *Act* to "modify, alter and change the constitution of any body constituted or continued by this *Act* and confer upon the bodies constituted or continued by this *Act*, or any of them such powers as to the Board may seem meet", with the necessary substantive changes to reflect the new unicameral structure created by the 1971 *Act*. When Governing Council exercises its power under this provision, the legal effect must be as if the provisions of the Statute itself, to the extent that it is inconsistent with or does not extend to the terms of Governing Council's modifications, are amended. It cannot be that Governing Council's power under s. 2(14)(i) is limited to modifications which leave untouched the statutory powers conferred upon councils by the 1947 *Act*, and continued in force by ss. 7 and 9(1) of the 1971 *Act*. If that were so, Governing Council would be unable, for instance, to change the composition of the various councils from that specified in ss. 68 and 69 of the 1947 *Act*. Yet, such power is clearly contemplated by s. 2(14)(i). To hold that such power to "determine the composition, powers and duties" of councils is restricted only to new councils which Governing Council might bring into existence after the coming into force of the 1971 legislation would be to unreasonably restrict the broad wording of the provision.

To summarize the holding on this issue, then, after approval by Governing Council of the Constitution of the Faculty of Medicine containing the power to delegate its academic appeal function, the Faculty Council had the power to delegate that function to its Appeals Committee as if that power had been conferred directly upon it by the 1971 *Act*.

The same result may also be reached by a different route, also receiving its validity from the terms of the broad powers of Governing Council, as set out in s. 2(14), and more particularly, in s. 2(14)(i), of the 1971 *Act*. On June 19, 1975, Governing Council approved *Guidelines for Academic Appeals Within Divisions*, found in the *Handbook* for this Committee. Paragraph 9 of that document provides in part:

Report Number 218 of the Academic Appeals Committee

Each division should repose authority to determine appeals within the division in a standing committee of reasonable size who should report to the Faculty Council or other divisional governing body *for information*.
[Emphasis added]

By this provision, Governing Council is directly authorizing, and indeed, directing, the delegation of councils' powers of determining appeals to some subordinate body of a council.

The Effect of Section 25 of the Statutory Powers Procedure Act

The Student argues that the above provision works a stay of the decisions of the Board of Examiners and of the Appeals Committee unless this Committee "otherwise orders", and that the effect of such stay must be that the Student should be permitted to proceed with his studies as if he had not received a failure in the paediatric rotation, i e., that he should be permitted to proceed with his Fourth Year programme. He acknowledges that such proceeding would be at his risk, and that if his appeal is dismissed, the stay would be removed, the failure restored to its usual operative effect, and time spent in the Fourth Year programme might be given no credit. At the opening of this appeal before this Committee, your Committee decided that, if the statutory stay did apply here, this Committee had no basis, without hearing evidence, to determine whether or not to "otherwise order". As the decision of this Committee on the substantive appeal will determine, insofar as the University's internal processes can do, whether or not the Student may now proceed to his Fourth Year, the determination of the applicability of the "stay" provision of the legislation, as far as this case goes, is, by this time, moot. Nevertheless, as the matter is important to the University, and has been raised and extensively argued here, it should be dealt with here, to the extent that the University can determine this matter internally.

The *Statutory Powers Procedure Act*, (hereinafter, the *SPPA*), provides:

25.(1) Unless it is expressly provided to the contrary in the Act under which the proceeding arises, an appeal from a decision of a tribunal to a court or other appellate tribunal operates as a stay in the matter except where the tribunal or the court or other body to which the appeal is taken otherwise orders.

The stay, then, operates automatically, unless either the tribunal appealed from, or the body to which the appeal is taken, removes the stay. No such action was taken by the Board of Examiners or by the Appeals Committee of the Faculty in this case, and none has been taken by this Committee, and therefore, if the statutory stay is operative at some or all previous stages of these proceedings, it is still operative. It is clear that the stay referred to is not a stay of the proceedings themselves, as this would simply freeze the appeal process, and remove any appeal as of right. The Section must refer to a stay in the operative effect of the decision in the originating tribunal.

"Tribunal" is defined by s. 1(1) of the *SPPA*:

Report Number 218 of the Academic Appeals Committee

"tribunal" means one or more persons, whether or not incorporated and however described, upon which a statutory power of decision is conferred by or under a statute.

"Statutory power of decision" is also defined by the same section:

"statutory power of decision" means a power or right, conferred by or under a statute, to make a decision deciding or prescribing,

- (a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or
- (b) the eligibility of any person or party to receive, or to the continuation of, a benefit or license, whether the person is legally entitled thereto or not.

However, the *SPPA*, including s. 25 thereof, does not apply to all "tribunals" which might otherwise come within the operation of the *Act*. Section 3(1) provides:

- 3.(1) Subject to subsection (2), this Act applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision.

Subsection (2) of s. 3 specifically exempts certain proceedings from the operation of the *SPPA*. Only one of these, s. 3(2)(g), has possible relevance to examinations and academic appeals within the University:

- 3. (2) This Act does not apply to a proceeding,
 - (g) of one or more persons required to make an investigation and to make a report, with or without recommendations, where the report is for the information or advice of the person to whom it is made and does not in any way legally bind or limit that person in any decision he or she may have power to make.

In summary, the automatic stay provision of s. 25 of the *SPPA* will be applicable to the decisions of the Board of Examiners and the Appeals Committee only if they are "tribunals" which are required by law to afford a hearing to the parties. Again, this must be examined with respect to each of these bodies separately.

The Board of Examiners (and the Faculty Council)

As the Board is, as described above, only empowered to make a recommendation to the Faculty Council, it appears to come within the exception created by s. 3(2)(g) of the *SPPA*, and thus that Act is not applicable to the Board's decisions. However, if this is correct, this would only shift the problem up to the level of Faculty Council, when it decides whether to adopt the Board's

Report Number 218 of the Academic Appeals Committee

recommendations. The following discussion applies to the grading and promotion decisions within the division, at whatever level therein they are originally made.

This Committee has, in at least one previous case, considered an argument that some form of hearing is required in a grading or evaluation situation. In Report No. 198, made in October, 1995, this Committee, differently constituted, was considering an appeal from a graduate student of the Faculty of Medicine who had been terminated from the graduate programme. One of the grounds of appeal was the failure of the Postgraduate Committee in the sub-discipline involved to afford a hearing to the student at the meeting at which the original decision to suspend from the programme was made. As part of its holding on this issue, the Committee said:

The meeting, in so far as it dealt with [the Appellant] was part of a process of *evaluation*. In the case of evaluation of clinical work, as in the case of formal examinations, papers or theses, the "hearing" component, if it may be so called, is provided by what the candidate writes on the paper, or how the candidate performs in the practical setting.

The issue of the necessity of a hearing in academic evaluation matters was adverted to by the Supreme Court of Canada in *King v. University of Saskatchewan* (1969), 6 D.L. R. (3d) 120. A law student had failed to obtain the standing required for his degree, and launched a series of appeals within the University's internal processes. An *ad hoc* investigating committee recommended that, on compassionate grounds, the degree be granted, but this recommendation was not accepted by the Executive Committee of the Council, nor later, by the full Faculty Council of the University. A further appeal to the Senate was dismissed. The student then appealed to the courts for judicial review, on the ground of denial of natural justice. One basis upon which it was claimed that natural justice had been denied was that the student had not received notice of the various meetings of the Executive Committee and of the full University council, and was not given an opportunity to be present or be represented by counsel at these meetings. The Student and counsel were present at the final Senate appeal.

In considering the effect of the lack of notice or hearing afforded at the Executive Committee and Council levels, Spence J., speaking for the Court, said:

What was being considered here was whether the appellant had attained the necessary standing in his studies in the law school to justify the granting to him of a degree of bachelor of laws [S]uch a matter is essentially a domestic one within the University. The considerations which are given to such an issue are not those which can be assisted by an adversary formula, and it is difficult to conceive of a situation which would have the representatives of a law school faculty confronting the representatives of a student in the trial of an issue as to whether a degree should be granted.

