

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report #350 of the Academic Appeals Committee
November 5, 2010

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Thursday, October 7, 2010, at which the following members were present:

Professor Emeritus Ralph Scane (Chair)
Ms Judith Goldring
Professor Elizabeth Smyth
Professor Wendy Ward
Mr. Gregory West

Secretary: Ms Natalie Ramtahal, Coordinator, Appeals Discipline and Faculty
Grievances

In Attendance:

Mr. E■■■■ S■■■■, the Student
Mr. Joshua Chan, Law Student, Downtown Legal Services
Mr. Jordan Giurlanda, Law Student, Downtown Legal Services

Professor Thomas Coyle, Faculty of Applied Science and Engineering
Ms Barbara McCann, Registrar of the Faculty of Applied Science and Engineering
Mr. Khuong Doan, Associate Registrar of the Faculty of Applied Science and
Engineering

1. The Appeal

This is an appeal from the decision, dated August 17, 2010, of the Academic Appeals Board (the Board) of the Faculty, which denied a petition by the Student to be permitted to withdraw without academic penalty, after the final date for withdrawal from courses, from the course APS105H1, taken in the Winter Term, 2009. The Student had previously petitioned to the Committee on Examinations of the Faculty for relief in this course and two others. That Committee had granted relief in the form of an assessment of completed course work, according to the standard formula employed by the Faculty. The assessment

raised the course grades in the other two courses to a passing level, but left the grade in APS105H1 at a failing level.

2. The Background

The Student originally enrolled in the B.A.Sc. program at the Edward S. Rogers Sr. Department of Electrical & Computer Engineering in the Fall Term of 2007. He considered that he was making unsatisfactory progress and, upon petition, was granted leave to withdraw from all courses taken during the term, without academic penalty. He was readmitted into the first year of the program in the Fall Term of 2008, on academic probation. His sessional average for that term was insufficient to allow him to proceed cleanly into the next term, but did permit him to enroll in the Faculty's "T-Program", in the Winter Term, 2009. This required him to repeat courses in which he had obtained less than 60%, and, if certain requirements were met, to take a summer term to complete the required number of first year courses. In the Winter Term, 2009, the Student took five courses. Two of these were repeated courses and three were new courses, including APS105H1.

On January 27, 2009, the Student's father was involved in an automobile accident in the Student's home country in Europe. The father was seriously injured, was in a coma for several days, and was in a critical condition for some weeks. The Student continued in his courses, and wrote his final examinations at the end of April and beginning of May, 2009. Unfortunately, during the examination period he developed an acute case of sinusitis, for which he sought medical treatment.

The Student petitioned the Committee on Examinations for relief from three courses, including APS105H1. His grounds for the request were his medical condition at the time of his final examinations and the emotional distress he had suffered earlier in the term as a result of his father's injury.

The Committee granted relief in respect of the three courses requested. We were advised by Professor Coyle, on behalf of the Faculty, that the relief was granted upon the basis of the medical evidence. The Committee on Examinations did not consider that a comparison of the Student's marks on term work following the Father's accident with the level of marks he had historically been receiving during his time in the Faculty warranted the conclusion that his marks had been adversely affected by his reaction to the accident. However, the relief granted was to provide that the three courses be re-assessed in accordance with the Faculty's standard practice, which applies a given formula (the Boocock-Will formula) to assess a final course grade. This formula is based upon a student's "closely-supervised term work" and the class average on the final examination. The course grade awarded after an assessment is the higher of the grade actually achieved or the grade determined by the application of the formula. Although previous panels of your Committee have expressed unease with this particular remedy, they have not considered it proper to interfere with its application where it is fairly and consistently applied in a particular case.

On applying the formula to the three courses involved in the original petition, two of these were upgraded to a passing grade. However, although the mark in APS10H1 was raised by the formula, it remained a failing grade. The Student did not meet the sessional average required to remain in the "T-Program", was failed, but permitted to re-apply for admission to the First Year. In fact, he has not done so, but is pursuing another field of study at a different university.

3. Decision

The appeal should be dismissed.

The Student has based his appeal both on procedural grounds relating to the proceedings within the Faculty relating to this appeal, and on grounds relating to his particular circumstances, which are alleged to have adversely affected his performance. Your Committee will consider the procedural grounds first.

