

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #368 of the Academic Appeals Committee
October 15, 2013

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Tuesday June 4, 2013 at which the following members were present:

Mr. Tad Brown, Chair
Dr. Sarita Verma
Mr. Chirag Variawa

Secretary: Mr. Christopher Lang, Director, Appeals, Discipline and Faculty
Grievances

Appearances

For the Student Appellant:

Mr. J [REDACTED] B [REDACTED], the Student

For the University of Toronto Faculty of Law:

Professor Ian Lee, Associate Dean, Faculty of Law

The Appeal

The Student is appealing a decision of the Appeal Committee of the Faculty of Law dated November 22, 2012. The decision of the Appeal Committee of the Faculty of Law dismissed an appeal by the Student of the decision of Academic Standing Committee of the Faculty of Law dated June 2012 in which the student petitioned to change a grade on his transcript for the first year Criminal Law course (LAW124Y1) (the "Course") from a letter grade to a grade of "Credit" accompanied by an explanatory note indicating that the Faculty of Law had failed to adhere to its administrative obligations. The student has also petitioned that the Faculty provide him with a letter of apology that would include a brief plan on how the Faculty intends to prevent such administrative deficiencies in the future. The issue originated from the Student's concern with the mark received on the

first assignment in the Criminal Law course and his request that the assignment grade be omitted from a Statement of Grades on first term tests and assignment which the Faculty issues to first-year students early in the second term.

In the written Statement of Appeal, the Student has reiterated his request that the following remedies be applied (1) the Faculty of Law issue a letter of apology to him acknowledging that it failed to adhere to its administrative obligations and (2) the Faculty change the final grade on the Student's transcript for the Course from a letter grade to a grade of "Credit". In the hearing the Student also requested as further remedies that the Faculty of Law pursue one of the following three options: (1) cease publishing the Statement of Grades to first year law students after the first term, (2) move a semester system, or (3) provide the option for an appeal of interim marks so that marks under appeal would be noted on the Statement of Grades.

Facts

In the Student's first year small group class, the Course, students were required to write a series of assignments and one of these is due in the first term. The Student received a C+ on his first assignment. His professor initiated a meeting with the Student to discuss this assignment. However the Student was still not satisfied with the professor's explanation of the grade. At the core of the discussion was whether the Student had answered the assignment as instructed. In the Student's view, there was a problem because there were no written instructions but only verbal instructions in class as to the assignment.

The Student sought to appeal his assignment grade but learned of the Faculty of Law's policy that an appeal can only be brought against a final grade in a course and not against an individual assignment grade. In first year full year courses this means at the end of the academic year. The Student then requested that the assignment grade be omitted from a Statement of Grades on first term tests and assignments which the Faculty issues to first year students early in the second term. This Statement of Grades may be used by the students for a number of purposes including applications for summer jobs at the end of first year. The Faculty initially refused this request. However, after a few repeated requests by the Student, the Faculty reconsidered their position and agreed to provide the Student with a Statement of Grades omitting the disputed assignment grade. The Student's final grade in the Course was B.

On June 22, 2012, the Student asked the professor to re-assess his grade in the Course by re-assessing his grade on the first assignment which is the first required step under the Faculty's appeal policy. The professor confirmed the original grade and provided written reasons for his decision. The Student did not pursue a further appeal of his grade.

Previous Decisions

On June 15, 2012, the Student submitted a petition seeking a change in his grade in the Course from B to CR. The Student further requested a notation on his transcript

explaining that “the Faculty of Law failed in its obligations to provide appropriate procedures to resolve disputes in the course and that this failure is recognized as having had a negative effect on [the Student’s] performance” and a letter of apology from the Faculty. The Faculty submitted the petition to the Academic Standing Committee (“ASC”). On June 22, 2012, the ASC denied the petition stating that it was “was not satisfied that the actions complained about actually prejudiced [the Student’s] performance.

The Student appealed the ASC’s denial of his petition to the Appeal Committee of the Faculty of Law. The Appeals Committee dismissed the appeal. In the written decision, the Appeals Committee stated that “the Faculty’s Policies permits the invocation of the appeal process for final grades awarded upon course completion but not for component partial evaluations as they come along and prior to the final grade as approved by the Faculty. This policy reflects, in our view, the Faculty’s position on a number of important considerations of both principle and pragmatics. So, what happened here, in this Committee’s view, is that the prime objection of the student became just the absence of such a right to a “timely” appeal. But, as the student correctly pointed out, this is not a matter of a grade appeal-it is a matter of objecting to the Faculty’s policy as not providing a timely process.”