This passage strongly supports the conclusion that the type of evaluation and promotion decisions made, in this particular case, by the Board of Examiners and Faculty Council, in confirming the Board's recommendations, are not the types of decisions which at law require a hearing, as that word is used in s. 3 of the *SPPA*. The Chair holds that a hearing, in this context, requires more than a submission of work or performance for evaluation, or of facts and

Report Number 218 of the Academic Appeals Committee

arguments in support of a petition for special consideration, as in the case of a request for *aegrotat* standing, or relief on compassionate grounds from the normal consequences of a poor academic evaluation. It requires some form of a *lis* between the student and the evaluator, some "adversary formula" for the "trial of an issue", which is not present in a marking or promotion situation. The types of decisions made in the process of grading, considering for promotion, and considering whether relief should be granted in the form of supplemental examinations or otherwise from failure to meet requirements, are essentially ministerial, as the word is used in this legal context, rather than judicial or quasi-judicial in nature.

Further support for this conclusion may be drawn from the judgment of the Federal Court of Appeal, in *Re Scarborough Community Legal Services and the Queen* (1985), 17 D.L.R. (4th) 308. This was an appeal from a decision of the Minister of National Revenue, refusing to the applicant registration as a charitable organization for purposes of the *Income Tax Act*. The Minister, after reviewing the material submitted by the organization on the application, held that it was not a charity within the meaning of the *Act*. One of the grounds of appeal was denial of natural justice, in that the Minister had come to a decision without giving the applicant prior notice of the case against it and an opportunity to meet that case. This ground of appeal was rejected by the majority of the Court.

Urie J., at p. 317, said:

I am unable to find, either as a matter of natural justice or procedural fairness, an obligation on the Minister to invite representations or conduct a hearing before reaching a decision on the application. The prescribed material must, of course, support the application. The contents of that material, both that which is helpful and that which is damaging, is, of course, known to the applicant, as are the legal requirements for satisfying the Minister that the organization is in law a charity. Nothing precludes an applicant from making submissions in support of its application, or to explain deficiencies or defects therein or from filing additional supporting material to demonstrate that it is truly a "charity". Whether it chooses either to do so or not, the Minister, relying on what is before him, must decide whether registration should be granted or not. The failure to call for representations cannot, therefore, in the statutory context of an application for registration, vitiate his decision, as I see it.

Marceau J., who also was part of the majority on this issue, said, at p. 322-23:

.... [A] decision to deny an applicant to be given special status on the facts and evidence submitted by him, lacks the basic characteristics of an adjudication *inter partes* by a court of law. Moreover, and most importantly, the decision to refuse the application in the present case was not made on the basis of information obtained without the interested party's participation; it was made solely on the evidence submitted by the applicant himself.

The function of the Minister in dealing with an application for registration as a "charity" is, in my view, a strictly administrative function, and it does

Report Number 218 of the Academic Appeals Committee

not appear to me to be one subject, in its exercise, to judicial or quasi-judicial process.

In the view of the Chair, the analogy of the issue in this case to the evaluation of the academic performance of a student, whether that performance is evaluated by examination, thesis or clinical participation, as a requisite for achievement of some academic status such as a degree, or interim standing towards a degree, is strong.

Therefore, as the decision-making functions of the Board of Examiners, or of the Faculty Council, in respect to its original decisions on grading and promotion, are not such as require "an opportunity for a hearing before making a decision", either by the *University of Toronto Act*, or "otherwise by law", neither are, in this function, "tribunals" to which the *SPPA* applies. Therefore, there is no stay of their decisions on an appeal to the divisional appeal tribunal, here, the Appeals Committee, or subsequently to this Committee.

This holding does not mean that other aspects of natural justice or procedural fairness do not apply in the making of decisions of this nature. Such decisions must be made in good faith, without allowing irrelevant considerations such as personal dislike, or bias against a racial or religious group to which a student may belong, to operate in the decision making. Presumably, courts will enforce this requirement, by judicial review or otherwise. The University, through its internal processes, certainly will.

The Appeals Committee

The position is different once an appeal is taken from the original grading or promotional decision. Here, a true *lis* between the student and the University does come into existence. Once the University denies the allegation of error in the original decision, the decision moves towards the judicial or quasi-judicial end of the legal spectrum. The function of a divisional tribunal, such as the Appeals Committee here, so closely parallels the function of this Committee, which has been judicially determined to be subject to the *SPPA*, that, at first blush, it seems to follow that that *Act* will apply to a divisional academic appeal committee. However, this issue must be examined in the light of the leading case discussing this University's academic appeal structure, *Re Polten and Governing Council of the University of Toronto* (1975), 8 O.R. (2d) 749, a decision of the Divisional Court of the High Court of Justice of Ontario.

Polten involved an attempt to have the courts review a series of internal appeals from the refusal of the University to grant a doctoral degree following the oral examination upon the thesis, which appeals were carried, unsuccessfully, to the predecessor of this Committee. An interim appeal was taken to the Applications and Memorials Committee of the School of Graduate Studies.

In the course of its judgment, the Court said (at p. 765):

The subcommittee on academic appeals [the predecessor of this Committee] which finally dealt with the matter on behalf of the governing council, did conform with the *Statutory Powers Procedure Act, 1971*. The Committee on

Report Number 218 of the Academic Appeals Committee

Applications and Memorials of the Council of the School of Graduate Studies had, under s. 70(1)(e) of the 1947 *Act*, the power and duty to "deal with and decide upon all applications and memorials by students and others", but only "subject to an appeal to the Senate". Its decision was not final. Moreover, the minimum rules prescribed by the *Statutory Powers Procedure Act, 1971* are, by s. 3(1), only applicable where the tribunal is required by or under the Act under or by which the tribunal is created or otherwise by law to hold or to afford to the parties an opportunity for a hearing before making a decision. The committee on academic appeals had the specific power to "hear and determine appeals"; the committee on applications and memorials only to "deal with and decide". Therefore, although the decision of the Council of the School of Graduate Studies was a decision made in the exercise of a statutory power, it was not a "statutory power of decision" within the meaning of the Act, unless the council was otherwise required by law to afford the applicant an opportunity for a hearing before making a decision.

The Faculty submits that this case is conclusive that a divisional appeal committee, such as the Appeals Committee, is not governed by the *SPPA*. The Student points to the concluding words of the passage cited, and argues that the Appeals Committee is now "otherwise by law" required to hold a hearing. The "law" relied upon in this connection is the *Guidelines for Academic Appeals Within Divisions*, referred to above. These were approved by Governing Council after the release of the judgment in *Polten*. The "Guidelines" provide that:

The appellant should have the right to appear before the divisional committee in person, with or without counsel or other adviser, and to call evidence and present argument in person or by counsel.

In its context, this is a mandatory direction, not a suggestion.

The argument of the Student is attractive. The provision certainly creates a contractual right to a hearing as described, in favour of a student who appeals to the divisional level. However, on the cases reviewed in *Polten*, and from that case itself, dealing with judicial supervision of universities in their relationships with students, it appears that it is the applicability of the general law of the jurisdiction to the decision-making process in question that lifts the decision out of the "domestic" realm, governed by contract, to an area sufficiently "public" that it becomes subject to judicial review. In *King v. University of Saskatchewan*, the courts were considering the effect of provisions of the Saskatchewan *University Act* substantially similar to the provisions of s. 70 (1)(e) of *The University of Toronto Act, 1947*, which confers power to determine academic appeals on faculty and school councils, as they affected the courts' right to review the matter at issue in the case. In the Supreme Court of Canada, Spence J. recited the holding in the lower court that this section created a statutory duty, and that compliance with that duty could be controlled and enforced by the ordinary courts. Spence J. approved the following passage from the judgment of Hall J.A., in the Saskatchewan Court of Appeal in the same case:

The respective duties [of the faculty council and of the Senate] so created are therefore not domestic matters within the University but are in the nature of

Report Number 218 of the Academic Appeals Committee

public duties, and as they specially affect the rights of the appellant, *mandamus* may be granted if there has been a failure to perform them.

