

THE UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 334 OF THE ACADEMIC APPEALS COMMITTEE

May 7, 2009

To the Academic Board
University of Toronto.

Your Committee reports that it held a hearing on Wednesday, April 22, 2009, at which the following members were present:

Professor L. Sossin (Chair)
Mr. Grant Gonzales (Student)
Professor Ellen Hodnett
Mr. John Stewart
Professor Cindy Woodland

Secretary: Ms Nancy Smart

Appearances:

For the Student Appellant:

Ms. T.D. (the Student)
Mr. Michael Hamilton (Downtown Legal Services)

For the School of Graduate Studies:

Mr. Robert Centa

This is an appeal from a decision of the Graduate Academic Appeals Board (“GAAB”) dated March 14, 2008, dismissing an appeal of the Student from a decision of Professor Susan Pfeiffer, Dean of the School of Graduate Studies (“SGS”), dated July 27, 2006 (the “July 2006 Revocation Decision”). Dean Pfeiffer’s decision was that because the Student had withheld material information from her admission application, SGS was “revoking and canceling” the Student’s “offer of admission and/or registration” in the Master of Health Science Program (the “Program”).

Dean Pfeiffer also indicated that she was requesting that the Provost lay a charge against the Student under the *Code of Behaviour on Academic Matters* (the “Code”). The Provost did not lay such a charge, and the Vice Provost, Academic, subsequently confirmed in a letter dated September 24, 2008, that Dean Pfeiffer’s decision to revoke the Student’s “admission and/or registration” was not imposed as a sanction under the *Code*. Therefore, the Student could not appeal the decision under the *Code*.

GAAB, in its March 14, 2008 decision, concluded that it lacked jurisdiction to hear an appeal from the July 2006 Revocation Decision because it was an admissions decision.

GAAB also separately considered its jurisdiction to hear an appeal from the Student against a decision of the School of Graduate Studies, dated February 2, 2006, which terminated the Student from the Master of Health Science Program due to failures in three separate courses (the “February 2006 Termination Decision”). GAAB concluded that the appeal from this decision was moot due to the subsequent decision of SGS to revoke the Student’s admission to the Program.

While this decision relates to the question of the jurisdiction of your committee, it is important to provide a brief background of how the Student has come to be in this situation.

Background

The Student had applied for admission to the Program in January of 2005 and was admitted in May of 2005. She registered in the Program in the Fall of 2005. After completing the Fall semester, on February 2, 2006, the Student was notified that she had failed three of the five classes in which she had enrolled, and as a result, she was notified that her registration was being terminated because of poor academic performance. The Student was also notified of her right of appeal the February 2006 Termination Decision to GAAB, and on March 26, 2006, the Student filed her appeal.

Prior to a GAAB hearing on the appeal of the February 2006 Termination Decision, SGS became aware of information which had been omitted from the Student’s application to the Program. This information related to certain courses the Student had taken at Ryerson University and the grades received in those courses.

On July 17, 2006, the Student was notified in writing that she was to attend a meeting with Dean Pfeiffer to investigate a possible *Code* violation. The meeting took place on July 19, 2006, and in that meeting, the Student indicated that she did not intend to mislead the University and she did not admit any guilt in the allegations of academic dishonesty raised by Dean Pfeiffer. Following this meeting, on July 27, 2006, the Student was informed of the Dean’s decision to revoke her admission.

After argument before the Chair of GAAB (exercising his authority to determine whether an appeal is outside the jurisdiction of GAAB), GAAB concluded that,

After the Dean's decision, the University must treat the Student as never having been a student in the Program, or, treating the decision as a revocation or cancellation of *registration* in the Program, as having been removed from the Program by a penalty purportedly imposed under the Code. The Board must accept the Dean's decision as a valid decision, so long as it has not been reversed or amended by some agency, within or without the University, with the ability to do so... the Board is not such an agency. (Emphasis in original)

In short, GAAB accepted that there is no appeal from the July 2006 Revocation Decision, as admission decisions by the University are not within the jurisdiction of GAAB. Having reached the conclusion that GAAB lacked the jurisdiction to hear an appeal from the July 2006 Revocation Decision, GAAB found the prior, pending appeal on the February 2006 Termination Decision, while clearly within GAAB's jurisdiction, to be moot, as it could have no practical consequences for a student whose admission has been revoked.

