

**THE UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL**

Report #363 of the Academic Appeals Committee  
February 7, 2012

To the Academic Board  
University of Toronto

Your Committee reports that it held a hearing on Friday, November 25, 2011, at which the following members were present:

Professor Hamish Stewart, Chair  
Professor Andrea Sass-Kortsak  
Mr. Kenneth Davy

Secretary: Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances  
Observer: Mr. Jason Marin, Administrative Assistant, Appeals, Discipline and Faculty Grievances

**Appearances:**

**The Students Appellant:**

Mr. [REDACTED]  
Ms. [REDACTED]

**For the School of Graduate Studies:**

Mr. Robert Centa, Counsel, Paliare Roland  
Ms. Julia Wilkes, Articling Student, Paliare Roland  
Professor Berry Smith, Vice-Dean Students, SGS  
Ms. Jane Alderdice, Director Quality Assessment and Governance, SGS

**I. The Appeal**

The Students each appeal from a decision of the Graduate Academic Appeals Board (GAAB), to the extent that the GAAB dismissed their appeals from a decision of the Graduate Department Academic Appeals Committee of Economics (GDAAC), dismissing their appeals from their grades of FZ in two courses in the Winter 2009 term and upholding a decision of the Department of Economics, refusing to grade their tests in two courses in the Fall 2009 term.

At the beginning of the hearing, the male Student stated that he would speak for both Students. The Chair asked the female Student if she was content to have the male Student proceed on her

behalf. She said that she was. Since the factual basis of the two appeals and the issues raised by the Students in each appeal were substantially identical, the two appeals were heard together. One copy of the decision will be placed in each Student's file.

Finally, unless otherwise indicated, all page references in this decision are to the two volumes of material filed by the Students in support of their appeal, as amended in accordance with the order of the Chair in Motion Decision #359-1 of the Academic Appeals Committee (see Appendix A).

Your Committee unanimously finds that the appeals should be dismissed.

## **II. Overview**

This overview is drawn in part from Motion Decision #359-1 and in part from the decision of the GAAB.

In the 2008/09 academic year, the Students were enrolled in the first year of the Ph.D. program in the Department of Economics. The Students are married to each other. They were absent from the University for much of the Fall 2008 term and part of the Winter 2009 term owing to the serious illness and subsequent death of the male Student's father. Both Students received grades of FZ in the five courses that they took that year (three in the Fall 2008 term and two in the Winter 2009 term).

In the Fall 2009 term, the Students were permitted to audit the first module of two courses and to write the test for that module. However, the Students never registered for the 2009/10 academic year; for that reason, the Department refused to mark those tests.

The Students eventually appealed the FZ grades and the refusal of the Department to grade the tests they took in Fall 2009. They also sought numerous other remedies including a tuition refund, guaranteed funding for four years from their new registration date, and prompt registration. Their appeal was considered by the GDAAC. In two substantially identical reports dated 3 June 2010, the GDAAC recommended that the appeals be dismissed. The GDAAC held that the Students' requests for a tuition refund, guaranteed funding, and prompt registration were not within its jurisdiction. It found that the FZ grades were appropriate. It held that Department's refusal to grade the tests taken in Fall 2009 was justified because the Students were not at that time registered. In decisions dated June 17, 2010, Professor Arthur Hosios, Chair of the Department of Economics, accepted the GDAAC's recommendation and dismissed the Students' appeals (vol. 1, pp. 173-191).

The Students appealed to the GAAB. In a decision dated November 19, 2010, the GAAB allowed the Students' appeal in part. The GAAB found that "a decent solution" to the Students' situation would have been a leave of absence for Fall 2008 (vol. 1, p. 221). Since a leave of absence had not in fact been granted, the appropriate outcome was "to award the non-mark grade of WDR for each of the courses taken in the Fall Term, 2008" (vol. 1, p. 222). The GAAB therefore directed that the grade of FZ for the three courses that the Students took in Fall 2008 be vacated and replaced with the notation WDR. The GAAB also recommended that the university

waive the Students' fees attributable to Fall 2008. However, the GAAB dismissed the Students' appeal of the FZ grades for the two courses taken in Winter 2009, and agreed with the GDAAC and Professor Hosios that the Students were not entitled to have the tests written in Fall 2009 graded (vol. 1, p. 223).