However, because of s. 3(1) of the *SPPA*, in order to determine whether that *Act* applies to a particular function of a council of a faculty or school, it is not enough to find that the function involves sufficient "public" duties to attract the traditional supervisory role of the courts over inferior decision-making bodies. We are concerned here with one particular public duty, the duty to afford a "hearing", as contemplated by the *SPPA*. If that duty is not imposed by the general law of the jurisdiction, it is difficult to see why the fact that the institution, by its "domestic" rules, imposes upon itself a duty which is equal to the equivalent "public" duty, itself turns that duty into a "public" duty.

Both *King* and *Polten* have held that intermediate appeal bodies such as the Appeals Committee, deriving their appellate jurisdiction from a statute, are exercising a statutory power, and thus may be subject to review by the courts. The question, again, is whether the courts will require a "hearing" at this level when they do engage in such a review. If the courts, absent any self-imposed "domestic" requirement for a hearing at an intermediate level, would not impose such a requirement themselves, then the voluntary self-imposition of such a requirement by the institution would not constitute the kind of "law" encompassed in the phrase "otherwise by law", found in s. 3(1) of the *SPPA*. Such a requirement would be merely a matter of "domestic" regulation, within the sphere of contract only. An institution surely cannot take itself out of, or place itself within, the scope of the *SPPA*, by amending its own internal regulations.

Polten clearly decided that divisional academic appeal committees were not required to afford a "hearing" by any express provisions of the *University of Toronto Act, 1971*, as this Committee is required to do. Perhaps less clearly, it must also have decided that general, non-statutory principles of administrative law do not impose that requirement either. The Divisional Court relied, in part, on the fact that the divisional committees' decisions are not final. In itself, this could not be a conclusive factor in all cases, for s. 25(1) of the *SPPA* makes it clear that the *Act* applies to tribunals whose decisions are subject to appeal to other tribunals. This holding by the Court appears to be made in the context of discussion of the nature and degree of judicial regulation of academic decisions of universities or similar academic bodies that general administrative law permits and requires, and concludes that, while the courts will require a "hearing" at the final level of appeal, they will not require one at lower levels.

This is not to say that the courts will not require some degree of "natural justice", at all levels of academic decision-making with respect to a student. As the Divisional Court said, at p. 768 of the *Ontario Reports*:

Secondly, although the appeal must be conducted according to the rules of natural justice, these rules do not always require a formal hearing, or the presence of the appellant, provided his case is presented to them by way of correspondence, briefs, memoranda or otherwise.

It appears that the Court considered that it is the requirement of a "formal hearing" that invokes the *SPPA*. By "formal hearing", the Chair believes that the Divisional Court was referring to the kind of hearing required by the *SPPA*, in its then form. Section 10, in that version of the Act,

Report Number 218 of the Academic Appeals Committee

provided for representation by counsel or agents, the right to call and examine witnesses and to present arguments and submissions, and the right to conduct cross-examinations of witnesses. The same provisions exist under ss. 10 and 10.1 the 1993 version of the *Act*, with respect to "oral" and "electronic" hearings. The current version does provide for "written" hearings (by exchange of documents), but not if any party objects. Its examination of the authorities did not lead the Court to conclude that general principles of law, apart from statute, demanded a "hearing" of this nature at intermediate levels, in the university academic evaluation and review context.

It was submitted by the Student that a later judgment of what was then the District Court, in *Wong v. University of Toronto* (1991), 79 D.L.R. (4th) 652 (actually decided in 1989), decided that a divisional appeal committee (in that case, the Applications & Memorials Committee of S.G.S.) is governed by the *SPPA*. There is a bald statement to that effect at p. 658 of the report cited. It is not clear that the Judge had her attention specifically drawn to the relevant passages in *Polten* before making this statement. Otherwise, one would have expected elaboration of her reasons for coming to what is a different conclusion on the point. In any event, if the analysis given above of the higher-ranking Court's decision in *Polten* is correct, the statement in *Wong*, so far as it affects divisional academic appeal committees within this University, must be regarded as wrong.

In summary, the Chair concludes that the *SPPA* does not apply to a divisional academic appeal within this University, and therefore, that there is no application of the automatic stay provisions of that *Act* to the decision of the Appeals Committee of the Faculty of Medicine in this case.

If this conclusion is wrong, then the question would arise as to how s. 25(1) of the *SPPA* would affect a student in the position of the appellant. The Student argues that the policy of the section is to preserve the *status quo ante* so as to minimize harm to the person affected, pending final disposition of the matter, and that, in his case, this means that matters should be preserved in the state in which they would have been had the adverse (to him) decision not been made. This, it is argued, should permit him to proceed into the Fourth Year programme, admittedly at his risk that the final decision might be against his promotion, and that he would not be permitted to continue in that year, or retain credit for work done therein.

The Chair holds that the section cannot have such a sweeping operation. The *status quo* which is preserved by the section must be that which existed at the time the tribunal in question, that is, the one whose decision is being appealed, thus invoking the "stay" provision of the *Act*, became seized of the matter. In this case, that *status quo* is that the Student has not passed the Third Year paediatric rotation, and has not been promoted to Fourth Year. A stay of an essentially negative decision, that the Appeals Committee would not interfere with that position, surely cannot operate as a mandatory order to promote, even on a conditional basis. If that were to be the operation of a "stay" in this case, then the consequential effect would be to impose a statutory "stay" of similar effect on the promotion decisions of the Board of Examiners and the Faculty Council, whose decisions with respect to promotion have already been held to be outside the operation of the *SPPA*. It would take out of the hands of the University not only the decision whether to promote, but also the decision as to what result follows for the student as a result of the decision against promotion. There is not just one possible consequence to such a decision. The student might or might not be permitted to repeat the rotation, and if not, might or might not

Report Number 218 of the Academic Appeals Committee

be permitted to repeat the full year. Almost all of the appeals which come to this Committee from divisional appeal committees will be appeals from such essentially negative decisions not to interfere with another decision below, and, with decisions of this nature, there is really nothing upon which the statutory stay can operate.

PART II

The Substantive Issues

The Student enrolled in First Year Medicine in September, 1992. Academically, it was a successful year, the Student obtaining Honours standing. However, in this academic year, the University and the Student commenced a dispute which was to proceed before the University Tribunal and the Courts, and is still awaiting a final decision. The merits of this dispute are not the concern of this Committee, but the existence, and general nature thereof, were raised by the Student as germane to the appeal before this Committee. In short, the Student alleges that the existence and nature of the dispute introduced improper bias into the academic decisions of which he is complaining here. At the beginning of the hearing before this Committee, the Chair instructed the Committee that the proceedings before the Tribunal involving the Student were irrelevant to the resolution of the matters before this Committee, except with relation to the issue of bias, and that the Committee must assume, for its purposes, that the Student will ultimately be acquitted of the charges pending there. This instruction was repeated again at the beginning of the Committee's *in camera* discussions as to its decision, with a further instruction that it could also be used to consider whether these matters could also supply an additional source of stress upon the Student which could be material to the assessment of his academic performance. The latter issue was raised during the hearing of this appeal.

The Disciplinary Proceedings

A brief chronology of the events relating to the matters pending before the University Tribunal is useful here. From the Student's point of view, events begin in February, 1993, in the second term of his First Year, when he complained about what he saw as a racist attitude on the part of a course instructor. Shortly thereafter, on March 5, 1993, he was called to the office of Dr. M. Rossi, Assistant Dean, Student Affairs. The subject of this meeting was not his complaint, as he expected, but an allegation by the Faculty that his application for admission to the Faculty contained serious errors and omissions. After a meeting between the Student and Dean Aberman, in May, 1993, the Dean recommended to the Provost that charges be laid against the Student before the University Tribunal. On June 29, 1993, Provost Foley wrote to the Student, instituting certain formal charges.

The Student commenced his Second Year in September, 1993. In October, 1993, Provost Sedra instituted three additional charges. In March, 1994, in the second term of his Second Year, the charges were heard by a jury of the University Tribunal, the Student was convicted, and expulsion was recommended. The Student appealed to the Appeal Tribunal. His appeal was dismissed on June 1, 1994, with reasons to follow. Due to the delay, ultimately of eleven months, before reasons of the Appeal Tribunal were available, the recommendation for expulsion

Report Number 218 of the Academic Appeals Committee

was not implemented, and, in September, 1994, the Student, who had passed the Second Year, continued his studies into the Third Year of the undergraduate programme. On April 25, 1995, the reasons for the decision of the Appeal Tribunal were released, and on June 1, 1995, the expulsion was made effective by Governing Council.

