

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report #367 of the Academic Appeals Committee
October 7, 2013

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Wednesday, 11 September 2013, at which the following members were present:

Professor Hamish Stewart, chair
Professor Elizabeth Cowper
Mr. Andrew Girgis

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

Appearances

For the Student Appellant:

Mr. A [REDACTED] K [REDACTED] D [REDACTED], the Student

For the Faculty of Applied Science and Engineering:

Professor Thomas Coyle, Chair of the Committee on Examinations
Mr. Khuong Doan, Associate Registrar, Student Services

The Student appeals from a decision of the Academic Appeal Board (AAB) of the Faculty of Applied Science and Engineering, dismissing his appeal from a decision of the Committee on Examinations (CE) of that Faculty, which granted in part the Student's petition for special consideration.

Scheduling of the Appeal

The Student sought an expedited appeal on the ground that the August examination session of the Summer 2013 semester would be his last opportunity for an effective remedy. The Student filed his appeal on 17 June 2013; the Faculty responded on 9 August; and the Student replied to the Faculty's response on 16 August. All of these filings are within the time lines contemplated by your Committee's appeal process. Thus, in the event, it proved impossible for the office of Appeals, Discipline and Faculty Grievance to assemble a panel of your Committee in time to hear the appeal before the end of the Summer 2013 term. The appeal was heard at the earliest possible time, in September 2013, well in advance of your Committee's regular hearing week

(near the end of October). It is, in any event, the view of the Chair of your Committee that if your Committee had allowed the appeal, it would have been possible to craft a remedy appropriate to the Student's situation.

Motions

In his Reply to the Faculty's Response, the Student made two motions asking the Chair of your committee to request the Faculty to provide certain additional information concerning his term work in the Winter 2013, when the Student was, without the permission of the Faculty, auditing certain courses. In the best case imaginable for the Student, the additional information requested for CHE230 might strengthen the Student's case to some extent, while the additional information requested for CHE223 would only marginally affect the instructor's assessment. But even in this best case scenario, the additional information would not affect your Committee's decision. The Chair of your committee therefore dismisses these motions.

In their Response, the Faculty asked the Chair to redact from your Committee's decision the names of all of the Faculty's faculty and staff who were involved in the Student's case, on the ground that these individuals "acted on behalf of and as a representative of the Faculty, only, and not in his/her individual capacity." The fact that an individual was acting in an official or institutional capacity is not by itself a reason for redacting that person's name from the decision of a court or other tribunal. The reasonable reader of law reports and tribunal decisions understands that individuals are not acting in their personal capacity when they are, for instance, exercising the powers of a peace officer, corporate officer, or university administrator. The Chair of your committee might look more favourably on such a motion where there was some allegation concerning personal misconduct by a member of the faculty or staff, particularly if your Committee found that allegation to be unfounded. However, there is no hint of any such allegation here. The Chair of your Committee therefore dismisses this motion.

Proceedings in the Faculty

The Student was enrolled in the Faculty's BASc degree program in Chemical Engineering. Owing to his poor performance in the Fall 2012 term, the Student's academic status as of January 2013 was "Refused Further Registration". On 15 January, the Student petitioned the CE for special consideration on the ground that he might have been suffering from ADHD. This petition was dismissed for want of adequate documentation. On 25 February, the Student submitted a revised petition, with additional documentation concerning his ADHD diagnosis and the course of treatment he was pursuing. The Student sought reinstatement into the program, as of January 2013, or in the alternative a waiver of the "60% rule" that had resulted in his being refused further registration. On 26 March, the CE allowed the petition in part, effectively granting the student his alternative remedy. The entirety of its decision reads as follows:

Your academic status, 'Refused Further Registration', is lifted to 'Academic Repeat Probation – Withdraw for eight months.' You are permitted to continue in Fall 2013-4 without repeating the failed term. Note that you must maintain a 60% average until you successfully remove the probationary status or else you will be refused further registration (details can be found in the Academic Calendar).

PT, Fall 2013 Registration to take Elective only.