The first procedural ground raised by the Student is that the decision of the Board lacked sufficient reasons for its decision. Factually, the allegation is correct. The decision simply upheld the decision of the Board of Examiners, which itself gave no reasons which were produced to your Committee. Your Committee is prepared to accept that, if the decision of the Board had been the final decision of the University in this matter, it would not have survived judicial review by the courts of this province on this ground alone. Given the importance of the decision to the Student, the common law requirement of procedural fairness would likely have mandated some form of relief. Your Committee is aware that large divisions like the Faculty face an equivalently large number of academic petitions and appeals, and that they would have difficulty in finding the resources to write the detailed reasons for decision that smaller divisions might deliver. Nevertheless, your Committee is also aware that divisional appeal committees of divisions of this University of at least equivalent size to that of the Faculty do manage to issue decisions that, while generally terse, at least reveal the core of the reasoning behind the decision. Your Committee is not convinced that the bareness of the Board's decision in this case is excusable on the basis of workload. The Board should make an effort to conform its decisions to the minimum demands of what the courts refer to as natural justice.

However, whatever the failings of the Board's decision in this respect, they do not mandate the relief sought by the Student. The injury to a student is that the student cannot properly evaluate the next step, if any, that should be taken. But here, the Student has in fact proceeded to this Committee, where his case has been reheard. He has not been prejudiced by passing up the remedy of a rehearing. A court would most likely grant a remedy by nullifying the decision and remitting it to a rehearing. In the circumstances of this case, where the Student already has a rehearing under your Committee's procedures, no further relief upon this ground is warranted.

The second procedural ground argued is that the Student did not personally attend the hearing by the Board of his appeal, in reliance upon certain assurances of a member of the Faculty's administrative staff. The Student filed his appeal from the Board of

Examiners with respect to APS105H1 on June 26, 2009, and shortly thereafter left for his home in Europe. On July 27, 2009, a member of the staff of the Registrar of the Faculty sent him an e-mail, advising that his appeal would be reviewed on August 11, 2009, giving the particular time and place, and inviting him to appear. The e-mail warned that, if the Student failed to appear, the appeal would be considered in his absence. It stated, "There will be absolutely no rescheduling of a hearing."

On July 30, 2009, the Student replied, explaining that he was out of the country, and it would be difficult for him to attend. He asked as to how much his absence might affect the decision, and whether he could answer any questions which the Board might have through e-mail. The same official replied on July 31, 2009:

"Appearance at the hearing is not required and historically makes no difference as a rule to the outcome of an appeal."

He also stated that the e-mail interchange suggested by the Student would not be possible.

The Student stated that he relied upon this e-mail as an assurance that his personal appearance would make no difference to the result of his appeal, and did not return to Toronto for the hearing. Subsequently, this communication was brought to the attention of other Faculty representatives through the First Year Counsellor (the FYC) of the Faculty. They agreed that the e-mail message was "ambiguous" and could mislead the Student into believing that personal attendance would never make a difference, whereas it sometimes did. According to the Faculty's submission, the Faculty offered, through a telephone conversation between the FYC and one of the Student's legal advisors, to hold a rehearing of the appeal, at which the Student could attend. The Student stated that his understanding was that if he applied, the Faculty would consider a rehearing. In fact, the Student decided to proceed with his appeal to your Committee, and not to ask for a rehearing at the Faculty level.

Your Committee is not prepared to afford the relief asked on the above ground. Whatever the nature of the offer concerning a rehearing (the memorandum of the FYC concerning the conversation supports the Faculty's version) the Student declined an opportunity to pursue at least the possibility of a rehearing at the Faculty level at which he could attend. He has had a full opportunity to be heard at this present level. In fact, although he made some comments during the hearing before your Committee, he was not called as a witness, although he was made available for cross-examination. Again, if, despite your Committee's views to the contrary, he is entitled to a remedy on this ground, it would be nullification of the Board's decision and a directed rehearing, not the non-grade notation of WDR which he seeks. Again, having sought and obtained a full hearing before your Committee, he is not entitled to go back before the Board for another rehearing there.

Your Committee notes that this case illustrates a difficulty that students may face when appeals are scheduled when a student is legitimately off campus. This situation will often arise during the summer. The student may be at such a distance from the campus that returning to participate in an appeal is a significant hardship. If it is not feasible for a

division to offer flexibility of hearing dates to students in this position, it may be that teleconferencing or videoconferencing could be an acceptable substitute. Your Committee hopes that the University will consider developing a protocol for permitting and financing such distance hearings.