The disciplinary proceedings then moved into the Ontario Court (General Division), as the Student instituted an application for judicial review of the Tribunal's decision. In the course of those proceedings, the Court granted a stay of the expulsion decision, on July 19, 1995, pending hearing and determination by the Divisional Court of the matters raised before it. Accordingly, the Student resumed his Third Year studies with a rotation in Psychiatry commencing July 20, 1995.

On November 1, 1995, the Divisional Court panel heard argument on the Student's application. On December 4, 1995, the Divisional Court quashed the expulsion decision, and remitted the matter to the University Tribunal for rehearing.

The Third Year Academic Performance

The Committee now turns to the Student's Academic Performance in the Third Year. Although the First and Second undergraduate medical years contain some clinical components, in the Third Year, "the Phase I Clerkship", the emphasis shifts greatly to education in a clinical setting. In "rotations" of a few weeks in clinical studies in various specialties, the undergraduate - a "clinical clerk" - is trained in, and evaluated upon, medical knowledge, clinical skills and professional attitudes, including professional ethics. Methods of evaluation may include written and oral examinations, and appraisal by the supervisor and other medical staff concerned in the rotation. All three components are regarded as equally important by the Faculty. In the Faculty's "M.D. Curriculum Directory", it is stated, in the section on the Phase I Clerkship, "General Aims", that this is an opportunity for clerks to "[u]nderstand the importance of human relationships, both personal and communal, and the importance of communication both with patients and their relatives and with other professionals involved in their care. ("ATTITUDES" are as important as "knowledge" and "skills".) In the section, "Evaluation and Assessment in the Clerkship", it is noted that "[u]nacceptable professional behaviour is sufficient grounds for failure".

The Student, in his Third Year, passed all of his rotations except Paediatrics. The Board of Examiners recommended that he fail in that subject in the original rotation, in a remedial rotation, and in a subsequent supplementary rotation. In its meeting of October 27, 1995, which considered the third, or supplementary rotation, the Board, in addition to passing a motion that the student fail, passed a further motion "[t]hat a decision regarding [the Student's] suitability to continue in the medical program will require assessment by the Board of Medical Assessors and re-evaluation by the Board of Examiners. "

The Board of Medical Assessors, which is composed of specialists in various branches of medicine, and is an advisory body to the Dean, met on November 6, 1995. It considered the materials which had been before the Board of Examiners, and advised that the Student "not continue as an active medical student until such time as it has had an opportunity to review

Report Number 218 of the Academic Appeals Committee

formal medical and psychiatric assessments performed on [the Student] and make a recommendation through the Dean to the Board of Examiners.

In turn, the Board of Examiners met again on November 10, 1995, and passed a motion "[t]hat [the Student] not be allowed to repeat the third year of his undergraduate medical training until he has had psychiatric, psychological and medical assessments as soon as reasonably possible, and the results of those assessments have been reported to, discussed and a recommendation made by the Board of Examiners, Undergraduate Medical Program." Following the text of the motion, the Minutes noted, "the purpose of these assessments was to rule out the presence of metabolic, neurological, psychiatric or other conditions which might account, in whole or in part, for observed unacceptable ethical and professional behaviour." Up to this time, this resolution represents the Student's status at the University. He has not undergone the required assessments, and as matters come to this Committee, he can neither repeat Third Year nor enter Fourth Year, nor take any intermediate step, such as an unusual additional supplementary rotation in paediatrics. The Committee will have more to say about this requirement for medical assessment later in this Report.

The Rotations in Paediatrics

In November and December, 1994, the Student entered upon his scheduled rotation in Paediatrics, at Scarborough Grace Hospital. In this rotation, he received a failing grade on the written examination component, and also a failing grade on the clinical and attitudinal evaluation. With respect to the latter, the Student obviously was very poorly regarded by the supervising physician, who finally assessed him at 30 *per cent*. Of two other physicians who were asked to submit evaluations to be averaged in to the final clinical mark, one failed him, with a mark of 59 *per cent*, and the other, who had supervised for one day, passed him with 62 *per cent*. The very low mark assessed by the supervisor was the lowest, or among the lowest, that the officers of the Faculty who appeared before us had seen. The Student attributed the supervising physician's low rating to prejudice against him. In the Student's petition to the Board of Examiners, dated August 17, 1995, the Student did not elaborate on the cause of this prejudice. He stated that an "air of mistrust and ill-will" had developed between them, from the commencement of the relationship, and that this was unfairly reflected in the evaluation. Before this Committee, he elaborated on this position, accusing the supervisor of being racially prejudiced against him and allowing this to affect the assessment which she made.

The results of the paediatric rotation came before the Board of Examiners at its meeting on August 18, 1995. Dr. R. Schneider, the Director of Undergraduate Medical Education of the Department of Paediatrics of the Faculty, presented these results to the Board as a failure. The minutes of the Board for that meeting show concerns regarding clinical skills, inability to focus on history, problem-solving abilities and general paediatric knowledge. There were also unspecified "attitudinal concerns". The minutes stated that "Board members took note of" the Student's petition of August 17. The Board recommended that the Student fail paediatrics, and be required to complete a remedial rotation in that subject. Upon successful completion and reassessment of the remedial rotation, the paediatrics grade would be raised to a pass.

Report Number 218 of the Academic Appeals Committee

The Student undertook the required remedial rotation on a general paediatric ward at Sick Children's Hospital, during the period September 4 - 29, 1995. His supervisor was Dr. R. Hilliard. During the first two weeks, he was under immediate supervision of Dr. Jacobson, who did an interim evaluation, which, although expressing concerns about the general level of paediatric knowledge, awarded an overall "satisfactory" grade, the lowest passing grade, for this period. In the second half of the rotation, with the permission of his supervisor in the rotation, he spent two days a week in library study, rather than clinical service. The student requested this additional library time to attempt to rectify previous criticisms as to his level of knowledge in paediatrics. The Student passed his written examination for the rotation with a mark of 72 *per cent*. At the end of the rotation, Dr. Hilliard, the supervisor in the rotation, joined with Dr. Schneider in a written recommendation to the Board of Examiners that the Student pass, with an overall grade of "C or 65".

The written joint report to the Board by Drs. Schneider and Hilliard was generally positive about the Student's interviewing skills, but less positive with respect to clinical skills in conducting physical examinations. They noted that his examinations were regarded as unacceptable on two occasions and a clear pass on the third. His paediatric knowledge was referred to as containing major gaps and "inadequate for his level of training", but improvement in this area took place during the rotation, and, as noted, the written examination was passed. Concerns about professional behaviour, particularly raising questions among co-workers on the ward as to sense of responsibility, lack of enthusiasm and a tendency to function independently, rather than as part of a team, were also noted.

This report on the rotation in Paediatrics came before the Board of Examiners on September 29, 1995. As well as the report on the Paediatric rotation, presented by Dr. Schneider, the Board also considered reports on the Student's rotations in Surgery, Medicine and Psychiatry. The Board considered that the Student had passed the rotations in the latter three subjects, but, going against the recommendation of the rotation supervisor and the Paediatric Department's Director of Undergraduate Medical Education, failed the Student in Paediatrics, and required that he successfully complete a supplemental four-week rotation in that subject.

In preparation for the supplementary rotation, Dr. Schneider reviewed the written appraisals from the earlier rotations, and prepared a statement of objectives for the rotation, which was designed by him to address the major weaknesses previously identified with respect to the Student's performance in paediatrics. In structuring the rotation, he sought to place the Student in an area where the staff was used to clinical clerks, where there could be a number of supervisors, and where the Student would not be previously known to supervising staff. The Emergency Department at Sick Children's Hospital was chosen. As Dr. Schneider considered that the somewhat restricted field of an emergency department might not meet all of the Student's needs, he arranged with Dr. Robert Ehrlich, a paediatric endocrinologist, to supervise the Student in an out-patient clinic setting. Dr. Ehrlich was approached by Dr. Schneider to supervise the Student because of his experience as a teacher and supervisor, and because Dr. Schneider was aware that Dr. Ehrlich had had some contact with the Student during the Second-Year programme, and that contact had been positive. Because of the division of the Student's time between the clinic and the emergency service, where Dr. Ehrlich had no responsibilities, Dr. Ehrlich was willing to take on the general supervisory role only on the basis that the Student would have another immediate supervisor for the Emergency Department portion of the rotation.

