

UNIVERSITY OF TORONTO GOVERNING COUNCIL

Report #322 of the Academic Appeals Committee January 29, 2008

To: The Academic Board,
University of Toronto

Your Committee reports that it held a hearing on Tuesday January 15, 2008, at which the following were present:

Professor Emeritus Ralph Scane (Senior Chair)
Professor Clare Beghtol
Ms Saswati Deb (Student)
Professor William Gough
Professor Ronald Kluger

Ms. Nancy Smart, Judicial Affairs Officer

Appearances:

For the Student Appellant:

Mr. Eric Polten (Counsel)
Ms. Amy Mitchell (Counsel)
Ms. E. G. ("the Student")

For the Faculty of Applied Science and Engineering:

Ms. Lily Harmer (Counsel)
Mr. Danny Kastner (Counsel)
Ms. Barbara McCann
Ms. Ella Lund-Thomson
Professor Kim Pressnail

The Appeal

This is an appeal from the decision of the Examinations Committee of the Faculty of Applied Science and Engineering (the Faculty), dated October 25, 2007, acting upon the recommendation of the Ombuds Committee of the Faculty, to deny the Student permission to withdraw without academic penalty from the course ECE221H1, taken in the Winter term of 2007, and for which a failing grade was assessed. Following upon this decision, the Student was found to have failed that term, and is required to repeat it. In the circumstances of her failure, the Student does not retain credit for courses taken in that term that she passed, and must repeat those courses. It is this requirement that these courses be repeated that is really what this appeal is about. At the hearing, the Student expressed willingness to accept the failure in ECE221H1 if she could retain credit for courses passed in the term in question.

Facts

The Student entered the B.A.Sc. program in the Department of Electrical and Computer Engineering in the Faculty in the Fall session of 2005. Her progress until the Winter session of 2007 had academic difficulties which it is not necessary to discuss in detail here, except to state that she entered the Winter term of 2007 as a student in the Second Year program of the Faculty with the status of being on previous probation. This status determined the minimum requirements that she was required to fulfill to proceed to the next session of instruction.

In the Winter session of 2007, the Student took six subjects. In the course in question, the Student received an original final grade of 43%. In one other course, ECE243H1, she received an original final grade of 50%. In the remaining courses, she received original final grades of 60% or slightly better. Overall, her original weighted sessional average was 56%. Under the Faculty's rules, this result would place a student upon "repeat probation", and require that the student repeat the session at the next opportunity. The Faculty operates on a "session" basis, rather than on a "course" basis, as some other divisions do, so that a student required to repeat a Winter session, for example, would normally have to sit out until the next Winter session arrived, in order to repeat the courses taught within that session.

With respect to the course ECE221H1, the Student failed a term test written on February 5, 2007. After a second term test failed to improve her average, she consulted an instructor, who advised her to petition, even though the time for petitioning for relief from a course mark had long passed. The Student did petition the results of the term test, on grounds of illness, on April 11, 2007. This date was more than one week after the Student's return to classes, which is the Faculty deadline for such petitions. The Faculty submits that the Student withdrew the petition on or about April 30, 2007, an assertion that the Student's submission denies. The submissions of neither Faculty nor Student reveal any formal disposition of this petition. The Student alleges that her anxiety stemming from her lack of knowledge regarding the results of this petition contributed significantly to the health problems which affected her final examination in ECE221H1.

The Student did poorly on the final examination in ECE221H1. She petitioned for permission to withdraw from this course, and from the course ECE243H1, without academic penalty, for health reasons. At the hearing before your Committee, the Faculty acknowledged that its committees reviewing these petitions had accepted the validity of the Student's grounds for seeking relief, and accepted the validity of those grounds for the purpose of this hearing. Accordingly, your Committee did not hear evidence on this issue, and proceeded on the basis that the Student had established this element of her case.

However, under the Faculty's regulations, establishment of sufficient grounds for relief will not necessarily get a student out of academic difficulty. Although the Examinations Committee has jurisdiction to grant withdrawal without academic penalty, it did not consider that this was an appropriate situation to award that remedy, given the restricted circumstances in which your Committee has previously held this remedy to be available, and given that it was being applied for after the final results of the term had been released. Instead, the Examinations Committee applied the remedy of assessing a grade, which is the usual procedure within the Faculty when a student misses a final examination or establishes that the examination has been adversely affected by outside events beyond the student's control. "Assessing a grade" involves the application of a mathematical formula: the student's closely supervised term grade times the class examination average, divided by the closely supervised class average. Under this formula, the better the student's

term work, the higher the assessed grade, which will become the course mark, will be. The assessed grade is compared to the actual grade, and the higher of the two becomes the course grade.

In this case, while the assessment process brought the Student's grade in ECE243H1 from 50% to 61%, it would have lowered the grade in ECE221H1 from 43% to 40 %. Under the Faculty's regulations, in such a case, the higher original grade was allowed to stand.