In a letter dated December 3, 2010, Professor Brian Corman, Dean of the School of Graduate Studies, rejected the GAAB's recommendation that tuition attributable to Fall 2008 be waived (vol. 1, p. 225). Professor Corman gave three reasons for this decision. First, he noted that graduate students pay a program fee rather than a fee for each course; consequently, replacement of an FZ by a WDR did not entitle the student to a fee waiver. Second, the Students had not withdrawn so as to entitle them to a refund of any part the program fee. Finally, the Students "did not in fact pay any fees for 2008-9, nor did [they] repay any of the funding that [they] received which amounted to more than \$22,000 each."

### **III. Jurisdictional Issues**

The Students appealed from the GAAB to the AAC, seeking a large number of remedies. In advance of the appeal, the SGS moved before the Chair for directions concerning the scope of the appeal, submitting that the AAC did not have jurisdiction to award many of the remedies sought and that some of the material the Students submitted to the AAC was inadmissible because irrelevant and/or privileged. In Motion Decision #359-1, dated August 25, 2011, the Chair accepted the SGS's submissions and made certain directions concerning the conduct of the appeal. The Chair stated his conclusion on the scope of the appeal as follows:

#### *The Remedies Sought in Category 1*

The SGS concedes that the AAC has jurisdiction to grant the remedies sought under category 1. The Students have set out those remedies as follows (vol. 1, p. 22):

- 1-1) The groundless FZs in Winter 2009 to be removed.
- 1-2) An official letter from the SGS explaining our circumstances in fall 2008 and winter 2009 and certifying our justified absence due to family crisis that resulted in WDRs.
- 1-3) Immediate registration not to lose another academic year. Also, our OSAP loan is due as a result of the department's illegitimate termination and refusal to process our registration.
- 1-4) Special accommodations from the department and the SGS so that we could complete the first year courses as soon as possible.
- 1-5) In Fall 2009, we took the final exams for the first stage of micro and macro. We would like them to be marked and considered completed.

The AAC has jurisdiction to grant remedies 1-1 and 1-5. The Chair is not certain that the AAC has jurisdiction to grant the remaining remedies, but considers it preferable to decide that question, if necessary, at the hearing on the merits.

In light of the submissions and the conduct of the parties at the hearing of the appeal on November 25, 2011, the Chair has concluded that the AAC does not have jurisdiction to make any order in respect of remedies 1-2 and 1-3. As explained in the Motion Decision, the AAC's jurisdiction flows from its Terms of Reference, which state that its function is:

2.1 To hear and consider appeals made by students against decisions of faculty, college or school councils (or committees thereof) in the application of academic regulations and requirements, and to report its decisions, which shall be final, for information to the Academic Board ...

The decision under appeal here is that of the GAAB, dismissing the Students' appeals from the grades of FZ given for their courses in the Winter 2009 term. The GAAB's Terms of Reference provide in part:

3. The [GAAB] shall hear and determine appeals of students registered in the School of Graduate Studies concerning grades in a course or component of a grade in a course, or concerning any other decision with respect to the application of academic regulations and requirements to a student. ...

The Chair's view is that while a division of the university might well decide to write a letter explaining a student's situation, the jurisdiction of the AAC does not extend to ordering university officials to write such a letter. Moreover, it is quite clear that in this appeal, the AAC does not have jurisdiction to order the SGS to register the Students, for the simple reason that the Students are not appealing a decision refusing them registration. There is no evidence that they have attempted to register and have been refused. (The Chair expresses no opinion as to whether such a decision would be appealable and, if so, by what route.) The decisions under appeal may have consequences for the Students' ability to register, but, as explained more fully in Motion Decision #359-1, "The AAC's jurisdiction does not extend to remedying all the consequences, whatever they may be, of a decision that the AAC does have jurisdiction to review." Regardless of the outcome of this appeal, if the Students wish to register, they will have had to seek registration in accordance with whatever procedures are appropriate for students in their situation.