Thus, the CE did not give any reasons for refusing to reinstate the Student, or indeed for granting the alternative remedy. The Student states that he was advised by his academic counselor that the CE's reasons were that "ADHD requires 3-4 months to stabilize" and "it is now too late to be reinstated".

Meanwhile, without the consent of the Faculty, the Student was attending the classes that he would have been enrolled in, had he not been refused further registration, and submitted some work in some of these classes, which was marked by the instructors in these courses. It is not entirely clear from the record when the Faculty became aware of this situation, but it would have been on or before 27 March 2013, when the Student submitted a further petition to the CE (referred to in the materials filed as the "Second Consideration"). The supporting documentation indicated that the Student had been attending classes throughout the semester in the hope of being reinstated.

On 29 April, the Student appealed from the CE's decision to the AAB. He claimed that by 26 February, his condition had stabilized. He noted that he had been attending classes and he filed some examples of the work he had done for these classes. He drew the AAB's attention to his immigration and financial situation. The Student is a citizen of Mauritius and his study permit expires in August 2014; he stated that to get an extension, he would be required to demonstrate that he had funds to support himself through an additional year of study.

The Student also complained of a number of procedural irregularities in the CE's process, including delay, failure to provide reasons, and failure to encourage him to submit appropriate documentation of his condition.

He now sought the following remedies (Student's appeal to AAB, p. 2, emphasis removed):

1. To be granted credit for CHE223 and CHE230 in the form of an assessed grade/aegrotat standing/deferred examination.
2. To be given an opportunity to obtain credit for the remaining three courses ... through deferred examinations. As from then, another decision may be made to allow the results of the deferred exams to either count for 100% of the course mark or to serve as criteria for granting aegrotat standing.

The AAB obtained "term work reports" from the instructors in the courses the Student had attended. These reports are normally used where the Faculty assesses a mark for a student who, for one reason or another, has not completed all the work for a course. The instructors' assessment of "what the student's final course mark might have been" were as follows:

- CHE210: "<50%"
- CHE210: "<10%"
- CHE222: none indicated (the Student apparently completed no work in this course)

- CHE223: “Difficult to assess because student did not complete all assignments or the final exam.”
- CHE230: “71%.”

The AAB met on 27 May and sent its decision to the Student on 28 May 2013. The AAB found that the CE’s decision was reasonable. With respect to the Student’s procedural complaints, the AAB acknowledged that the CE’s failure to provide reasons was “unfortunate” but found that “the decision itself was fair and reasonable given the timeline and evidence that was available.” With respect to the original request for reinstatement, the AAB said that “given the timeline of the evidence submitted by you (on February 26, indicating that preliminary treatment for your newly-diagnosed condition was underway), re-instatement in the Winter 2013 session was not appropriate.” With respect to the specific remedies now sought by the Student, in lieu of reinstatement, the AAB said: “Your request was not found to fall within the Faculty’s guidelines for offering deferred exams, aegrotat standing, or assessed grades.”

The Appeal

The Student appeals from the AAB to your Committee.

Decision

The Student’s Procedural Complaints

Your Committee finds that the CE should have provided the Student with reasons for its decision. It is a basic and uncontroversial principle of procedural fairness that a tribunal that makes decisions affecting the rights and interests of the parties before it should provide the parties with reasons for its decision for the benefit of the parties, the public, and any tribunal that might review the decision. The reasons need not be lengthy or intricate, but should indicate the facts and the principles that led the tribunal to its conclusions. As your Committee stated some 12 years ago, in another case where the CE provided no reasons (Report #258 of the Academic Appeals Committee, December 14, 2001, p. 5):

... elementary fairness to a student seeking relief requires that a tribunal publish at least a summary of the reasons for its decision. Published written reasons for a decision not only make the process more transparent, and therefore more credible, but may guide the student and the division with respect to future matters. They will also be of assistance to superior tribunals to which an appeal is taken.

However, your Committee finds that the CE’s failure to provide reasons does not affect the outcome of this appeal. Your Committee is reviewing the decision of the AAB. The AAB did provide reasons which are adequate for the purpose of review. The ultimate issue for your Committee is whether that decision was reasonable.