Report Number 218 of the Academic Appeals Committee

The member of the Emergency Department responsible for immediate supervision of clinical clerks serving in that department was Dr. Barbara Ronsley. She testified before this Committee that prior to being advised by Dr. Schneider that the Student was arriving to do a rotation, she had no knowledge of him or of his background in the Faculty. She was aware that the rotation was not a first rotation in paediatrics. She received a copy of the statement of objectives that Dr. Schneider had developed for this rotation, and was aware that Dr. Schneider wanted the Student to have maximum clinical experience. Dr. Ronsley told the Committee that, in view of this, she took particular care in working out the Student's schedule to place him with experienced emergency physicians, so that he would have more than one period of supervision with most of the doctors to which he would be assigned. She also tried to give some variety between the more senior and younger physicians.

Unfortunately, the Student started off badly on Dr. Ronsley's initial shift with him, on October 6, 1995. This was the first scheduled shift in the rotation. The Student's evidence was that "[f]rom the very first instant that I met Dr. Ronsley I knew that there was going to be a major problem". Her initial attitude may well have been the result of her belief that he was 45 minutes late in arriving, regarded as a serious matter in the Emergency Department. The Student testified that this was due in part to a misunderstanding of the starting time of the shift. Matters did not improve, and Dr. Ronsley was sufficiently disturbed by events on that shift to discuss them with Dr. Anna Jarvis, the head of the Emergency Department at the Hospital. Dr. Jarvis advised that the observations of Dr. Ronsley should be put into writing. This was done by a letter to Dr. Jarvis, dated October 10, 1995, and copied to Dr. Schneider. It will serve no purpose to detail the matters raised, except that they involved state of knowledge, a perceived ethical problem involving the wearing of a tape recorder, and a problem where, having been sent to Minor Emergency during a lull in Major Emergency, where Dr. Ronsley was in charge, the attending physician in Minor Emergency reported that, after seeing a patient, he had disappeared without reviewing the case with her. (The Student had tried to review it with Dr. Ronsley, but had been told by her to review it with the physician directly responsible for the patient.)

On October 10, 1995, Dr. Schneider, who had previously been orally advised of the contents of Dr. Ronsley's letter, and Dr. Ehrlich met with the Student. Dr. Schneider was also aware of a notation by another staff member on duty on the same shift as Dr. Ronsley that a laceration had been sutured by the Student without discussing or reviewing the matter with a staff member. They heard the Student's explanations of the matters raised in this letter, and Dr. Schneider subsequently communicated these to the Emergency Department. They also heard that the Student was objecting to Dr. Ronsley on the basis that she was biased against him. Neither doctor recalls that this bias was attributed to racial grounds, and neither can remember if, at that meeting, the Student told them that he believed that she was "out to get him", as he testified that he told them. In any event, the Student was warned about lateness, and warned only to review cases with a staff physician, unless otherwise directed by the staff.

The Student continued with scheduled rotations in Emergency, and on October 10 and 11, 1995, he was on shifts supervised by Dr. Jarvis, the Department Head. She was, of course, aware of Dr. Ronsley's concerns, but her own interaction was more positive. She did have some concerns about his history taking and aspects of an examination she watched. Around midnight on the 11th, she had a private discussion with him, as she tries to do with all clinical clerks, on the expectations

Report Number 218 of the Academic Appeals Committee

held of him in the Department. She told the Committee that she stressed the importance of reviewing only with staff. Another staff doctor had just reported that the Student had been reviewing cases with clinical assistants, rather than staff doctors. There was one physician, not on staff, but holding a visiting appointment, whom Dr. Jarvis authorized the Student to review cases with. The Student asked her to take over his immediate supervision, as he was unhappy with his relations with some staff, but this was not possible. Dr. Jarvis testified that she told the Student that he could not let his personal interactions interfere with his learning.

To complete the record of the Student's direct interaction with Dr. Jarvis, he worked with her again on October 24, near the end of the rotation. At that time, she graded him "pass" with respect to his time under her immediate supervision.

On October 16 and 17, the Student was on shifts on which Dr. Leslie Goodis was the senior physician, or, in the terminology of the Department, the First Attending Physician. Dr. Goodis testified that at the beginning of the shift, the Student arrived 25 minutes late, and then did not introduce himself to her, the senior on the floor, as students are supposed to do. She testified that she told him that he should review all cases with her, as she understood that this was the desire of the Department in this particular rotation. She told the Committee that, upon hearing this, the Student became angry and argumentative, and the situation turned into a confrontation very quickly. Dr. Goodis did not understand why this was happening. For some reason the Student saw only two patients on that shift, at least to the knowledge of Dr. Goodis, which would be unusually low even on a quiet night. At some time during the shift, Dr. Goodis told the Committee that she had sent the Student to a medical case, rather than a laceration case to which he wanted to attend, because she did not have time at the moment to supervise him in a laceration treatment. This was not well received by the Student.

The following night, Dr. Goodis was again the senior physician. Dr. Goodis told the Committee that the Student reviewed only one case with her, and despite her previous instructions, reviewed all of his other cases with Dr. Sgro, the Second Attending Physician. The Student's affidavit states that, on this shift, "I reviewed most of my cases with Dr. Michael Sgro Dr. Sgro did not know me nor had he been prejudiced towards me by Dr. Ronsley or Dr. Goodis." Before this Committee, the Student admitted that he wanted to avoid Dr. Goodis, because of their interaction on the previous shift. Dr. Goodis, on a note made that shift, rated the Student's attitude as "poor". She was sufficiently concerned about the situation on her shift to report to Dr. Jarvis, who advised her to document her concerns in writing. This was done by a letter to Dr. Jarvis, dated October 25, 1995, and copied to Drs. Schneider and Ronsley. In answer to a question from this Committee, Dr. Goodis stated that she had never before sent a letter of this nature about a student.

Following this, there was another meeting between Dr. Schneider and Dr. Ehrlich, and the Student. The Student stated that they raised with him their concerns with regard to the contents of the letter from Dr. Goodis, referred to above. He, in turn, raised his concerns that Dr. Ronsley was prejudiced against him, and in turn had prejudiced Dr. Goodis against him, and that, due to this attitude on the part of the two doctors, he was in danger of failing. Neither Dr. Schneider nor Dr. Ehrlich agree that they simply told the Student to "endure it", as is alleged. Dr. Ehrlich recalls himself as saying that sometimes rough spots must be accepted and that the Student should try to improve in the area of the criticisms he was receiving. Dr. Schneider recalls the

Report Number 218 of the Academic Appeals Committee

Student complaining about the wait to review with staff doctors, and that he told the Student to follow instructions in this regard.

The practice in the Emergency Department is that doctors supervising clinical clerks, or having a significant interaction with them on a shift, fill out cards, at the end of a shift, with brief notes of anything they think is significant as to the student's performance, and note whether they think that the student passed or failed. Not all staff always fill out cards, and not all indicate a grade. This may be because of oversight, or because they think nothing sufficiently significant to note has occurred. These are deposited in the Department, to serve as memoranda, and are eventually brought before a "business meeting" of staff of the Department, when a discussion among staff involved in supervising a student during a rotation takes place. The collective view of the Departmental staff as to the recommendation they will make to Dr. Schneider with respect to the sufficiency of the student's performance is worked out at that meeting. This information will be presented in turn to the Board of Examiners.

The "business meeting" which dealt with the Student's rotation as it pertained to the Emergency Department was held on October 26, 1995. In making the evaluation, the staff used a standard Faculty evaluation chart requiring the ticking off of grades under various headings. This was completed by Dr. Ronsley in accordance with the results of the general discussion, and was supplemented by a detailed letter addressed to Dr. Schneider. This letter represented Dr. Ronsley's effort to be a scribe for the group decision. In summary, the staff were prepared to pass the Student in the areas of history taking and physical examinations, and in his technical skills, but found him weak in ability to take responsibility and very weak in his professional behaviour, attitude and ability to work with colleagues. Overall, the Student was assessed at 57 *per cent*, a failing mark, for his performance in the Emergency Department in this rotation. The Student refused to sign this evaluation.