As for Remedy 1-4, the Chair is of the view that the AAC may well have the power to recommend, or perhaps even to order, a division of the University to provide a student with some accommodation so as to give effect to a remedy granted by the AAC. However, as your Committee has decided to dismiss the appeal, this possibility need not be considered in this case. If the Students do at some point re-enter the program, the Ph.D. program in Economics, it will be for the department to decide whether to provide any accommodation in relation to their first-year courses.

The SGS did not cross-appeal from the decision of the GAAB. Therefore, the GAAB's decision to substitute WDRs for FZs for the three courses taken by the Students in Fall 2008 stands. The GAAB's recommendation that the SGS waive the Students' fees attributable to Fall 2008 also stands. The AAC has jurisdiction to make additional recommendations in respect of tuition, but

no jurisdiction to review Professor Corman's decision not to follow the GAAB's recommendation.

Thus, the Chair rules that the only issues before your Committee at the hearing on November 25, 2011, were the following (the first two issues are as stated in the submissions of the SGS, para. 10):

- (a) was the award of FZ grades for the Students' work in Winter 2009, given their personal situation at the time, a correct, consistent, and fair application of the University's policies and procedures?
- (b) should the Department grade the tests that the Students wrote in Fall 2009?, and
- (c) should the AAC recommend any rebate or cancellation of tuition for 2008/09, in addition to the recommendation made by the GAAB?

#### **IV. The Hearing**

Your Committee heard the Students' appeal on the morning of November 25, 2011, beginning at around 8:00 a.m. and concluding at around 12:30 p.m. Neither party argued that additional time was required or requested an additional hearing date.

During the hearing, both parties made occasional reference to material concerning the Students' negotiations with Professor Berry Smith, Associate Dean of SGS, and Professor Martin J. Osborne, Associate Chair, Graduate Studies, of the Department of Economics, between May 22 and October 27, 2009. In Motion Decision #359-1, the Chair had ruled that this material was inadmissible because it was irrelevant and privileged, though the Chair also ruled that "[t]he fact that negotiations did occur is relevant ... to explain why the Students were permitted to write the tests in Fall 2009". In accordance with the Chair's ruling, your Committee disregarded both parties' references to the inadmissible material.

At the hearing, the Students attempted to establish that the SGS had terminated their enrollment in the Ph.D. program. It was not clear to your Committee why this point was important to the Students. There are some references in the material to the Students' having been terminated (e.g., vol. 2, p. 221), but your Committee finds that these references are erroneous. The Department intended to seek the Students' termination, but suspended that request during the negotiations mentioned above; and the request remains suspended. Therefore, the Students are not terminated but lapsed; they are lapsed because they have failed to register; and they are not eligible to register because they have not paid their fees for 2008/09 (SGS Submissions, paras. 47-8).

Immediately following the hearing, and in accordance with its usual practice, your Committee met in private, discussed the parties' positions, and unanimously concluded that the appeals should be dismissed.

#### **V. Decision**

### *Background: Fall 2008*

The Students began the Ph.D. program in Economics in the Fall 2008 term. At this time, Professor Adonis Yatchew was Associate Chair, Graduate Studies. The Students were enrolled in three required courses: ECO2020H (Microeconomic Theory I), ECO2021H, (Macroeconomic Theory I), and ECO2400H (Econometrics I). However, they spent a substantial portion of the term in Iran owing to the serious illness of the male Student's father. On October 6, 2008, the male Student informed Professor Yatchew of his absence, and on October 13, the female Student informed Professor Yatchew of her absence. During October and November, the Students and Professor Yatchew exchanged a number of e-mails concerning the Students' personal situation and the need for them to fulfil the residency requirements of the Ph.D. program. Eventually, the Students requested a Leave of Absence, but there was some confusion as to whether leave was requested for September 2008 to January 2009, or for January 2009 to April (or August) 2009. This request was ultimately cancelled, and the Students returned to the program in January 2009 (as described below). But the department assigned grades of FZ for their Fall 2008 courses.

The GAAB found that "A leave of absence for the fall term would have been a decent solution" to the situation and that it was likely permissible for the department to have granted such a leave retroactively (vol. 1, pp. 335-6). The GAAB found that "assuming that retroactive leave was not possible, ... assigning failing grades to the Fall Term courses was too draconian" (vol. 1, p. 336):

The Students were in a family situation for which the University has often granted relief from the normal consequences of failing to achieve required standards. There has been no suggestion that the University questioned, or had reason to question the facts of the Students' family situation before the decision to enter failing grades was made.

