

**THE UNIVERSITY OF TORONTO**

**THE GOVERNING COUNCIL**

**REPORT # 340 OF THE ACADEMIC APPEALS COMMITTEE**

January 29, 2010

Your Committee reports that it held a hearing on Monday, January 11, 2010. The following members were present:

Professor Emeritus Ralph Scane (Chair)  
Mr. Kenneth Davey  
Ms. Min Hee Margaret Kim  
Professor Ronald Kluger  
Professor Elizabeth Smyth

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

**Appearances:**

**For the Student Appellant:**

Mr. M■■■■■ S■■■■■ (the Student)

**For the University of Toronto at Scarborough:**

Professor John Scherk

This is an application for leave to file an appeal late. The Notice of Appeal in the substantive appeal to this Committee, from a decision of the Sub-Committee on Academic Appeals (the Subcommittee) of the University of Toronto at Scarborough (UTSC), dated November 17, 2004, was filed at the Office of the Governing Council on December 1, 2008. The Student had communicated with staff at that office with respect to filing an appeal near the end of September, 2008, and had filed a statement with respect to his intended appeal on November 24, 2008.

The Terms of Reference of your Committee, as approved by the Governing Council on December 12, 2005, provide:

“3.1.6. An appeal to the Committee shall, except in exceptional circumstances, be commenced by filing a Notice of Appeal in accordance with the rules of the Academic

Appeals Committee no later than 5:00 p.m. on the ninetieth (90<sup>th</sup>) calendar day after the date of the decision from which the appeal is being taken. Where this deadline falls on a day when the University is closed, the deadline shall be deemed to fall on the next regular business day of the University at 5:00 p.m.

In view of the great lapse of time from the date of the decision being appealed to the filing of a Notice of Appeal to your Committee, the then Senior Chair of your Committee (who is also the Chair of this panel) directed that the question whether “extraordinary circumstances” existed which would justify an extension of time to file an appeal should be heard by a full panel of your Committee. He also directed that, if leave to file the appeal late should be granted, the substantive appeal should be heard and determined by a differently constituted panel of your Committee.

The appeal to the Subcommittee was from the denial of the Student’s petition to be allowed late withdrawal without academic penalty from all courses taken in the Fall, 2003 and Winter, 2004 sessions. The Student had petitioned and been permitted to defer his Winter term examinations to August, 2004, in circumstances which are at the core of his substantive appeal, and which will be adverted to later. He did very poorly in those examinations, resulting in very low sessional GPAs, which of course severely affected his cumulative GPA over his total program. However, he did receive credit for four courses towards the requirements for his B.Sc. degree. He ultimately graduated in June, 2008. He has found his overall results an impediment to hopes of entering a medical degree or postgraduate program, and now regards his 2004 decision to petition to defer his examinations, rather than to seek late withdrawal from his entire program as taken to that time, rather than writing the examinations and doing poorly, as an error of inexperience, compounded by extraordinary stress which he was then suffering, and his worries about extending his need for student loans. His petition and subsequent appeal to the Subcommittee in 2004 were attempts to repair this perceived error, by allowing him to retake the terms in question under better circumstances. Your Committee notes that, given the views of the Petitions Committee and the Subcommittee at UTSC on the petition he launched after receiving the results of the August, 2004 examinations, to withdraw from the entire 2003 – 2004 academic year, the chance that he would have obtained the same relief he was refused on his actual petition and appeal had he petitioned for the same relief before taking the August examinations, instead of petitioning for deferral of his examinations, is very speculative, at best.

The basis of the Student’s appeal to the Subcommittee was that, on March 26, 2004, the Student was arrested and charged with a serious criminal offence. Following his arrest, he was detained in custody for about one month, and then released on bail under onerous restrictive conditions, which kept him confined to his home, and only allowed to leave it in the presence of his mother, even to attend classes. In January, 2005, the bail conditions were modified to permit him to attend University classes without his mother. The Student has always denied any involvement in the crimes in question. In May, 2005, all charges against him were dropped. The Student alleged that, due to the effects of his confinement

and subsequent onerous restrictions upon his movements, certain medical problems resulting from injuries allegedly suffered shortly following his arrest, and subsequently from attacks by other inmates, and the high degree of stress he was undergoing during this period, his ability to function academically at his normal level was seriously impaired when he wrote the deferred examinations in August, 2004. As mentioned above, the Subcommittee, while sympathizing with the Student over a situation over which it acknowledged he had no control, found that the circumstances did not justify granting the requested relief.

