

REPORT NUMBER 262 OF THE ACADEMIC APPEALS COMMITTEE

December 3rd, 2001

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Monday, December 3rd, 2001 at 10:00 a.m. in the Counsel Chamber, Simcoe Hall, 27 King's College Circle, at which the following were present:

Professor Ed Morgan, Acting Chair
Dr. Alice Dong
Professor Luigi Girolametto
Professor Gretchen Kerr
Ms. Heather Schramm

Mr. Paul Holmes, Judicial Affairs Officer

In attendance:

Ms. P.H., the appellant
Ms. Emily Morton, Downtown Legal Services, counsel for the appellant
Ms. Sari Springer, Cassels Brock, counsel for the Faculty of Applied
Science and Engineering
Professor Raymond Kwong, for the Faculty of Applied Science and
Engineering
Professor Doug Lavers, for the Faculty of Applied Science and
Engineering
Ms. Ella Lund-Thomsen, Undergraduate Counselor, Faculty of Applied
Science and Engineering
Ms. Barbara McCann, Faculty Registrar, Faculty of Applied Science and
Engineering

This is an appeal by Ms. P.H., a student in the Faculty of Applied Science and Engineering (the "Faculty"). The appeal involves two issues: (a) an appeal of a retroactive withdrawal granted to the appellant with respect to the courses she took in the fall of 2000, and (b) an appeal of the grade the appellant received in ENG 182 in the winter of 2000.

On or about January 12, 2001, the appellant petitioned the Committee on Examinations requesting that she be permitted to proceed "without hindrance" into the next term as her failures in the fall of 2000 were attributed to medical reasons. In a decision dated February 16, 2001, the Committee on Examinations refused this request, but agreed to allow the appellant to retroactively withdraw from the courses for which she had

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registered in the fall of 2000. On May 22, 2001, the appellant submitted a further petition for special consideration to the Committee on Examinations, and by decision dated June 11, 2001, the Committee denied this further request and confirmed its earlier decision to grant her retroactive withdrawal. In effect, the failures during the fall 2000 term would be expunged from her record, but she would be required to repeat the courses she had taken during that term.

The appellant further petitioned the Faculty Ombuds Committee, and a decision from the Ombuds Committee was released on July 26, 2001. The Ombuds Committee upheld and reconfirmed the prior decisions to grant the appellant a retroactive withdrawal regarding the courses taken in the fall of 2000. The present appeal is an appeal of the Ombuds Committee decision dated July 26, 2001.

The appellant began her studies at the Faculty in the fall of 1999. The Faculty's regulations, as set out in the Faculty calendar, provide that a student must obtain a sessional average of at least 60% in order to have passed the term. A student who receives less than 60% but more than 55% is on probation but may proceed to the next term; and a student who obtains less than a 60% sessional average for the second consecutive term is placed on repeat probation and must repeat the session immediately when it is next offered. A student who obtains a sessional average of less than 60% while on repeat probation will have failed the program and will not be reconsidered for readmission.

Since the appellant had received an average of 59% during the winter 2000 term, she was on probation for the fall 2000 term. During the fall 2000 term, the appellant took the following courses and received the following unofficial marks:

ECE 212H	51%
ECE 241H	50%
MAT 290H	62.2%
MAT 291H	50%
PHL 255H	73%

This record would produce an average of 57.2%. Since this was the second consecutive term that her average was less than 60%, she was placed on repeat probation. The appellant petitioned the grades which she received during the fall 2000 term. Both committees of the Faculty found that due to the medical problems that she had been suffering she should be permitted to retroactively withdraw from the fall 2000 term and repeat it when next offered. This would have the effect of eliminating the repeat probation status and would afford her an opportunity to improve her grades and put herself back in good standing with the Faculty.

