

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 113 OF THE ACADEMIC APPEALS BOARD

December 17th, 1987

To the Academic Affairs Committee,  
University of Toronto.

Your Board reports that it held a hearing on Thursday, December 17th, 1987 at 9:30 a.m., in the Board Room, Simcoe Hall, at which the following were present:

Professor J. B. Dunlop (In the Chair)    Ms. Irene Birrell, Secretary  
Ms. R. Barney  
Professor C. Berger  
Mrs. J. R. Randall  
Professor F. A. Sherk

In Attendance:

Ms. F                    appellant  
Mr. S. Zucker, counsel for the appellant  
Dean A R. Ten Cate, Faculty of Dentistry  
Mr. Ian Blue, counsel for the Faculty

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

At a meeting on December 17th, 1987, the Academic Appeals Board dealt with a preliminary issue in the appeal of MS F. against a decision of the Academic Appeals Committee of the Faculty of Dentistry. The Board fixed January 14th, 1988 as the date on which it would hear the appeal on the merits. It decided that, in the meantime, the appellant should be allowed to continue to attend her courses.

The appellant was a second-year student in the Faculty of Dentistry in 1986-87. Her results for the year were five A's and a C in didactic subjects, two C's and a failure in preclinical and clinical subjects. Her failure was in Restorative Dentistry and she failed again on the supplemental assessment. This resulted in her failing the year and being refused further admission, as provided in the Faculty's regulations.

The appellant appealed to the Academic Appeals Committee of the Faculty, presenting testimony by an ophthalmologist of a "convergence" problem that could be corrected by exercise and corrective lenses. She presented psychological evidence of "examination anxiety" caused, in part by her vision problem. Along with the vision problem, the anxiety was, in the witness's view, primarily responsible for her failure. This witness indicated willingness to assist the appellant to overcome this condition. Dean Ten Cate reported many references in her file to the appellant's lack of emotional control and doubted whether these could be attributable to visual problems. He requested that second assessments be sought.

The Academic Appeals Committee then made an unusual decision for a quasi-adjudicative body. It granted the appeal on condition that the Faculty choose appropriate authorities to reassess her visual and emotional problems. If these authorities did not substantiate the assessments presented at her appeal hearing, the appeal was to be denied. Thus the Committee did not decide the case on the evidence presented but seemed by implication to delegate part of the decision-making process.

The Faculty's chosen ophthalmologist confirmed that the appellant had a treatable visual condition. The psychologist in a lengthy report expressed the opinion that the appellant had a high average Verbal IQ on WAIS-R test but a low average Performance IQ, being particularly weak in observation of visual detail, visual and social detail and visual-spatial manipulation. The conclusion was that "Dentistry is probably an unlucky choice for this bright young woman."

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On November 18th, 1987 Dean Ten Cate informed the appellant that the terms of the decision of the Appeals Committee would be "applied as stated". On December 7th, 1987, the Chairman of the Appeals Committee wrote to the appellant's lawyer, Mr. Zucker, confirming that the appellant had "been judged ineligible to continue in the course in Dentistry." It was not clear to the Board whether the Committee had met again on the matter but it appeared from the tenor of the Chairman's letter that it had not.

The appellant immediately appealed to the Board and requested an early hearing because, as she had been refused permission to attend classes, the matter was one of urgency from her viewpoint. The Faculty, in view of the legal issues that might be involved, requested time to instruct counsel. The Board scheduled the hearing of December 17th, 1987 to consider the date for the hearing on the merits and the appellant's interim status.

The Faculty is, most certainly, entitled to an adjournment so that it will have an adequate opportunity to instruct counsel and prepare its case. At the same time, in the Board's view, this procedural protection of the Faculty's interest ought not to be allowed to prejudice the appellant's situation. The appellant having missed ten days of classes to date, would miss at least two more weeks pending the outcome of her appeal unless she be granted the privilege of attending classes in the interim. The Board believed that this could hurt her chances of academic success in the event her appeal should be successful. It appears from the material now before the Board that there is a serious issue to be considered on the appeal. The appeal is not frivolous.

Conversely, the Board saw no prejudice to the Faculty in allowing the appellant to attend. The Faculty indicated a concern over the precedential implications, not only for the Faculty but for the University generally, in allowing the appellant to continue with her courses. The Board's view is that the precedent here established is narrow because of the unusual circumstances: the conditional nature of the Appeal Committee's decision to allow the appeal. The decision, in the Board's view, stands for the proposition that a student who has been allowed to repeat conditionally should be permitted, in the absence of any prejudice to the Faculty, to attend classes until the issue of whether or not the condition has been met is finally resolved. Any other case must be decided on its own facts.

It may also be worth noting the general proposition that a precedent set by the Board which is considered an unacceptable rule for all or part of the University may be "corrected" for the future by a duly enacted regulation. The Board's decisions are not written in stone.

In brief, therefore, because justifiable delay on the Faculty's part could cause unjustifiable prejudice to the appellant and because there is no evident prejudice to the Faculty, the Board decides that the appellant should be allowed to continue attending her courses pending final disposition of her appeal.

Secretary  
December 22nd, 1987

Chairman