Whether, had the Student made a timely appeal to your Committee from the Subcommittee's decision, or, in the present circumstances, if your Committee gives leave for this appeal to proceed late, and it is subsequently heard and determined by another panel of your Committee, the Student would be successful, is speculative. Your Committee's view is that success was and is not impossible, but by no means certain.

The Student's grounds for arguing that he should be permitted to proceed with his appeal to your Committee at this late date are that he discussed his situation, including the possibility of a further appeal with an academic advisor at UTSC after receiving the result of his appeal to the Subcommittee. He states that he was told that the likelihood of such a sweeping request being granted was small, that delay in his program while waiting for a result might result, and that he would probably be better off putting the unfortunate episode completely behind him and doing the best he could with the remainder of his program. He also states that he remained at that time under the same stress level, and that he "was simply too exhausted to fight the University's decision."

In opposing the application, UTSC notes that, if the substantive appeal were to be granted, the results actually obtained in the 2003 – 2004 academic year would have to be vacated, to be replaced by the results obtained on the prospective rewriting of the examinations. This would leave the Student short of the number of credits required for the degree he presently holds. The Student has told your Committee that he is in fact prepared to surrender his existing degree if his appeal should be successful, and he is allowed to attempt to replace his 2003 -2004 academic year. Your Committee was not given any advice as to whether such a surrender procedure exists. While this would primarily be a matter for a panel considering the substantive appeal to consider, if leave to proceed were to be given, it is also a consideration when determining the issue of leave to proceed.

Your Committee considers that provision for extension of the stipulated time to institute appeals is chiefly intended to protect against situations where appeals are not filed in timely fashion due to mishap or inadvertence, where a genuine intention to appeal was formed within the allowed time, or where some major event of illness or other incapacitating situation prevented or seriously impeded a student's ability to formulate or effectively implement an intention to appeal. That is not this case. While the Student was still suffering some adverse effects from his unfortunate situation following his arrest, these did not affect his ability to determine to, and to effectuate a petition for relief and appeal to the Subcommittee from the denial of that petition in 2004. Your Committee

sees no reason to find that they so affected his ability to determine to, and to effectuate a further appeal to your Committee within the allowable period following receipt of the Subcommittee's decision.

Your Committee does not absolutely rule out the possibility that some other extraordinary circumstances might also give rise to an extension for time to appeal, but it does not find such circumstances here. The allegation that the Student was given misleading advice on appealing to your Committee by an advisor at UTSC's Advisory Service does not meet that requirement. No evidence was tendered by UTSC to contradict the Student's allegations, and no explanation was offered as to why this evidence was not available to be tendered. Accordingly, your Committee is entitled to assume that such evidence, if tendered, would not assist the University's position. Nevertheless, even on that basis, your Committee does not consider that such advice as described could give rise to relief here, in the circumstances of this case. In hindsight, given the Student's present desire to apply to a medical school, it *might* have been better for the Student to try his hand at a final appeal. He *might* have succeeded on his appeal, and he *might* then have raised his sessional and cumulative GPA sufficiently for a medical school or a graduate program to admit him at the present time. However, advice as to the future lacks the benefit of hindsight. Even with the present benefit of such hindsight, your Committee does not find that the advice given at the time was wrong, or ill-advised. Stressed as he might have been, the Student must still take responsibility for acting on the advice given.

Furthermore, your Committee has grave concerns as to the policy implications of allowing a former student who has accepted his or her degree from returning thereafter, long after the time for launching an appeal from a pre-degree academic decision has passed, to appeal for the purpose of improving the appearance of the transcript of the academic record leading to the degree he or she has accepted. Although it might be conceivable that there could be circumstances so egregious that such relief should be given, this is not such a case.

### **Decision**

The application for permission to file a late Notice of Appeal is denied. The appeal is quashed.