Your Committee does not accept the Student’s position that the delay, if any, in the CE’s processing of his petition had any impact on his situation. The Student’s petition, with documentation, was submitted on 26 February, at which point the Winter 2013 term was half

over. Your Committee finds even if the CE had dealt with the Student's petition immediately, it is unlikely that its decision would have been any different.

As noted above, the Student's petition was originally filed on 15 January, and was re-filed with additional documentation on 29 February. The Student argued that the Faculty's processes infringed the following guideline for academic appeals (see Governing Council, Policy on Academic Appeals Within Divisions, 3.v):

Divisional processes should encourage a student's confidential disclosure of appropriate information at the earliest possible stage particularly with respect to diversity, accommodation and other personal issues that may be relevant to the disposition of an appeal.

This guideline requires divisions of the university to encourage students to provide "appropriate information", that is, documentation that will support their petitions or appeals. This documentation will often be "confidential", so that a division will not have access to it unless the student provides it. Divisions of the university should encourage students to support their appeals with suitable documentation, but they cannot direct students as to what information to provide. It therefore remains the responsibility of a student to make his or her case for a remedy in the appeal process. (Your Committee believes that this guideline also requires divisions of the University to provide a supportive environment for disclosure and to ensure that when students do disclose confidential information, the information is not disseminated any more broadly than necessary. But these points do not arise in this case.)

Your Committee finds that the Faculty did not violate this guideline. The CE's response to the Student's original petition clearly indicated that the documentation provided by the Student was insufficient. The Student was therefore encouraged to provide appropriate information, and he did so in his revised petition. The Faculty was not required to inquire of the Student whether there was further documentation, unknown to it, that might assist the Student in building his case.

The Reasonableness of the AAB's decision

The AAB was faced with the following situation. In the Fall 2012 term, The Student had performed so poorly in his program that he had been refused registration for the Winter 2013 term. The Student had, however, provided medical evidence of a previously undiagnosed condition (ADHD) that likely helped to explain his poor performance. Meanwhile, the Student had, without the permission of the Faculty, been attending classes and doing some term work. The AAB sought some additional information from the instructors of the courses the Student had been attending, and learned that they were on the whole not optimistic about his potential performance. The Student asserted that his ADHD was well-controlled and was confident that he could succeed. It is evident that the AAB did not agree with this assessment, characterizing the Student's medical evidence as showing his "preliminary treatment for your newly-diagnosed condition" and stating that it "expects you to continue to receive appropriate treatment for your condition and to work towards managing your difficult circumstances using all resources available to you, including the University's Accessibility Services." The AAB agreed with the

CE that it would be appropriate to lift the Student's status to "Academic Repeat Probation – Withdraw for eight months."

Your Committee agrees with the AAB that the Student's situation fell well outside the circumstances in which a deferred examination, aegrotat standing, or assessment of grades would be given. To grant one of these remedies in this situation would have been not just exceptional but highly unusual. The Student was not enrolled in the Winter 2013 term and the basis for assessing his performance in the courses he audited was very thin. It was therefore reasonable for the AAB to take the view, as it appears to have done, that the Student was unlikely to be successful if granted the remedies he requested. The AAB was not required to accept the Student's assertion that his treatment had been "successful" and that he was "just like a normal student". The medical evidence did not strongly support this assertion. Dr. Doron Almagor's letters, which were considered by the CE and were before the AAB, merely state that the Student had been diagnosed with ADHD and spoke in very general terms about his treatment. Dr. Kiran Clair's letter of 26 March 2013 states that the Student was stable and his prognosis was "good". It does not support the Student's assertion that his treatment had been completely successful. It appears that the AAB accepted Dr. Clair's opinion and decided that it justified giving the Student another chance, in the form of the opportunity to re-enter the program in September 2013. Your Committee finds that this was a very reasonable decision.

The appeal is therefore dismissed.

Professor Hamish Stewart
Chair, Academic Appeals Committee of Governing Council