The third procedural ground of appeal advanced by the Student is that he was unaware of the exact nature of the Faculty's assessment formula, which is not generally published, and could not therefore anticipate whether the application of this formula would permit him to continue in the program. This is coupled with the assertion that, having received his original results and conferred with his FYC, he was advised to seek the remedy of assessment for his three courses. The Student alleges that the FYC was under a duty to pre-apply the formula to his results and determine whether an assessment would give results that would permit him to remain in his program. If not, the Student states that he would have sought some other remedy in the first instance, presumably the remedy he is seeking here.

Your Committee does not find merit in this ground of appeal. It would be desirable for the Faculty to make the Boocock-Will formula generally known to its students, if it indeed does not do so. Certainly the formula can probably be found in some of the decisions of your Committee published on its website. However, the formula is the remedy usually applied in the case of successful petitioners within the Faculty, and the Student was in no different position than any other petitioning student would have been. Your Committee does not believe that a person in the position of the FYC is under a duty to conduct a "pre-appeal" to ascertain that an appeal he or she is counselling a student to undertake will be successful. The FYC may have assumed that the Committee on Examinations would, in its usual practice, proceed by way of assessment in the event the petition was successful (an assumption which would have been correct), but the Student remains responsible for deciding how to proceed. Your Committee is reluctant to contribute to the establishment of a policy of permitting students who seek advice, whether from formal counsellors or informally, as from teaching faculty members whom they consult, to effectively transfer the responsibility of deciding upon important decisions in their lives to the counsellors. The result of such a policy most likely, over time, would be to lead persons to refrain from giving counsel, or to confine it as narrowly as possible. Your Committee does not believe this to be in the best interests of the University or its student body. There may be situations where the advice given is so irresponsible that relief should be given, but this is not such a case.

Also, in this particular case, the Student did not in fact follow the FYC's advice to the extent of limiting himself in his petition to requesting the remedy of assessment. His actual request was "to re-evaluate my academic standings in [three courses], in such a way so that the final exam marks for [two of the courses] be not taken into consideration as well as my overall grade for APS105 to be a passing grade." While this request certainly covers the assessment remedy, it is sufficiently open-ended to cover other remedies. The remedy actually granted came about because of a decision of the Committee on Examinations, and subsequently, by the Board, not because the Student, whether in reliance upon the FYC or not, had narrowed the choice of remedy he was

seeking. An appeals committee is not restricted to awarding only remedies which have been specifically requested by a student. Your Committee does not believe that, had the Student specifically asked for a WDR remedy, it would have been granted, in the face of the Committee's view of the facts and its policy against granting this remedy in individual courses except in the most extraordinary circumstances.

Turning to the grounds for appeal based upon the Student's particular circumstances at the relevant time, the Student alleges that he is entitled to the remedy of late withdrawal because of the combination of the emotional effect on his ability to pursue his studies caused by the injury to his father near the end of January, 2009, and his medical problem during the end of term final examinations. The latter has been recognized by the Faculty as affording grounds for relief, although the relief afforded, the application of the formula to assess a grade, did not remove his failure in APS105H1. The Faculty reviews did not find that the evidence of the possible effect on his studies of his father's injury merited the conclusion that further relief in the failed course was justified.

As described to your Committee, the Committee on Examinations, having decided that relief is merited and that the Boocock-Will formula should be employed, relies upon a "Term Work Report" from the course instructor. This shows the maximum marks available from the final examination, from "closely supervised term work", and from "not closely supervised term work", the actual total marks achieved by the student under these three categories, and the class average in each category, as well as the student's total mark and the total class average. To this data, the formula is applied. Unfortunately for your Committee's purposes, the form does not break down the individual components of the "closely supervised" category which is so crucial to the validity of the formula, and we understood the Faculty's evidence to be that this breakdown was not sought out by the Committee on Examinations. As the Student pointed out, if some of these components are unreliable, for example if some term work is affected by illness or other cause, and are not removed from the calculation, the result of the application of the formula is to that extent less reliable. However, in this case, the formula as applied still left the Student five marks below a passing grade. Without evidence as to what eligible marks included in the total marks for "closely supervised term work" might reasonably have been deemed affected by the reaction to the father's injury, and what the result of their removal from the calculations would have been, your Committee finds that the onus of showing that the formula as applied in this case brought about an incorrect failing assessment has not been met. There is no basis for concluding that such evidence was unobtainable. For example, the course instructor has indicated sympathy towards the Student, and might have supplied the necessary information if asked. In the absence of a conclusion that the Faculty's application of its appeal procedures was unfair or unreasonable by the standards applied to all of its students, there is no basis for substituting the specific relief now requested by the Student for the result determined by the Board.

The appeal is dismissed.