

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

REPORT NUMBER 288 OF THE ACADEMIC APPEALS COMMITTEE

December 16, 2003

To the Academic Board,
University of Toronto

Your Committee reports that it held a hearing on November 28, 2003 at which the following members were present:

Professor Ed Morgan, Chair
Mr. Sachin Aggarwal
Dr. Alice Dong
Professor John Furedy
Professor Jake Thiessen

Secretary: Mr. Paul Holmes, Judicial Affairs Officer

Appearances:

For the Student

Mr. Y. (the "Student")
Ms. Erica Toews, Downtown Legal Services
Ms. Marisa Wyse, Downtown Legal Services

For the University of Toronto at Scarborough ("UTSC")

Professor Ian McDonald, Associate Dean, UTSC

This is an appeal from the decision of the UTSC Subcommittee on Academic Appeals dated November 12, 2001. That decision denied the appeal of the Student's petition to the Committee on Standing requesting a deferred examination in ECMB02H taken in the summer of 2001.

The Facts:

The Student first enrolled in the Honours B.A. program at UTSC in the fall/winter session 1999/2000. One of his minors was Economics for Management Studies. By the beginning of the 2001 summer session the student had earned 7.5 credits, had achieved a

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cumulative G.P.A. of 1.68 and was in good standing. The student had completed the pre-requisite course for ECMB02H, which was ECMA02Y3Y, in the Winter 2000 session.

The grading scheme for ECMB02H in the 2001 summer term broke down as follows:

Term Test #1	20%;
Term Test #2	30%;
Final Examination	50%.

The Student missed both of the term tests, one for food poisoning suffered several days prior to the term test and the other as a result of a court subpoena. The course instructor agreed to have the final exam constitute 100% of the Student's mark. The drop date for the course was June 11, 2001.

The final examination was scheduled for June 28, 2001. The Student did not attend. As a result he received a grade of zero in the course and an "F" on his transcript. He petitioned on June 29, 2001 for a deferred exam, including with his petition a University of Toronto Medical Certificate. The certificate indicated that the Student visited Dr. S. Mahesan on June 28, 2001 and that he was suffering from allergic rhinitis. The symptoms included: sore throat; headache; fever; runny nose, and; stuffy nose. Dr. Mahesan indicated on the form that the date of onset of the illness was June 25, 2001 and that "[d]ue to this ...illness he cannot concentrate to do any examinations or assignments."

UTSC regulations state as follows:

If you are affected by illness or other circumstances which do not actually prevent you from writing an examination, *you are required to attempt it*. If after receiving your final grade, you feel that your performance on the exam was adversely affected, you may petition to rewrite it. [emphasis in the original]

UTSC policy is to grant deferred exams in the following circumstances:

- Medical or other appropriate documentation confirms a problem that would have affected the student's performance;
- The student's final exam mark differs significantly from term work grades; and,
- The grades are such that if the student wrote another exam, he/she could pass the course (requests are not granted where regardless of performance on the make-up the student could not pass the course).

The Student petitioned the Committee on Standing, which denied the petition in the first instance. That decision, dated August 20, 2001, stated: "...your medical documentation is weak and you have not completed any portion of the course to date. You should have assessed your situation prior to the drop date and withdrawn from the course."

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The Student appealed to the Subcommittee on Academic Appeals, this time including a letter from Dr. Mahesan dated September 18, 2001, which stated:

This letter is to confirm that the above-mentioned student is under my medical care. He was examined on the day of June 28th, 2001 in which he was ill and toxic. In this examination, it was found that the patient was suffering from Allergic Rhinitis and Migraine. The symptoms that the patient was suffering from included headaches, sore throat, nose stuffiness and fever. His sinuses were congested and inflamed. Allergic Rhinitis and Sinusitis caused the patient to experience Migraine headaches. This particular condition can give rise to poor concentration and severe head ache. The medications I prescribed will cause drowsiness. Therefore, taking into consideration the effects of symptoms [*sic*] from the illness and the medication prescribed, in my medical opinion, it was difficult for the patient to prepare and sit down for an examination. Therefore, I am suggesting that the patient receive special considerations for the missed examination on medical grounds.

The Subcommittee on Academic Appeals denied the appeal. In the decision dated November 12, 2001, the Subcommittee found that Dr. Mahesan's September 18, 2001 letter was "highly retrospective, but improved" from the statements made in the medical certificated dated June 29, 2001.

On appeal to Your Committee, UTSC advanced a line of reasoning that did not appear elsewhere in the materials, including in the two previous decisions in this matter. According to UTSC, the student has filed numerous petitions and appeals related to various courses, and his recurrent pattern of behaviour needs to be taken into account. Professor Ian McDonald, on behalf of UTSC, tendered for Your Committee's consideration fourteen prior medical petitions submitted by the same student during the course of his four years at UTSC. Your Committee determined that, while each petition must be evaluated on its own merits, the student's history of complaints may be looked at in order to help assess the credibility of the student's claim of illness. In this case, the student's record of complaints showed no evidence of a single, chronic ailment; rather, the evidence disclosed numerous complaints in the nature of sinus colds, allergies, food poisoning (on more than one occasion), headaches, etc. Most telling, the student did not appear to use one doctor, but rather the medical certificates supporting the many petitions came from a variety of doctors. In addition, the student has never visited or made use of the UTSC Health and Wellness Centre or the University's *AccessAbility* Services, as one would expect if there were recurring medical problems.

Accordingly, it appeared to Your Committee that not one of the many medical certificates submitted by the student in support of his various petitions represents a doctor's assessment of the student in light of his overall medical record. Just as a doctor, in evaluating a patient and reaching a diagnosis, would, if it were available, take into account the history of complaints in assessing whether an ailment is real or imagined,

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acute or mild, so can Your Committee assess the credibility of the student's complaint in light of this history.

Your Committee finds that the student is not credible in complaining that the bout of allergic rhinitis suffered the day of the final examination prevented him from attending and writing the exam. While Dr. Mahesan wrote a more fulsome and improved note in support of the student's appeal to the Subcommittee on Academic Appeals, he does not appear to have had the student's complete history at his disposal. The initial diagnosis by Dr. Mahesan indicated that the student suffered from a stuffy nose, sore throat, and other symptoms of a relatively minor ailment. Your Committee finds that the student could have attended at and should have written the exam on the scheduled date.

Counsel for the student has also advanced the argument that the student's medical condition is a "disability" as defined in the *Ontario Human Rights Code* (the "Code"), and that the failure of UTSC to agree to a deferred examination represents a corresponding failure to accommodate a person with a disability as required by the *Code*. The student concedes that the ailment of which he complains is episodic rather than chronic, but his counsel contends that even occasional illnesses can qualify as a disability under the *Code*. Whatever the *Code's* definition of "disability" may be, Your Committee is of the view that there is no evidence that the student suffered anything beyond a *de minimis* type of illness. Your Committee finds that the ailment complained of by the student is not sufficient to be a disability within the meaning of the *Code*.

The appeal is therefore dismissed.

Respectfully submitted,

Paul J. Holmes
Secretary

Ed Morgan
Chair