The Student sought an appeal to your Committee both on the grounds that GAAB does have jurisdiction to hear the appeal from the July 2006 Revocation Decision, and that, irrespective of how the jurisdiction issue is decided, GAAB should consider the Student's appeal against the February 2006 Termination Decision on its merits.

The Chair of your Committee, after a pre-hearing consultation with the parties, concluded that your Committee would first hold a hearing to determine GAAB's jurisdiction to hear an appeal from the July 2006 Revocation Decision. Only if the Student were successful on this hearing would it be necessary to remit the merits of the July 2006 Revocation Decision back to be dealt with by GAAB. The Chair also concluded that your Committee could decide whether, irrespective of the outcome of the jurisdiction issue, GAAB should proceed to hear the merits of the appeal from the February 2006 Termination Decision.

Analysis

The Jurisdiction Issue

GAAB concluded that the decision of SGS "revoking and canceling" the Student's "offer of admission and/or registration" was an admissions decision. Your Committee does not believe GAAB erred in this finding. While the July 2006 Revocation Decision also purports to deal with the Student's registration status, and while a referral of a possible *Code* violation to the Provost was mentioned in the same letter, neither of these aspects of the decision alters the fact that the Student's admission was revoked by SGS as a result of Dean Pfeiffer's decision. The question, therefore, is whether GAAB (and, by extension, your Committee) has any role in the accountability of the University for admissions decisions.

The Terms of Reference of GAAB authorize it to:

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 Terms of Reference make no mention of admissions decisions. The SGS Calendar observes that graduate students may “dispute substantive or procedural academic matters, including grades, evaluation of comprehensive examinations and other program requirements ... Decisions related to admission to an academic program, including admission to the doctoral program for current master’s students, are not subject to appeal.” (Emphasis added.) Further, the policy of Governing Council regarding appeals within academic divisions, notes that an Academic Appeal is an appeal by a student of the University against a University decision as to his or her success in meeting an academic standard or academic requirement or as to the applicability of an academic regulation, but that no appeal lies from an admissions decision. In light of these policies, it is clear that the University has not conferred on GAAB or your Committee the jurisdiction to review a decision by the University relating to admissions.

The Student has raised the concern that by relying on the revocation of admission after the Student had been admitted, registered, and completed a full semester of classes, the University is seeking to terminate the Student in a fashion which deprives her of the procedural protections she would have been afforded had the University relied on its termination of the Student for her poor academic performance, or had the University pursued the allegations against the Student for violation of the *Code*. The University has submitted that this course of action is not improper, and has emphasized that admissions decisions are subject to a different framework of accountability from academic decisions.

Accountability of University for Admissions Decisions

The basis for the revocation of the Student’s admission was a provision of the Ontario Rehabilitation Sciences Programs Application Service (“ORPAS”). ORPAS is not a policy or document enacted by the University of Toronto. Rather, it is an Ontario wide service which Universities and applicants utilize in order to govern the application process. The ORPAS document describing the application process provides:

Admission Irregularities

The discovery that any information is false or misleading or that any material information has been concealed or withheld will invalidate your application and will result in its immediate rejection, or in the revocation and cancellation of an offer of admission and/or registration if you have been admitted.

The University has adopted the position that by submitting her application for admission through ORPAS, the Student agreed to be bound by the terms and conditions of ORPAS. ORPAS does not provide for any appeal route for decisions taken by Universities using its application process. ORPAS also does not provide for any procedural protections prior to a University determining that a student is in violation of the terms of ORPAS. In this case, the written notice provided to the Student in July of 2006, informing her of the allegations against her and requiring

her attendance at a meeting with the Dean, were procedural steps associated with laying a charge under the *Code*, not with a breach of the terms of ORPAS.

The Student submits that ORPAS is “vague” and “totally void of direction” as to how Universities should deal with potential concerns after a candidate has been admitted.

Once the University decides that the terms of ORPAS were breached by concealing or withholding material information in a student’s admission application, what recourse is available to the student subject to this decision? What if the student believes the information at issue in a decision to revoke admission was not in fact “material,” or was not “concealed” or “withheld,” within the meaning of ORPAS or where the student believes there is an explanation or justification which may mitigate the appropriate consequences? If GAAB and your committee lack jurisdiction over such a dispute, where can an aggrieved student turn?