As noted above, the Faculty operates on a "session" basis, and bases promotion decisions upon a student's sessional average. Using the Student's course marks as revised by the assessment process, her revised sessional average moved from 56% to 57.8%. However, a student on past probation, as in this case, who obtains a sessional average of less than 60% fails the session and must repeat it. Under the Faculty's regulations, a student does not retain credit for courses taken in the session that must be repeated in which a final mark of less than 70% was awarded. As all of the grades obtained by the Student in courses taken in the term in question were less than 70%, she was denied credit for all of them.

Subject to one matter that troubled your Committee, the Faculty's application of its regulations to the Student, following its acceptance of the validity of the Student's petition for relief from the course in question, was unexceptionable. The Student was treated as any other student in the Faculty would have been.

The troubling matter is the term test taken in ECE221H1 on February 5, 2007, which was petitioned by the Student. Frankly, your Committee did not appreciate the possible significance of this matter until the hearing had concluded and it was considering its decision. This was largely the result of a coincidence. At the beginning of the hearing, it appeared that counsel on both sides were under a misapprehension as to your Committee's usual process. Your Committee normally proceeds by a *de novo* hearing, that is, it hears evidence and cross-examination thereon, including evidence that may have been before lower appeal tribunals, and reaches its own conclusions on that evidence. It does not restrict itself, as counsel stated that they had assumed, to a review of the record of the material before the lower tribunals, and a consideration, based upon that review, of the reasonableness of the conclusions drawn by the tribunals below. As counsel on both sides indicated that they had not prepared to introduce oral evidence, or to cross-examine the other party's witnesses, and as the Faculty acknowledged the validity of the Student's grounds for petitioning the results of her final examinations, as described above, the Committee attempted to adapt its procedure to the type of hearing counsel had prepared for. As a result, the evidentiary stage, which in the normal course might well have highlighted this matter as an important issue, was almost non-existent, and did not do so.

Your Committee was troubled because the term test, which was the subject of a petition for illness, supplied a component of the mathematical formula used to assess the final mark in ECE221H1. If the term mark was unreliable, due to the Student's illness, the assessment must correspondingly lack reliability. As the term mark in question was very low, its inclusion would operate to reduce the final assessed mark. Your Committee has no basis upon which to decide whether the term mark petition was or was not withdrawn, a matter in dispute in the written submissions. The petition does not appear to have been formally addressed and decided by the Faculty. It may well have been dismissed for lateness if it had been heard, but there is no evidence whether this preliminary issue was considered by the Faculty either. Even if the petition were allowed and the term mark in question was removed from the equation, or was itself assessed from

the remaining marks, whatever was the usual procedure in such cases, your Committee cannot determine whether the overall result would be affected, as it has no evidence as to the totality of the term marks in this course employed in the calculation.

Your Committee could have recalled the parties to a continuation of the hearing, whenever this could be arranged given the number of persons involved, to resolve these undetermined issues. However, your Committee thought that this would create undue hardship to the parties, especially to the Student. The Student indicated at the hearing that, due to uncertainty as to her status at the beginning of the current term, and the realization that she would lose some valuable time which she could not afford to lose at the beginning of the session, until her status was resolved, she would voluntarily sit out this term. Observing her record to date, your Committee felt this to be a wise decision on her part. Your Committee notes that it was originally scheduled to hear this appeal on December 20, 2007. Had this hearing proceeded, it is very possible that your Committee could have given a decision prior to the opening of the Winter term, 2008. Your Committee has been informed by the Judicial Affairs Officer that the hearing was adjourned from this date at the request of the University. Accordingly, by the time a new hearing date could be arranged, it was impossible for your Committee to deliver a decision until after the Winter 2008 session had commenced. As a result, because of the sessional structure of the Faculty's courses, the Student cannot resume her studies until the Fall session of 2008, if she were to succeed on her appeal, or the Winter session of 2009, if she fails to succeed. Your Committee also was informed by the Faculty that, on the hypothesis that the Student were permitted to withdraw without penalty from ECE221H1, her sessional average for the Winter session, 2007 would have been sufficiently high to permit her to proceed to the next session, still on probation, carrying the course, but retaining credit for the other courses taken in the session. Your Committee notes that granting a grade of WDR is a permitted remedy under the Faculty's rules, although the granting of such a remedy at this stage is an extraordinary exercise of your Committee's discretion. Giving the benefit of the doubt to the Student on the matter of the term examination by permitting withdrawal from the course in question will not compromise the Faculty's standards. The Student will still be on probation, and will still have to retake the course in her next term or as the Faculty may determine. However, repetition of the session, coupled with the undergoing of this unusually long period of enforced absence from her studies, is an unduly harsh consequence of an obviously terrible result in one course pulling down her sessional average below the ordinarily permitted level.

Accordingly, your Committee believes that the most just result, given all that has transpired, is to allow the appeal, and direct that the grade in ECE121H1 be vacated and replaced with the non-grade report WDR. Your Committee orders accordingly.