With respect to the portion of the supplementary rotation served in the endocrine clinic, Dr. Ehrlich submitted a report, dated October 25, 1995, stating that, while the Student's previously identified weaknesses in clinical skills were evident at the beginning of his time in the clinic, they improved under instruction. His conclusion was, "I believe that his clinical skills are adequate to enter the 4th Year of his clerkship". He also noted that another staff doctor had evaluated the Student on two examinations of patients. That doctor had passed the Student on these examinations.

These recommendations came before the Board of Examiners on October 27, 1995. Dr. Ehrlich presented the results of the rotation to the Board, but did not make any recommendation as to passing or failing. The Board thought that the Student had been marginal throughout the course and that he had not met the Standards of professional behaviour as set out in the Faculty Calendar. Accordingly he failed the course in Paediatrics, and thus, his Third Year. The Board, as mentioned, added the rider that his suitability to continue in the medical programme would require assessment by the Board of Medical Assessors and re-evaluation by the Board of Examiners in the light of that assessment.

To complete the recital, the Board of Medical Assessors did meet, and make the recommendation referred to above, and the Board of Examiners, meeting on November 10, 1995, incorporated that recommendation into its own final recommendation. The Student was advised

Report Number 218 of the Academic Appeals Committee

of this decision by a letter from Dr. Frecker of the same date, and was invited to consult a physician and a psychiatrist of his own choosing, and submit their written assessments.

The Appraisal of the Appeal by the Committee

As mentioned at the beginning of this Part, the principal ground upon which the Student founds his appeal to us is bias. This divides into two main arguments. The first is that the disciplinary proceedings instituted before the University Tribunal were not instituted in good faith, but were a reaction to complaints made by him in First Year about racist behaviour by some instructors in the Faculty. The academic difficulties which led to the appeal before this Committee are alleged to flow from the disciplinary difficulties, in that the Faculty of Medicine is attempting to remove him from the Faculty by the academic route, if it cannot succeed, as it has as yet been unable to do, by the discipline route.

The second line of argument concerning bias was that racial bias on the part of some supervisors in Paediatrics influenced their adverse evaluations of him, as a member of a visible minority. Dr. Ronsley, his supervisor in Emergency Department in the third, or supplementary rotation in paediatrics, and the doctor who was supervisor in the first, or regular rotation in that subject, at Scarborough Grace Hospital, were the main targets of this argument. There was also an argument of systemic discrimination throughout the Faculty. This was referred to in the presentation before the Faculty Appeals Committee, and is an allegation in his complaint before the Ontario Human Rights Commission, filed in February, 1996, which was exhibited in his affidavit filed on this appeal. However, this latter argument was not vigorously pursued before this Committee.

This Committee is unanimous in concluding that there are no grounds for finding that bias, in any of the forms alleged, contributed to the evaluation process as it affected the Student.

The suggestion that the Faculty, through its senior officers or otherwise, is "out to get" the Student is not supported by any evidence which came before us. The Committee is asked, in order to arrive at this conclusion, to draw inferences from the sequence of events, that its members consider unwarranted, and refuse to draw.

The Committee saw and heard Dr. Ronsley's evidence. She denied any racial prejudice, either generally, or with respect to the Student. The members of this Committee believe her. The Committee notes, in support of its conclusions from observing her, that Dr. Ronsley's superior in the Emergency Department was Dr. Jarvis, herself a member of a visible minority, who told the Committee that she had experienced the results of racism in her professional career. We do not believe that racist behaviour on the part of any of her staff would long go unnoticed or undealt with, firmly, by her. It was clear to this Committee, from Dr. Jarvis' evidence before us, that Dr. Ronsley held her confidence. Also, Dr. Schneider told us that, in his meetings with the Student during the Third, or supplemental rotation, although the Student was concerned about his relationships with Drs. Ronsley and Goodis, he never raised the issue of racism on Dr. Ronsley's part.

Report Number 218 of the Academic Appeals Committee

Unfortunately, we did not hear evidence from the supervisor of the first, or regular rotation in Paediatrics, who was the subject of serious attack by the Student in this regard. The Committee notes that, in the petition to the Board of Examiners regarding this rotation, the Student did not allege racism on this doctor's part, confining his description to adjectives such as "prejudicial" and "disparaging" to describe her behaviour to him. Again, Dr. Schneider told us that, in meeting with the Student after the first failed rotation in paediatrics to review the evaluations with him, the Student raised the fact of a conflict with the supervisor, but did not raise the issue of racism. Because the Committee did not hear the supervising doctor's evidence, and had the Student's present version of her position only, the Committee cannot be as emphatic in rejecting the charge as we are in Dr. Ronsley's case, but the Committee does not find the charge established. Nor does the Committee consider that the failure in that rotation can be connected to bias, even assuming it existed. Another doctor, against whom no accusation of improper motivation of any kind was made, also failed the Student, and a third doctor barely passed him. The examination was also failed.

As to the allegation of systemic racism at the Faculty, the Committee was presented with nothing that would approach warranting such a sweeping conclusion. Even if it be assumed that the Committee was wrong in the case of the two individuals accused of this, nothing we heard would justify extrapolating this beyond individual cases. On probabilities alone, there are likely persons with racial or similar prejudices in this faculty as in others, but acknowledging this is far short of establishing a systemic fault.

The allegations of bias being rejected, the Student can only succeed on this appeal by establishing substantive error in the evaluation of his academic performance, or on procedural grounds which justify the relief he primarily seeks here, which is promotion to Fourth Year, or any other relief. The "procedural" grounds identified at the start of the appeal were dealt with in Part I of this Report. Others, which emerged during the hearing, will be dealt with by the Committee in this Part. To the extent that decisions on these procedural matters involve issues of law, the Committee has accepted the advice of the Chair.

The Substance of the Academic Evaluations of the Student

Turning to the academic evaluations first, the Committee first considers them on the assumption that there are no procedural matters which are relevant to their validity. The Committee finds no basis for interfering with the academic assessments and decisions made by the Board of Examiners, on the basis of the evidence before the Board on the various occasions on which the standing of the Student in Paediatrics was determined. We have rejected bias in the evaluations in the field or elsewhere, and, that said, the academic decisions appear to us to be such that a qualified group of examiners could have arrived at them, on the basis of the Faculty's published criteria.

It is not the function of the Committee to attempt to remark the Student's work in Paediatrics. However, as groundwork for what follows in our decision, we give our overall lay impression. In the first two paediatric rotations, the principal concern of supervisors and of the Board of Examiners was directed to the level of knowledge and of clinical skills displayed by the Student. There was concern for "attitudinal" problems in both the first two rotations in this subject, but

Report Number 218 of the Academic Appeals Committee

they were not the paramount concerns. In the objectives for the third, supplementary rotation, prepared by Dr. Schneider in the course of structuring that rotation to maximize the benefit to the Student, this area was only one of five identified by Dr. Schneider. The rest lay in the area of knowledge and clinical abilities. In the third rotation, while there could hardly be said to be enthusiasm for the level of knowledge and clinical skills achieved by the Student, both Dr. Ehrlich and the staff in the Emergency Department were prepared to recommend a passing grade in these areas. However, the emphasis, at the Board of Examiners, shifted to the "attitudinal" area. This had, in the eyes of the staff in Emergency, flared into a major problem in this rotation, although it had not appeared as such in the different atmosphere of the clinic in endocrinology, where Dr. Ehrlich was in professional contact with him. The Committee notes that this reading of the concerns of the Board as it evaluated the third rotation also appears to have been shared by the Appeals Committee, who said, "The [Appeals] Committee did not feel that your knowledge base or level of clinical skills were central issues" [in the decisions of the Board of Examiners concerning the third rotation].