The appellant testified that she was "shocked" to receive a letter regarding the retroactive withdrawal from fall 2000 only two weeks before the final exams in the winter 2001 term. She maintains that she was under the impression that, having not heard from the Faculty Ombuds Committee regarding her petition to proceed "without hindrance", she

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was properly registered in the winter 2001 term and could proceed with those courses. The evidence presented by the Faculty demonstrated that the appellant met with the Faculty's undergraduate counselor, Ms. Lund-Thomsen, on January 26, 2001, and that Ms. Lund-Thomsen explained to the appellant that a retroactive withdrawal would be recommended to the Committee. Further, the Committee confirmed this decision to the appellant in a letter dated February 16, 2001. According to the appellant, this correspondence inexplicably took roughly 6 weeks to get to her in the mail. In addition, the appellant received a 100% refund of her tuition fees for the winter 2001 term during the course of that term. Furthermore, the appellant testified that she had checked her own status with ROSI continuously during the winter 2001 term and that ROSI indicated that she had withdrawn from the program.

The appellant also maintained that she had several conversations with Professor Lavers that amounted to an agreement that she be allowed to proceed with the winter 2001 term, and that if she performed adequately in those courses her retroactive withdrawal would be revoked. The Faculty, and in particular Professor Lavers, denied any such agreement was ever reached.

It is your Committee's unanimous view that the Faculty committees' decisions to grant retroactive withdrawal for the fall 2000 term should be upheld. Whatever the content of the conversations between the appellant and Professor Lavers may have been, Professor Lavers did not have any authority to make the purported "agreement" with the appellant. The appellant was aware of this, and pursued the appropriate appeal procedures through the Faculty's Committee on Examinations and Ombuds Committee. Further, she did not in any way rely to her detriment on the conversations with Professor Lavers. These conversations caused her to do nothing more than to attend some winter 2001 classes for which she was not registered and which she was not required to attend (but which she will have to take in the future if she continues in the Faculty's program).

Your Committee also finds that the appellant received notice of the Faculty's committee decisions in a timely manner, and that even if there was a postal mishap with the notification letters, the decisions were valid. Moreover, Ms. Lund-Thomsen had already advised the appellant orally that the written decisions would be forthcoming, and the tuition fee refund and the fact that ROSI indicated that she had withdrawn from the program had already effectively notified her of the decision. The appellant has provided no grounds on which to overturn the valid decisions of the Faculty's committees.

The other point raised by the appellant is that the grade she received in ENG 182, which she took during the winter of 2000, had been raised from a 74% to a 79%. The effect of such an increase in this one grade would have been to raise the appellant's sessional average from 59% to 60% for the winter 2000 term. This, in turn, would eliminate her probation upon commencing the fall 2000 term, which would, in turn, eliminate her repeat probation upon receiving below a 60% average for the fall 2000 term.

The appellant's argument is based on a conversation she had with the instructor for ENG 182, Professor McDayter. The appellant states that Professor McDayter had agreed to

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adjust her mark for the course upward and that this adjustment must be taken into account in calculating her sessional average. While Professor McDayter is no longer on faculty at the University of Toronto (having moved to Trent University), he provided an explanatory letter which was put in evidence by the Faculty. In a nutshell, Professor McDayter explained that the relatively subjective nature of an English test or paper means that there is some flexibility in the grading, and that he would be inclined to accede to the request for a modest increase given the appellant's history of medical problems.

Your Committee finds that Professor McDayter did not have the authority to increase the appellant's grade for ENG 182 in the manner described by the appellant, and that the appellant never properly appealed her grade for that course. While a course instructor can amend a mark if there has been a clerical error in recording it, a course instructor does not have the authority to entertain an appeal of a grade for medical reasons. Such an appeal would have to go through the proper committee procedures. The appellant testified that she was aware of these procedures, but that much time had passed by the time she approached Professor McDayter and that she was no longer in a position to proceed in accordance with the Faculty's appeal procedures.

Your Committee finds that the grade received by the appellant for ENG 182 during the winter 2000 term stands at 74% and that there are no grounds on which to adjust it upward or otherwise amend it.

For all of these reasons, the appeal is dismissed.

February 11, 2002