The GAAB ruled that the Students' FZ grades for the Fall 2008 term should be vacated and notations of WDR substituted. The Students' academic records were modified in accordance with the GAAB's ruling. The SGS does not appeal from this decision.

### *Winter 2009*

In January 2009, the Students returned to the Ph.D. program on the following terms, which had been proposed by Professor Yatchew: they would enroll in two courses, namely ECO2030H (Microeconomic Theory II) and ECO2031H (Macroeconomic Theory II); they would take their comprehensive examinations in microeconomics and macroeconomics in June 2009; and they would retake ECO2020H, 2021H, and 2400H, as well as ECO2401H (Econometrics II), during the 2009/10 academic year (SGS Book of Documents, Tab 6; see also vol. 1, p. 336).

The final date to withdraw from Winter 2009 term courses without academic penalty was February 27, 2009 (see <http://www.sgs.utoronto.ca/calendar/cal2008-09/dates.htm>). The Students had no reason to, and did not, seek withdrawal from their courses before that date

Some time in March 2009, the male Student's father died. On March 17, and again on March 19, the male Student advised Professor Yatchew that both Students were in Iran, attending to the

funeral arrangements (vol. 2, pp. 177-8). It appears that the Students returned to Toronto on March 26, 2009. They did not attend any classes after their return (SGS Book of Documents, Tab 2). They did not communicate with their instructors. The examinations in their two courses were scheduled for April 14 and 16, 2009. The Students did not write these examinations. The Students received grades of FZ in both courses. On May 3, 2009, the male Student wrote to Professor Yatchew (SGS Book of Documents, Tab 7). This e-mail is concerned primarily with his and the female Student's responsibilities as teaching assistants; it does not make any request in respect of the work the Students missed. On May 12, 2009, Professor Yatchew wrote to each of the Students, stating that "the Department has decided to seek termination of your registration in the Economics Ph.D. program." He noted that the male Student's father had died and that the male Student had travelled to Iran to make funeral arrangements. He concluded the letters by inviting the Students to provide him with "any information of which I am not aware" within one week. (The letter to the female Student appears at vol. 1, pp. 134-6.) There is no evidence that the Students responded to Professor Yatchew's message. On May 22, 2009, the Students wrote to Professor Smith, seeking an appointment "in regards to our termination, sought by the Economics department" (vol. 2, p. 180).

The SGS Calendar states (SGS Book of Documents, tab 3):

Students with health problems or other personal circumstances which may adversely affect their performance in, or their ability to complete course work, examinations or other departmental assessments may request special consideration. Requests, supported by a medical certificate, or other appropriate evidence, should be submitted to the instructor or the coordinator of graduate studies as soon as possible or within 48 hours of the deadline or date of assessment. ...

If they wished special consideration because of the death of the male Student's father in March 2009, the Students should have submitted a request for special consideration to Shannon Elliot (coordinator of graduate studies) and/or to Professor Yatchew not later than April 18, 2009 (two days after the missed examinations). But, between March 19, 2009 and May 3, 2009, the Students did not communicate with the department at all. Between March 19, 2009 and May 22, 2009, the Students made no request for special consideration. They made no request to defer their examinations and no request for any other form of accommodation for their personal circumstances. The Students' behaviour during the Winter 2009 term is in striking contrast with their behaviour during the Fall 2008 term, when they had lengthy discussions with the department about their personal situation (see vol. 2, pp. 154-171).

Your Committee understands that the personal circumstances of the Students were difficult in March 2009; however, the Students have never offered a satisfactory explanation for their failure to make a timely request for special consideration on account of these circumstances. In their additional written submissions (an 8-page document headed "Facts and Violations"), the Students offer no explanation for this failure. At vol. 1, p. 17, of the appeal materials, the male Student states that "On March 25th, I returned to Toronto but was not feeling good enough to go to school. It took me a month and a half to recover." Similarly, in his first communication to Professor Yatchew following the death of his father, the male Student states that it has "not been easy for [him] to handle" his father's death (SGS Book of Documents, Tab 7). Your Committee

accepts these statements; however, there is nothing in the written material to indicate why the male Student's personal circumstances were so severe as to prevent the Student from making a request for special consideration. Moreover, there is nothing at all to indicate why the female Student was unable to make such a request.