This Committee also notes that there were suggestions of attitudinal problems in the rotation in one other subject that year, Medicine, although a pass was recommended by the staff in the subject and awarded by the Board. In fairness to the Student, this Committee also notes that, in several other rotations of which we have knowledge of the appraisals of the Student, there was no mention of any such problems, and, on the contrary, in some there were statements that his attitude was good. The problem appears to have been episodic, although for some reason, generally visible throughout Paediatrics. The basic problem has been verbalized in many ways - nonchalance; lack of initiative; lack of enthusiasm; lateness. What struck this Committee, particularly as we listened to Drs. Ronsley and Goodis, was not that they were so bothered by lack of knowledge and skills, and errors made by the Student -- their expectations of what a Third-Year undergraduate should be expected to know seemed to us to be pretty realistic -- but that he created an impression of not really caring about what he was doing in that rotation. Whether or not this was a true picture of his state of mind, no one but the Student himself can say with certainty, but his manner, as it appeared to these two doctors, and, although perhaps to a lesser degree, to other staff who joined in the consensus evaluation, was shocking to them in this regard. This Committee has not lost sight of the fact that these faults did not appear when the Student worked with Dr. Jarvis, but, as she pointed out, she was in charge of the Department, and she is not surprised when persons interact with her in a manner different from others. In addition, this Committee observed that Dr. Jarvis presents herself, as a matter of first impression at least, as an unusually gentle and nurturing person. The Student might well have felt more comfortable working with her, and showed it.

In any event, the Board of Examiners had available to it the results of previous rotations in Paediatrics and other subjects, and was, in addition to weighing the reports coming out of the final rotation, entitled to take a longitudinal view and assess the current situation in the light of previous experience. This is part of the explanation for the very unusual, but not unheard of, situation of the Board of Examiners rejecting the "pass" recommendations of the Student's supervisor and of the course director in determining that the Student had failed the second, remedial rotation in Paediatrics. The Board was also entitled to re-evaluate previous information in the light of current developments. It is for the members of the Faculty of Medicine to determine that the "professional attitude" of its students is as important as any other category in determining their status within the Faculty. As long as the process is essentially fair to all

Report Number 218 of the Academic Appeals Committee

students, this Committee cannot interfere, at least unless the decision appears grossly unreasonable. It does not so appear to this Committee.

The Process of the Evaluation of the Student

This brings this Committee again to the question of process. One troublesome matter which arose during the hearing was that, of the four meetings of the Board of Examiners which dealt with the Student's rotations in paediatrics, only one, that of September 29, 1995, which dealt with the second, or remedial rotation, had a quorum as established by the Faculty by-law. The Student argued that the decisions of the non-quorum Boards were nullities, incapable of being cured by any subsequent event. As with the jurisdictional arguments dealt with in Part I, this argument, if successful, would not pass the Student into Fourth Year, as he asks. At best, the Student would be entitled to have the matters considered by the respective Boards whose quorums were lacking remitted for reconsideration by properly constituted Boards.

This Committee holds that, as the decisions of the Boards were recommendatory only, the lack of a quorum makes their decisions irregularities only, which are curable. Technically, the irregularities were cured by the action of the Faculty Council in adopting the recommendations. However, the Committee prefers to rely on the fact that the Student, in coming to this Committee, and asking to be placed into Fourth Year, notwithstanding that no constituted examining body of the Faculty has so decided or recommended, has invoked the ultimate jurisdiction of Governing Council to decide upon the proper status of students seeking a degree from the University. Once invoked, Governing Council, in this case acting through this Committee, can, so long as it acts fairly in all the circumstances, act upon such information as it considers reliable. In this case, the Committee considers that it is proper for it to have regard to the recommendations of the various Boards in making its decision as to the Student's present academic status in the University. The Faculty should not regard this as a warranty that this will be the result in future cases where this error occurs.

In coming to its decision on this issue, the Committee had regard to the facts that, with respect to the first rotation, a finding in favour of the Student on a rehearing would be extremely unlikely to provide a different result, given the fact that the examination was failed and that two of three doctors failed the Student on the clinical appraisal. The decision with respect to the second, remedial rotation was made with a quorum in attendance. The decisions regarding the third, supplementary rotation have been the subject of lengthy examination, by this Committee as well as the Faculty Appeals Committee. Sending it back at this stage would be a massive waste of resources, both of the Student and of the University.

Another issue which concerned this Committee was whether the Student received sufficient warning of the nature of the "attitudinal" problems which were endangering his status. In considering this issue, the Committee recalls again that "attitude" became *the* major issue only in the third, supplementary rotation, and then only in the Emergency Room setting. The Committee considers that the Student was fairly advised with respect to these matters, although there are flaws, as referred to below.

Report Number 218 of the Academic Appeals Committee

With respect to the first, regular rotation, there is documentation showing final appraisals and referring to a mid-point appraisal, signed by the Student. Dr. Schneider, as the course supervisor, met with the Student in March, 1995, to review the failed rotation at Scarborough Grace Hospital. A memorandum prepared by Dr. Schneider, dated March 9, 1995, was presented in evidence. Dr. Schneider told the Committee that he discussed fully the matters in the memorandum with the Student. Dr. Schneider cannot remember whether the Student received a copy. A reading of the memorandum makes it clear that it memorializes a meeting that has already taken place. It would be far better that, in situations where students are in difficulty, copies of such memoranda be sent to them, and that a record of this be kept. This makes it more likely that students will not misunderstand what is told to them. Also, absence of such a memorandum and of information as to how and when it was delivered to the student might flag a possible lapse, and help protect against accidental failure to counsel the student.

On the second, remedial rotation, the Committee was presented with the mid-point evaluation, but not a final evaluation, or any details about what the supervisor said to the Student at that time. There was some meeting, but the Committee only knows from the Student that the supervisor told him that the Student had passed. However, Dr. Schneider met with the Student at the beginning of the third rotation, and generally reviewed the previous rotations with him in the course of discussing the objectives of the supplementary rotation.

In the third paediatric rotation, the Student did not receive a formal mid-point appraisal. Dr. Ronsley told the Committee that she advised the Student that she would do a mid-point review with him on Saturday, October 21. She was working an overnight shift on that date, and when it finished at 8:00 a.m., she waited a further fifteen minutes, the Student had not appeared, so she left. The Student did not communicate with her to reschedule the meeting. One may understand her feelings under the circumstances, but this Student was in difficulty, at least with her, and she should have pursued the matter. Further, given the fact that this was an unusual rotation, and that Dr. Schneider, who knew the background, was aware that there were strong indications of trouble for the Student, he should have been alert to make sure that this particular matter was duly attended to. However, Dr. Schneider and Dr. Ehrlich together had two special meetings with the Student, arising out of the reports of Drs. Ronsley and Goodis, and we find that the Student was made aware of the attitudinal concerns of members of the Emergency Department.

The Committee is aware that previous panels of this Committee have pointed out the need for strict attention to the documentation and communication to the Student of alleged failings in the area of professional attitude and behaviour, to give such Student a reasonable opportunity to respond. We do not wish to be taken as derogating from the importance of such documentation and communication by anything done in respect of this appeal. This Faculty has had its procedures in this regard criticized by this Committee on previous occasions, and, from the matters pointed out here, it has yet to tighten up sufficiently. It should also, as a matter of course, make available to an affected student, on request, a fair summary of the proceedings of the Board of Examiners which concern that particular student. Again, however, such errors below do not necessarily mean that the remedy should be promotion, as the Student seeks here. That remedy has been afforded by previous panels, as, for example, by the panel that issued Report #187. The difference is that, in that case, the Committee had "no difficulty concluding that the appellant should be allowed to proceed to [the succeeding year]". Unfortunately, this Committee unanimously finds that promotion would not be justified here.

Report Number 218 of the Academic Appeals Committee

The Disposition of the Appeal

Still leaving aside the effect of the recommendation of the Board of Medical Assessors, the Committee divides at this point as to the proper disposition of the appeal. The minority finds that, the Committee having unanimously dismissed the allegations of bias in the proceedings, and decided that it could and would give credence to the decisions of the Board of Examiners notwithstanding lack of quorum in some cases, there is no substantial basis for this Committee substituting its unqualified academic judgment for that of the qualified members of the Faculty of Medicine, and that the portion of the decision that the Student should repeat Third Year should stand.

