

UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL
REPORT NUMBER 191 OF THE ACADEMIC APPEALS COMMITTEE

April 11th, 1995

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing that began on Tuesday, April 11th, 1995 at 10:00 a.m., in the Flavelle Room, Faculty of Law, 78 Queen's Park Crescent, at which the following were present:

Professor J. B. Dunlop, Chairman
Professor J. Brailey
Professor B. F. Brown
Ms P. Haist
Mr. D. Morton

Ms L. Snowden, Secretary

In attendance:

Dr. Y, the appellant
Mr. R. Lepore, counsel for the appellant
Dr. J. Provan, Associate Dean, Faculty of Medicine
Ms S. Springer, of Cassels, Brock & Blackwell, counsel for the Faculty

At a meeting on April 11th, 1995 the Academic Appeals Committee heard the appeal of Dr. Y against the decision of the Appeals Committee of the Faculty of Medicine which upheld the decision to terminate her participation in a pre-residency program in Pathology. When the appeal first came before this Committee, differently constituted, it ruled that the appellant was not a student within the meaning of the Committee's terms of reference and that it therefore had no jurisdiction to deal with her case¹. The appellant applied to the Ontario Court (General Division) Divisional Court which held that the University should deal with the case on its merits². If jurisdiction did not lie with this Committee, then the Governing Council should provide some other forum.

¹ See Report Number 176 of the Academic Appeals Committee

² [1994] O.J. No. 1866

Report Number 191 of the Academic Appeals Committee

The Council passed a special resolution giving this Committee jurisdiction to hear Dr. Y's appeal. We thus need not consider the correctness of the earlier decision. But several important questions are left for the future.

Having heard the oral evidence, read the documents and considered the submissions of counsel for Dr. Y and the Faculty of Medicine, this Committee's decision is that the appeal must be dismissed.

BACKGROUND

The appellant came to Canada in 1983. She had received her medical education in Egypt. Graduating in 1974 she had interned, practiced for four years and spent two years in clinical pathology. In Canada she served as a laboratory technician, assisted her husband in his general practice, was an observer for a year at Wellesley Hospital, wrote and passed the licensing examination given by the Canadian Medical Council, assisted in some cancer research and obtained an M.Sc. in pathology at the University of Toronto. These events and activities occurred between 1983 and 1993.

In 1993, Dr. Y hoped for an appointment as a resident in a four-year program leading to a fellowship in Anatomical Pathology from the Royal College of Physicians and Surgeons of Canada. She was offered and accepted a place in a pre-residency program at Sunnybrook Health Science Centre that commenced July 1st, 1993.

PRE-RESIDENCY

A pre-residency program is a method of determining whether a physician, educated in another country and whose practical experience has been outside the country, has the knowledge and skill expected of a graduate of a Canadian medical school at the stage of seeking a residency appointment. The pre-residency program is a minimum of four and a maximum of twelve weeks in duration, depending on the time required for an appropriate assessment of an individual candidate and is at the discretion of the candidate's supervisor. Dr. Y was examined after six weeks.

Dr. Y's appeal has a dual focus: as an issue of fact it concerned the measure of her knowledge and skill in general and her performance in the pre-residency program in particular. As a matter of law the questions were whether there was a contractual relationship entitling the appellant to the full 12 weeks if she could not satisfy the program's requirements in less time, and whether the assessment that took place resulting in her required discontinuance was fair.

At the hearing the appellant gave oral evidence on her own behalf and filed the affidavit of Dr. Emmanuel Farber, Professor of Pathology and Biochemistry and former chairman of the University department, now at Thomas Jefferson University. The appellant had worked for Dr. Farber from 1991 until 1994. Dr. Linda Sugar, Director of the Pre-Residency Program, gave evidence for the Faculty. Apart from her participation in Dr. Y's evaluation, she had carried out a thorough inquiry and made detailed notes so that she knew the views of all the staff and residents who had knowledge of Dr. Y's performance and their reasons. In addition, there was a substantial amount of documentary evidence.

