

THE UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT # 332 OF THE ACADEMIC APPEALS COMMITTEE

Tuesday April 14, 2009

Your Committee reports that it held a hearing on Friday, March 27, 2009, and further met *in camera* on Tuesday, April 7, 2009. The following members were present:

Professor Emeritus Ralph Scane (Senior Chair)

Professor Jan Angus

Mr. Kenneth Davy

Dr. Joel Kirsh

Professor Elizabeth Smyth

Secretary: Ms Mette Mai

In Attendance:

For the Student Appellant:

Mr. M. S. (the Student)

Mr. R. S.

For the University of Toronto at Mississauga:

Professor Gordon Anderson

This is an appeal from the Decision of the Academic Appeals Board of The University of Toronto at Mississauga (UTM), dated September 26, 2006, which dismissed an appeal from the Committee on Standing at UTM, dated April 26, 2006. The latter decision dismissed a petition for an extension of time to complete the term work for the course POL340Y1Y, taken in the Fall and Winter terms of 2005 and 2006.

The Academic Background

The Student first enrolled at Erindale College in 1991-92. Following his first term, he was placed on academic probation. His results in the 1992-93 year were also unsatisfactory, and he received a one year suspension. On returning to classes in 1994-95, he took three courses, but on receiving an insufficient GPA, was suspended for three years. On returning in the 1998-99 academic year, he took three courses, achieving an annual GPA of 3.2, and was allowed to

continue on academic probation. However, in the 1999-2000 academic year, his annual GPA dropped to 1.0, largely due to a failure in POL340Y1, and he was refused further registration. After petitioning, he was permitted to re-register on academic probation. In the 2005-06 academic year, he enrolled in one course, POL340Y1. He did not submit the second assigned term paper, but did write the final examination. On receiving a grade of F in the course, he was again denied further registration.

Before your Committee, the Student raised a major ground of appeal which had not been placed before any of the appeal levels below, namely his apprehension during the relevant period of being charged with a major criminal offence, and the effect of this on his performance and judgment in his dealings, or lack of them, with the University with respect to his academic problems in that year. This is not the first time your Committee has encountered a similar situation. Past panels have noted the waste of time of the reviewing agencies below, who might have made an appeal to your Committee unnecessary had they been aware of the additional arguments now being advanced, and have warned that there is no certainty that your Committee will hear such new arguments. However, your Committee has said that it will not raise the extremely high bar that appellate courts raise against the attempted introduction of new evidence at the appellate level, as students are frequently appearing here and below without legal advice. Your Committee will try to balance the competing goals of efficiency in the appeals process, and arriving at a decision on all the evidence now available on the facts of each case. In this case, after deliberation, your Committee decided to receive the new evidence, which will be discussed more fully in the next section of this decision.

The Personal Background

When the Student enrolled in the 2005-06 academic year, he was fully employed in the internal audit division of a major Canadian bank. In his one course taken in that academic year, POL340Y1, he wrote a mid-term examination in December, 2005, and states that he received a mark of 75%, and that this examination carried a 25% weight in the total course grade. He also wrote the final examination in the course in early May, which he states was weighted at 40% of the total grade, and in which he received a mark of 66%. As mentioned above, he received no mark for the paper not submitted, and consequently failed the course.

The paper in question was due March 3, 2006. The "drop date" for the course was February 19, 2006. On February 21, 2006, major legislation came into effect in the U.S.A., which seriously affected many of the employer's clients, and consequently greatly increased the immediate work load of the division in which the Student was working. The Student was advised that he would have to work in the London, England office for a two week period commencing March 7, 2006, to assist with these problems in that office. The Student, dealing with his increased workload even before going overseas, did not complete and submit the paper on time, but felt that even allowing for a lateness penalty, he could submit it soon enough that the penalty would not affect his success in the course. He did not discuss his situation with the course instructor or any other officials at UTM. However, once in England, he not only found that the volume of work was keeping him from completing the paper, but his time in England was being incrementally extended by his employer, two or three days at a time. Eventually, he was kept in England until the latter part of April, 2006. He filed a petition for an extension of time to complete his term

work to the Committee on Standing, which was refused in the decision of April 26, 2006, referred to above.

The facts summarized in the preceding paragraph formed the sole basis for his petition and appeal below. Before your Committee, the Student raised what he considered an even more important factual ground of appeal. In late January of 2006, a person with whom the accused was acquainted was charged with a very serious sexual crime against another person with whom the Student was also acquainted. Suggestions were made that the Student was implicated in the offence, which the Student emphatically denies. However, the possibility that these suggestions would be taken seriously by the police, and that he would also be charged, frightened the Student, and led him to retain legal counsel for his protection. The Student felt that this possibility of being charged was lying over him until this year, when the person charged was acquitted. In fact, the Student never was charged with any offence by the police. The Student stated that during the entire period when he felt the possibility of being charged, he was under severe stress from this source, which affected his performance and his judgment on how to deal with his course obligations. The Student states that he had been instructed by his lawyer to refrain from discussing the case with anyone, and the lawyer has written a letter to your Committee corroborating that this instruction was given. The Student interpreted this instruction as precluding him from raising these facts in the original petition or in the appeal below.

Decision

Your Committee has decided that relief should be granted in this case, although not in the form requested in the original petition, in the appeal below, or in the appeal to your Committee. To permit the Student to submit his paper for credit at this late date is completely impractical. Some penalty for lateness was originally expected by the Student and would be justified, but your Committee declines to enter upon the exercise of deciding what would be the proper limits of such a penalty, and sees no justification in asking the then course instructor to weigh this issue, let alone try to fit his grading into the marking standards he was using in that course at that time. In addition, the academic goals of the course would be largely frustrated, as far as the Student is concerned, as the lapse in time would adversely affect the academic coherence of the course. Your Committee has decided that the appropriate relief is to grant withdrawal without academic penalty from the course. The facts of the case come within the requirements for granting this relief as set out in its previous decisions. The stress from the potential criminal charges was in existence before the "drop date", and would not have been expected to abate substantially during the rest of the duration of the course. Therefore, this factor alone would not justify the relief of withdrawal without academic penalty. However, the major increase in the work load of his job, and the assignment abroad was not foreseen or reasonably foreseeable by that date. Also, we accept that the potential criminal charge did seriously affect his judgment in deferring his application to the University for relief as long as he did, or in recognizing sooner that he could not get his assignment in within sufficient time to avoid time penalties so great as to make it impossible to secure anything close to a passing grade. However, to some extent the Student was being trapped by the employer's actions in extending his time abroad in small increments. Also, although very late in seeking relief, the petition was launched before the final examination was written, and before the final course mark could be known. The Student was not trying to gamble

that he could pass the course without the missed paper, and reserving the opportunity to appeal if he lost his gamble.

The appeal is allowed. The grade of "F" recorded for the course POL340Y1 in the Winter Term of 2006 shall be vacated, and the non-grade notation of WDR substituted for the grade. The status of the Student in the University will be reassessed in accordance with the application of this decision.