At a minimum, as a public decision-making body, the actions of the University may be challenged through judicial review to the Superior Court. In *Mulligan v. Laurentian University* 2008 ONCA 523, the Court of Appeal for Ontario confirmed the jurisdiction of the Court to review admissions decisions by Universities, and confirmed that the Courts “should be reluctant to interfere with the core academic functions of Universities.” (at para. 20) Further, if a student believed that a revocation of admission (or simply the denial of admission in the first place) lacked impartiality or was decided in a procedurally unfair fashion, or was decided in bad faith, or for ulterior motives or improper purposes, the student could challenge the University’s decision by way of judicial review. A Court has jurisdiction to quash the University’s decision and remit the matter back to the University for a fresh decision, and also has the power to compel the University to take appropriate action. In other words, while no appeal route has been established from admissions decisions through internal mechanisms, the University in no way can shelter or insulate its decisions from legal accountability. As a practical matter, however, pursuing remedies through a judicial review may be costlier and more complex than appeals through internal mechanisms.

In her submissions, the Student raised a scenario in which the University was confronted by suspected dishonesty on the part of a graduate student who has been a successful student in a program for several years and is nearing graduation. In the scenario, the student’s alleged dishonesty included but was not limited to falsifying the transcripts that formed the basis of admission. Rather than investigate the dishonesty through laying a charge under the *Code*, could the University simply revoke that student’s admission, thus expelling the student from the program, erasing his or her progress to that point, and do so with no further proceeding or due process provided to the student?

The effect of the decision that GAAB and your Committee lack the jurisdiction to hear appeals from admissions decisions would appear to mean that there are no internal impediments to the University exercising discretion either to proceed under the *Code* or to revoke admissions in such a scenario. It is not open to GAAB to assume jurisdiction over an admissions decision, in other words, merely because the conduct underlying the revocation of admission *could have been* treated as an academic matter or as an academic offence.

Notwithstanding the decision to uphold GAAB's conclusion on the jurisdiction issue, your Committee appreciates the sense of unfairness perceived by the Student, who feels that she has been unable to have the merits of her challenge to the University's decision heard. While your Committee has no authority to direct that the University provide the Student with an opportunity to explain the basis for her challenge to the July 2006 Revocation Decision, your Committee notes that there is no bar to the University making available an opportunity for a reconsideration of that decision. Your Committee is mindful of the fact that the Student already has had one opportunity to provide information to Dean Pfeiffer during their meeting in July of 2006. An opportunity to provide additional information (in writing or orally) which the Student believes would be relevant to a reconsideration of the July 2006 Revocation Decision could be informal. A reconsideration process clearly could not lead to any remedies which would bind the University. The purpose of such a discretionary procedure, rather, would be to ensure the July 2006 Revocation Decision was appropriate in the circumstances, and to provide a safeguard against the possibility of error in that decision.

Your Committee also believes these circumstances distinguish this case from other admission decisions. Revocations of admission occur rarely, and revocations of admission after a student has already registered and completed courses in a Program are rarer still. While the University may consider developing a policy to address such settings, there may also be advantages in approaching such revocations of admission on a case by case basis.

Delay might be a relevant consideration in the exercise of this discretion. Given the fact that the revocation of admission occurred in July of 2006, over ten months after the Student was permitted to register in the Program, and over a year from the time of her admission, and the fact that the University possessed the same information about the student at the time of admission as it raised subsequently as grounds for the revocation of her admission, your Committee believes there could be grounds to justify such a procedure in these circumstances.

Finally, your Committee recommends that if the July 2006 Revocation Decision is not modified, the University should return any fees paid by the Student for the Fall semester of 2005, and expunge any record of the Student's academic performance in the Fall of 2005.

Conclusion

In summary, your Committee upholds GAAB's conclusion regarding its jurisdiction. GAAB is therefore precluded from hearing an appeal of the July 2006 Revocation Decision. Your Committee also upholds GAAB's conclusion that, in light of its lack of jurisdiction over the July 2006 Revocation Decision, the appeal over the February 2006 Termination Decision is moot. Your Committee notes, however, that if the University does allow for a reconsideration of its July 2006 Revocation Decision, this could also have the effect of reviving the appeal of the February 2006 Termination Decision.

The appeal is dismissed.