The majority finds that the proper remedy is to direct that the Student have an additional opportunity to pass his Paediatric rotation, and to proceed into Fourth Year if he passes. The reasons of the majority do not impugn the professional judgment of the Faculty in this case. Ironically, although the Student spent considerable time attempting (and failing) to convince the Committee that the members of the Board of Examiners and staff in the rotations must have been aware of the concurrent disciplinary proceedings, and accordingly would be "out to get him" for that reason, the majority feels that, if the Board had been fully aware of the Student's position, and particularly of his position during the third rotation in paediatrics, it is possible that some allowance might have been made for his behavioural problems, with less disastrous results for the Student. This comment does not imply criticism of anyone for the fact that this was not considered. The danger of creating an appearance of prejudice if the administration of the Faculty had advised relevant academic supervisors, or the Board of Examiners, of the position of the Student was too great to permit them to do so, if they considered doing so. In the second and third rotations, the Student was subject to an expulsion order from Governing Council, continuing his studies under an injunction pending judicial review. It is true that he completed other rotations while in this position, and was able to surmount the additional stress which his position must have imposed upon him. But in the third rotation, he was closely approaching the scheduled hearing in the Divisional Court. (The review application was argued on November 1st and 2nd, 1995.) A negative result on that application would terminate his medical career no matter what he did academically. This could well give rise to despondency and despair, affecting his attitude, especially if, as the Committee must assume in considering this appeal, he is in fact not guilty of the offenses charged against him by the University. The majority accepts the point that most students, and perhaps all medical students, operate under stress; that some will from time to time have to bear particularly high levels of stress as a result of particular circumstances, and that somehow, they must still function adequately. However, the University has mechanisms for factoring these special circumstances into its evaluations of students and employs them regularly.

In addition, the Committee has pointed out some lapses in the manner in which the Faculty documented the Student's "attitude" problems and communicated them. While the majority find the Student was adequately advised of the concerns which were developing, the fact that these lapses existed creates unease which should translate into benefit to the Student.

Report Number 218 of the Academic Appeals Committee

Also, the majority believes that, if the Board of Examiners had not incorporated the recommendation of the Board of Medical Assessors into its decision of November 10, 1995, the Student would not have been placed in the difficult position of having to submit to a physical and mental examination if he wished to accept the rest of the Board of Examiners' decision. This may not have made any difference to subsequent events, but we prefer to give the Student the benefit of any doubt, thereby allowing him to minimize the effect on his life of the interruption in his studies.

The Committee understands that it will not be easy for the Faculty to mount an extraordinary fourth rotation in Paediatrics, where the Student will not face some knowledge of his background, and can still have a useful educational experience. However, Dr. Frecker has advised us that he believes it could be done, and we are confident that he will succeed in establishing such a rotation.

The Recommendation of the Board of Medical Assessors

At the meeting of the Board of Examiners of October 27, 1995, the meeting which decided the Student should fail the third, supplemental rotation in Paediatrics, the Minutes produced to this Committee state, "[I]t was suggested that [the Student] obtain psychiatric assessment before continuing with his medical education. The Board decided that [the Student] be referred to the Board of Medical Assessors". A formal motion, "THAT a decision regarding [the Student's] suitability to continue in the medical programme will require assessment by the Board of Medical Assessors and re-evaluation by the Board of Examiners" was carried.

On November 7, 1995, Associate Dean Rossi wrote to Dean Aberman, giving an expanded version of the motions passed by the Board of Examiners at that meeting. That version read:

It was the decision of the Board of Examiners that [the Student] fail Paediatrics. As a consequence, [the Student] has failed the third year. Further, it was the decision of the Board that his suitability to continue in the medical program, and to repeat his third year, will require that he undergo an assessment by the Board of Medical Assessors. Subsequent re-evaluation by the Board of Examiners will be based on the recommendations of the Board of Medical Assessors.

Dean Rossi continued on to advise the Dean that the Board of Medical Assessors had met on November 6, 1995. The Chair of that Board, which is advisory to the Dean, had asked Dr. Rossi to convey the following decision of that Board:

In review of the evidence, the Board has considerable concern regarding [the Student's] behaviour in medicine. The Board advises that [the Student] not continue as an active medical student until such time as it has had an opportunity to review formal medical and psychiatric assessments performed on [the Student] and make a recommendation through the Dean to the Board of Examiners.

Report Number 218 of the Academic Appeals Committee

Apparently the Dean transmitted that advice to the Board of Examiners, for, at the meeting of that Board on November 10, 1995, that Board passed its own motion:

That [the Student] not be allowed to repeat the third year of his undergraduate medical training until he has had psychiatric, psychological and medical assessments as soon as reasonably possible, and the results of these assessments have been reported to, discussed, and a recommendation made by the Board of Examiners...

The genesis of these motions, and what they imported, was of concern to this Committee. Dr. Frecker, as Associate Dean, sits on both the Board of Examiners and the Board of Medical Assessors. As we understood his evidence, the Board of Examiners, in referring the matter to the Board of Medical Assessors, was not alleging that there was a question of psychiatric or medical illness, but was merely seeking to rule out a "remote possibility". His present recollection and understanding is that the Board of Examiners intended that the Student should fail unless he could provide medical grounds to support a more favourable decision. In itself, this is unexceptional, and there is nothing wrong in referring any submission that a student might make in this regard for evaluation by the Medical Assessors. It is a window of opportunity to ask for special consideration on medical grounds that this Committee understands is available throughout the University. However, if this is what was in fact intended, the resolution was most unfortunately phrased. Rather than inviting the Student to make a submission as to his health if the Student thought that there was anything relevant to bring before the Board, it places an onus on the Student to prove his state of good mental and physical health before being allowed to continue. The apparently innocuous purpose of the original resolution, if it was as interpreted by Dr. Frecker, has now taken on a life of its own, as it passed through the meetings of the Board of Medical Assessors and the November 10 meeting of the Board of Examiners. Given a decision that the Student should fail Third Year, he would ordinarily be entitled to repeat one failed year as a matter of course. Now, he must go to doctors of his choosing and ask to be examined physically and mentally, for unstated conditions, to an unstated end. He was never invited to make any submissions or explanations to either Board in this respect, or to have his doctors make enquiries of either Board of what was the nature of the alleged problem. It seems to this Committee that what it was told started as an attempt to rule out a "remote possibility" that there were medical conditions which should be considered in deciding the Student's standing, if the Student desired to seek such relief, has now been raised as a barrier against him, with no communication to him of the reasons for such an extraordinary step, and no opportunity to make submissions before the decision was made. It is the unanimous view of the Committee that this will not do. The process was unfair, and the result of that process cannot stand.

Summary of the Decision of the Committee

The Appeal is allowed to the extent that:

- (1) The resolution of the Board of Examiners dated November 10, 1995, requiring that the Student not be allowed to repeat Third Year until he has undergone certain medical assessments and the results thereof have been reviewed by the

Report Number 218 of the Academic Appeals Committee

Board of Examiners and a recommendation has been made by that Board is vacated and set aside.

- (2) The Student will be afforded an opportunity, as soon as is reasonably possible, to take a further supplemental rotation in Paediatrics as part of his Third-Year programme. If the Student passes that rotation, he will be deemed to have passed Third Year. In such event, the Faculty will then make all reasonable efforts to permit the Student to enter upon his Fourth-Year programme as soon as possible thereafter.

The Committee recommends that, before starting this supplementary rotation, the Student take sufficient time to review his background knowledge in the field of paediatrics, after his lengthy absence. It also recommends that the Student also take time to reflect upon how he may best benefit from the evidence he has heard.

Costs

The Student has asked this Committee to award costs of the Appeal. The Committee is unaware of any precedent for such an award. No act of the Governing Council conferring any such jurisdiction upon this Committee, as, we understand, it has expressly done in the case of the University Tribunal, has been pointed out to us. We have no jurisdiction to make any such order.

Rosanne Lopers-Sweetman
Secretary

Ralph Scane
Acting Chairman

Susan Girard
Acting Secretary

Date of Release of Decision: January 9, 1997