The Appeals Committee concluded that there was no unfairness or unreasonableness in the manner in which this policy was applied to the Student. It stated that “Taking grades out of play on the basis that there is a complaint or appeal that has not been processed is not part of the Faculty’s policy. There is no “interim remedy” to be granted on the basis that an appeal will or may be launched later. A grade is not subject because an appeal has been launched or may be coming. To demand as a remedy in this case such a change in policy is not possible given our mandate. Nor would we want to change that policy via the narrow scope of this single complaint and the narrow and non-participatory nature of this adjudicative process. To change Faculty policy on this point would be a “big deal”. The right process for these changes lies elsewhere and involves a debate about the many substantive and pragmatic issues any change would entail- none of which have been, or should discussed in this appeal.”

Decision

The facts of this appeal are not in dispute between the parties. What is disputed by the Student is whether the application of the Faculty’s policy to only allow an appeal from a final course grade and not directly from an individual assignment grade causes the Student prejudice which warrants granting of one or more of the remedies requested by the Student. In particular, the Student questions whether the provision to first-year students of a Statement of Grades early in the second term which is used extensively by prospective employers looking to hire students for summer positions is appropriate when combined with the application of this policy which does not allow an appeal of those grades until the end of the academic year.

The Terms of Reference for the Academic Appeals Committee sets out in section 2(a)(i) the jurisdiction of Your Committee as “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.” [emphasis added] The role of Your Committee is to review the application of Faculty policies and to ensure that they applied fairly, reasonably and consistently. Your Committee finds that in this case the Faculty of Law’s policy on appeals was applied fairly and reasonably. Your Committee also finds that the Faculty of Law’s policy of not allowing appeals until the final grade has been issued is not inconsistent with the policies of the University.

As set out in the decision of the Appeals Committee of the Faculty of Law, the review of Faculty policy is a complicated matter which requires broad input and analysis of the various issues and outcomes. It is outside the jurisdiction of this Committee to change Faculty policy. As set out in section 5 (iii) of the University Policy on Academic Appeals within Divisions, “The Office of the Provost is responsible for monitoring the implementation of divisional appeals processes that are in compliance with this Policy. The Office of the Provost is also responsible for facilitating a periodic review of divisional processes for consistency to the Policy, for facilitating effective communication of the Policy and divisional processes, and for conveying information to the divisions about suggested best practices.” If there is to be a review of the Faculty policy in question, the responsibility falls with the Office of the Provost.

Your Committee was also presented with detailed submissions on the history, purpose and format of the Statement of Grades which is issued to first year students in the Faculty of Law early in the second term. The Faculty of Law started issuing Statement of Grades a number of years ago after a debate and decision by the Faculty Council. Previously the results of first term tests were issued informally which the Faculty submitted resulted in cases of misrepresentation by students in years past. As a result, the Faculty began issuing the formal Statement of Grades which included the crest, seal and signature of the Faculty. The form of the Statement of Grades contains a number of notations and disclaimers including the following statements:

“Except for Legal Process, which is a final grade, this is a statement of instructor-reported grades for FIRST TERM TESTS. First term tests are practice tests, administered primarily for pedagogical purposes.”

“However, if it is to the student’s advantage, they will count towards the student’s final grade. Final grades for these courses will be issued and approved after the end of the academic year.”

While the Statement of Grades does not explicitly state that the final marks may be appealable, it does state in bold letters that “This is not an official transcript.” For privacy reasons, one hard copy of the Statement of Grades is issued and available to be picked up by each student. While the Statement of Grades is required for many summer job positions, it is the student’s sole decision as to whether and to whom to distribute the

Statement of Grades. The Faculty reported that many students do not collect their Statement of Grades.

Therefore, your Committee finds that so long as the Statement of Grades is issued with clarity of purpose and intent, which the current format does, then it is a policy decision of the Faculty of Law as to whether to issue the Statement of Grades. As acknowledged by the Student, issuing of the Statement of Grades is a policy decision of the Faculty which requires balancing a number of goals. Again, it is not the jurisdiction of this Committee to change Faculty policy but rather ensure that it is applied fairly and consistently.

On the issue of whether written instructions were required for the assignment which was the subject of the dispute in this case, Your Committee finds that while providing written instructions may be best practice, they are not required. In this case, there was no evidence to support the conclusion that there were deficiencies or confusion in the verbal instructions provided.

Your Committee finds that the Faculty applied its policies fairly and reasonably and therefore there is no justification for the requested remedy by the Student of replacing the mark for the Course on the Student's transcript from B to "Credit". Similarly, there is no justification or jurisdiction for Your Committee to require a letter of apology from the Faculty.

The appeal is dismissed.