The GAAB accepted the Students' statement that they were upset by the death of the male Student's father, but commented (vol. 1, p. 337):

... [the Students' upset] did not warrant the subsequent complete withdrawal from participation in the courses and examinations which occurred. The Students were well aware that Economics had made some concessions from its regular program in an attempt to accommodate their familial problems, and they should not have assumed, without even consulting the department or SGS, that the University's academic requirements would be further rearranged to suit their circumstances.

Your Committee agrees with the GAAB on this point.

At the hearing, the male Student offered a different reason for the failure to contact the department. He stated that, in March and April 2009, he had the impression that any request for special consideration would not have been accepted, so there was no point in making one. This assertion was not made at any time before the hearing; but apart from that, your Committee does not find it credible. Although, as the GAAB found, the Students' experience with the department in the Fall 2008 term was not entirely satisfactory, in the Winter 2009 term the male Student was well aware from his own experience that accommodations were available for students in difficult personal circumstances. Indeed, during that term, he was enrolled in the Ph.D. program under an arrangement that was designed to accommodate him following the disruption of the Fall 2008 term. He was permitted to take a reduced load in the Winter 2009 term; he was permitted to take ECO2020H and ECO2021H in the second rather than the first year of the program, and he was permitted to take his comprehensive examinations in microeconomics and macroeconomics before having completed the required course work in those subjects.

Even if your Committee were to accept the male Student's submission on this point (which it does not), there was at the hearing no additional evidence from the female Student explaining her failure to make any request for special consideration following the death of her father-in-law in March 2009.

The Students seek the remedy of late withdrawal from ECO2030H and ECO2031H without academic penalty. Late withdrawal without academic penalty is an extraordinary remedy. Your Committee has granted this remedy in cases where a student has made a timely petition for late withdrawal and where a division of the University has responded unreasonably to that petition (see, for example, Report #302 of the AAC); your Committee has refused to grant this remedy where the Student has not offered a good reason for not making a timely request for late withdrawal (see, for example, Reports #328 and #337 of the AAC). The fact that a student has been accommodated in the past has been taken into account in assessing whether the student had a good reason for not making a timely request (see Report #337). Neither the male Student nor the female Student made a timely request for special consideration, and in particular neither of



them requested late withdrawal without academic penalty. Neither the male Student nor the female Student has satisfactorily explained this failure to seek special consideration. Neither Student is entitled to the extraordinary remedy of late withdrawal without academic penalty.

#### *The tests written in Fall 2009*

Between May and October 2009, the Students engaged in negotiations with Professor Yatchew and Professor Martin J. Osborne (who succeeded Professor Yatchew as Associate Chair, Graduate Studies) as well as with Professor Berry Smith, Vice-Dean of SGS, with a view to enabling the Students to resume their studies in the Fall 2009 term. While these negotiations were ongoing, the Department permitted the Students to audit ECO2020, ECO2021, and ECO2400. However, the negotiations were unsuccessful, and the Students did not register for the Fall 2009 term.

Your Committee agrees with the GAAB (vol. 1, p. 337) that the tests the Students wrote in Fall 2009 should not be graded because the Students were not at that time registered. It would have been appropriate to grade these tests only if the negotiations between the Students and the department had resulted in the Students' returning to the Ph.D. program for the 2009/10 academic year. The rationale for the department's decision is fully and persuasively explained in the e-mail of October 20, 2009, from Professor Osborne and the e-mail of 27 October 2009 from Professor Smith (SGS Book of Documents at Tabs 8 and 9).

#### *Cancellation or rebate of tuition*

Since the Students have not succeeded in having the FZs awarded for Winter 2009 removed, there is no reason to make any additional recommendation concerning cancellation or rebate of tuition.

### **VI. Conclusion**

The award of FZ grades for the Students' work in Winter 2009, given their personal situation at the time, was a correct, consistent, and fair application of the University's policies and procedures. The Department should not grade the tests that the Students wrote in Fall 2009. Your Committee makes no recommendations concerning rebate or cancellation of tuition for 2008/09.

The appeals are dismissed.