

THE GOVERNING COUNCIL

REPORT NUMBER 124 OF THE ACADEMIC APPEALS COMMITTEE

August 22nd, 1989

To the Academic Board,
University of Toronto

Your Committee Reports that it held a hearing on Tuesday, August the 22nd, 1989 at 2:30 in the Falconer Room, Simcoe Hall at which the following were present:

Professor J. B. Dunlop, (In the Chair)
Professor D. Craig
Professor K. G. McNeill
Dr. D. I. Murdy
Ms. J. Strickler

Ms Susan Girard, Governing Council Secretariat

In Attendance:

Mr. *D.* the appellant
Ms Glynnis Burt, Downtown Legal Services, counsel for the appellant
Professor W. W. Stieb, Associate Dean, for the Faculty
Mrs. H. J. Ditzend, Secretary of the Faculty

At a meeting on 22 August, 1989 the Academic Appeals Committee heard the appeal of *Mr. D.* from a decision of the Chairman of the Appeals Committee of the Faculty of Pharmacy refusing to hear his appeal on the ground that it was commenced after the July 1st deadline provided in the Faculty's regulations. The appellant, who had failed two courses in his second year, had been seeking, on compassionate grounds, permission to write two supplemental examinations.

The relief sought from this Committee was leave to appeal, notwithstanding that the deadline had passed and, in light of the imminence of the new academic year, favourable consideration by the Committee of the request to be permitted to write two supplementals. Ordinarily a successful appeal on the late filing issue would lead to the matter being referred to the Faculty's committee for a decision on the merits. The decision of the Committee is that the appeal is allowed and the appellant given a supplemental evaluation in the two courses. Had we been able to hear the appeal shortly after the appellant filed the notice of appeal to this Committee, the appellant could have written the Faculty's regular supplementals but since these examinations have now been written, our decision creates some difficulty. We regret this and can only advise the Faculty to devise some method of testing the appellant in the two subjects prior to or early in the term so that he may, if successful, continue in third year.

The immediate reason for appellant's failure to appeal prior to the deadline was that he had not been made aware of his failure in the two courses. His results had been withheld because of a substantial account owing to the University bookstore. In fact, he settled his bookstore account on 23 June but the Faculty was not informed until the appellant called the bookstore on 5 July. He had just learned of his failure on that day from a third party. He filed his appeal on 6 July. The chairman of the Faculty's committee placed the blame for his predicament on the appellant alone and declined to permit late filing of the appeal. The

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predicament on the appellant alone and declined to permit late filing of the appeal. The chairman was not told of the reasons for appellant's failure to settle the account earlier because, it appears, the appellant was too embarrassed to disclose the facts to anyone. The facts were disclosed for the first time to this Committee after the appellant had obtained the assistance of Downtown Legal Services. Having been apprised of the facts, the Committee can well understand his embarrassment.

It is one of the not infrequently revealed ironies of life that those who think they are a help to someone in achieving an objective are in fact a hindrance. Parents are no exception. Rarely, however, have we had a relationship described to us such as that between the appellant and his father. The father's determination to control his son's behaviour was singular indeed. For example, although employed in another city, he took time off to live with the appellant in Toronto during the appellant's first year so that he could guide and supervise the appellant's programme. During the second year, again by way of example, the father provided the appellant with a telephone so that he could speak to the appellant frequently but the number was unlisted and the appellant did not know what it was. This was to ensure that he could not give it out to people who might distract him from studies. His rent was paid and his food provided but he was given no money for recreation because he was expected to spend his time studying. The appellant's efforts to cope with and to some extent rebel against this control was detrimental to his ability to perform academically.

One of the ways he devised to obtain money for recreation was a Visa card which permitted cash advances. His father knew nothing of these advances and of course the appellant created a further problem for himself by incurring a substantial financial obligation on the card which he could not discharge. The obligations that grew during the year became oppressive by year's end. Reluctant to disclose them to his father, the appellant suffered from a limited ability to focus on his work and, in the end, from the withholding of his marks.

He cleared his bookstore obligation after he had received a pay cheque from his summer job but not until he had learned of his failure did he come to grips with the need to face his father's wrath and attempt to make the father understand how oppressive the son found the relations between them.

Presentation of evidence before this Committee that has not been put before the divisional appeal committee is something that occurs with reasonable frequency, usually because the appellant has obtained legal assistance for the first time at this stage. While a Faculty's representatives often feel a sense of frustration in such circumstances, they are unavoidable. The Committee has no transcript or other record of the evidence presented at the divisional appeal and cannot ensure except by hearing evidence that the requirements of the Statutory Powers Procedure Act have been observed in every case. On the whole, as we have observed in more detail on a number of previous occasions, this is preferable to requiring every divisional appeal body to maintain a transcript or similar record of its proceedings. Furthermore, appellants often do not obtain expert assistance and so do not put forward their best case until they have lost their first level appeal. The Committee is reluctant to deny access in these circumstances.

The chairman of the Faculty's committee did not convene a hearing before making the decision to refuse the appeal. He was not aware of the special circumstances in the case nor is it by any means certain that he would have been better informed if a hearing had been convened. Nevertheless, this Committee, knowing how commonly an appellant's case is better than it appears in the documents, has never exercised its jurisdiction to dismiss an appeal summarily. In our view it is better in almost every case to hold a hearing. This may be

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considered a generous not to mention time-consuming approach but on the whole it seems fairer to the student and sufficiently protective of the legitimate interests of the University, its faculties, colleges and schools. While the division's interest in timely appeals is important, it is a factor that can be taken into account at a hearing.

Thus the Committee concludes that the failure to appeal on time is sufficiently explained, and the delay short enough not to prejudice any Faculty interest, that leave to file a late appeal should be granted. We also conclude that, while every student faces pressures that may affect the opportunity to learn and to demonstrate his or her knowledge of a field, and a line must be drawn between cases in which the pressures justify some consideration and cases in which they do not, the circumstances of this appellant are not just unusual, they are extraordinary and justify his being given another opportunity. As he assured the Committee that he had been preparing for supplementals in the hope of being allowed to write, the Committee believes that opportunity should be granted.

The appellant also assured the Committee, and the Faculty, that his relationship with his father had been modified to the point that next year would not see a repetition of the pressures that have hitherto affected him. Whether this be true or not remains to be seen. The Committee has not been apprised of the father's view of the relationship but would nevertheless urge that he take remedial action in the interest of assisting the son to achieve the objectives the two must share.

We are aware that the University reserves the right to withhold access to statements of results and transcripts of students who have outstanding debts. It seems that those who actually make use of this right should consider its effects, which may clearly vary considerably in different circumstances and which may, as here, result in great costs to the University and to its students.

Appeal allowed.

Secretary
September 15th, 1989

Chairman