Report Number 191 of the Academic Appeals Committee

APPELLANT'S PERFORMANCE

According to Dr. Sugar, while the appellant had appeared from her record to be well qualified as a pre-residency candidate, her performance was well below expectations. The participants in the pre-residency program are assessed in supervised clinical activity as well as by examination.

According to Dr. Sugar, a plan to examine the appellant on July 23rd was cancelled when concern over deficits in the appellant's medical knowledge were voiced. The appellant was told that it had been decided that July 23rd was too soon to evaluate her and that there was some concern about her basic knowledge. The appellant was upset by the postponement, according to Dr. Sugar, and by the reasons given. Dr. Sugar "tried to be supportive" and recommended that Dr. Y study a standard pathology text because she would have to work hard to succeed.

Concern was expressed again on August 10th by Dr. Linda Kapusta, Dr. Y's supervisor, about serious gaps in the appellant's medical and anatomical knowledge. She appeared unable to learn from repeated instruction and experience in handling surgical specimens but continued to deal with them her own way, giving cause for concern over patient welfare. This was said to be the perception not only of Dr. Kapusta but the entire staff in the Sunnybrook department. Dr. Y suggested the names of two people who would give her a favourable report but both, when asked by Dr. Sugar, expressed the same reservations.

Dr. Kapusta wondered whether the appellant should be moved to a different hospital for a second opinion. Dr. Sugar interviewed all the residents in pathology at Sunnybrook who had worked with the appellant and concluded that an examination should be held that same week and the appellant either withdrawn if she appeared clearly unsuitable or moved to another hospital for the balance of 12 weeks if there seemed a possibility that she could be successful. She asked Dr. Silver, Chair of the Department of Pathology, and Dr. Butany to participate in the examination.

The result of the oral examination held on August 13th was so poor that the appellant was immediately terminated. The opinion was that either Dr. Y's basic medical education had been weak or too much time had elapsed since she had finished her degree. She was, we were told, the weakest candidate ever seen at Sunnybrook and sufficient improvement in the available time was out of the question.

APPELLANT'S CASE

The appellant, in her oral evidence, did not admit any inadequacy in her basic knowledge or skill. According to what the appellant told the Committee, she had thought the test after only three weeks would be a mere formality. She blamed her performance on the August 13th oral examination on inadequate notice. She also maintained that the oral format was more difficult for her than a written examination. She contended that she had been promised a 12-week program of training and thus what occurred was a breach of contract.

It was argued that in any event the short notice of the oral assessment and inadequate warning that she was not meeting requirements were elements of unfairness sufficient to invalidate the decision to terminate and justify re-instating her.

Report Number 191 of the Academic Appeals Committee

Dr. Farber's affidavit, while positive in its overall assessment of the appellant, also stated that he "was not in a position to assess in detail her general knowledge of medicine as a preparation for residency training in Pathology". Thus, only the appellant's own opinion stood against those of a number of staff specialists, residents and three examiners. The Committee can only conclude that the appellant's performance failed to meet the requirements for residency.

As for the arguments concerning the length of the pre-residency program, and the nature of the appellant's evaluation, the letter from Dr. Provan, Associate Dean, confirming the appellant's place in the program and describing it, stated that "this is not a contract". No documentary description before the Committee justified the view that a pre-residency was a contractual arrangement.

An assessment of from four to twelve weeks is not a training program in the usual sense. No doubt there is a learning aspect as a candidate performs assigned tasks under supervision, being shown how to do some of them and assisted and corrected in appropriate cases. But there is no syllabus to be taught. By and large it is the knowledge and skill accumulated over a number of years that is relevant for the assessment and, while the pre-residency may refresh one's memory and brush up one's skills, training is a minor adjunct. Nor is a test on relatively short notice unfair if it is only assessing what should be part of the candidate's accumulated professional equipment.

CONCLUSION

The Committee's conclusion is that the appellant, whatever skill and knowledge she may possess in general, was deficient in the areas needed to enter a four-year residency program in anatomical pathology. Further, considered professional opinion was that, whether from inadequacy of education it had never been acquired or from lapse of time it had been lost, the deficiency was irremediable in the available time.

The appeal must be dismissed.

Ms L. Snowden
Secretary

Professor J. B. Dunlop
Chairman

April 27th, 1995