

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #386 of the Academic Appeals Committee
May 25, 2016, June 16, 2016

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Wednesday, May 25, 2016 and Thursday, June 16, 2016 at which the following members were present:

Emily Orchard (Chair)
Professor Paul Kingston, Faculty Governor
Ms. Susan Froom, Student Governor

Secretaries:

Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances (May 25, 2016)
Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Mr. V.S. ("the Student") (via Skype)
Ms. Ejona Xega, Law Student, Downtown Legal Services
Ms. Rabiya Mansoor, Observer, Downtown Legal Services (June 16, 2016)

For the School of Graduate Studies:

Mr. Rob Centa, Counsel
Professor Jay Malcolm Graduate Coordinator, Faculty of Forestry (May 25, 2016)
Professor Mohini Sain, Dean, Faculty of Forestry, (May 25, 2016 – in person; June 16, 2016 - via Skype)
Professor Sanjay Nayak, Director-General, CIPET (June 16, 2016 – via teleconference)
Ms. Deborah Paes Graduate Administrator, Faculty of Forestry (May 25, 2016)
Ms. Emma Thacker, Associate Director, Graduate Affairs, School of Graduate Studies ("SGS") (May 25, 2016)
Professor Luc de Nil, Vice-Dean, Students, SGS (May 25, 2016)
Ms. Josie Lalonde, Associate Director, Student Services – Student Systems and Records, SGS (June 16, 2016)

I. Appeal

The Student appeals a decision of the Graduate Academic Appeals Board (the "GAAB") dated July 7, 2015. In that decision the GAAB reviewed a decision of the Graduate Department Academic Appeal

Committee (the “GDAAC”) dated December 16, 2014, in which the GDAAC recommended that the student’s registration in the Ph.D. program be terminated. The Student has asked Your Committee to grant his appeal and reinstate him in the SGS, Faculty of Forestry’s Ph.D. program.

II. Abandoned Pre-Hearing Motion

This Committee initially convened on May 25, 2016 to hear the appeal (the “Adjourned Hearing”). On that day, the Committee heard a motion by the Student to admit new documentary evidence. The Respondent objected to the admission of new evidence on the basis that:

1. the evidence had not been presented to the Division while the Student was registered in the program, was not considered by the GDAAC or the GAAB, and was being proffered for admissions for the first time during the Student’s final right of appeal; and
2. the February 3, 2014 doctor’s note appended to the Student’s Reply, which the Student submits is a better copy of the doctor’s note found at Tab I of the Student’s appeal materials, is not in fact the same document.

The Respondent argued that authenticity is a prerequisite to submission of any evidence and, that the document should be excluded, if not for the first reason above, then because it could not be authenticated.

The Student’s representative acknowledged the discrepancy between the copy of the Doctor’s note appended to the Student’s Reply and that included at Tab 1 of his appeal materials. She argued that the discrepancies should not determine, however, the Committee’s determination regarding whether the document was in fact authentic and noted that the Student could provide an explanation for the differences between the two versions of the note. Unfortunately, the Student was unable to provide the Committee with his explanation because of a poor Skype connection that made it very difficult to hear him. As such, a decision was made to adjourn the hearing to a date to be set in June at which the Committee would ensure a proper connection was in place.

The parties reconvened on the afternoon of June 16, 2016, at which point the connection with the Student was adequate enough to hear his evidence on this issue. However, the Student’s representative advised the parties that the Student had made the decision to abandon his motion to admit the doctor’s note dated February 3, 2014. Accordingly, it is unnecessary for this Committee to decide whether to permit the admission of this new evidence.

III. Facts

The Student commenced his studies in the Ph.D. in Forestry program with the SGS in the Fall of 2012. His Ph.D. supervisors were Professors Mohini Sain and Professor Sanjay Nayak. The four-year Forestry Ph.D. program has five (5) general requirements and students must:

1. complete at least three half courses (1.5 FCEs);
2. obtain credit in FOR1001H;
3. complete a qualifying appraisal examination;

4. prepare and defend a thesis that is an original and independent research work which adds significance to the existing body of knowledge; and
5. make a full-time commitment for a minimum of the first two years in the program.

During Fall 2012, the Student successfully completed three half courses [Environmental Pollution Prevention (CHE2504H), Design and Manufacturing of Biomaterials (FOR1288H), and Economics of Forest Ecosystems (FOR3003H)], and obtained credit in Research Methods in Forestry (FOR 1001H).

In February 2013, the Student went to the Central Institute of Plastics Engineering and Technology (CIPET) in Chennai, India to conduct research for his Ph.D. The criteria specified in Professor Nayak's research funding dictated that a significant portion of the research be conducted at this location. Although this was his first time working at CIPET as a doctoral student, the Committee heard that the Student was not new to the facility, having worked there as a research student for many years before commencing his studies at the University.

The Student's work at CIPET was supervised remotely by Professor Sain and on-site by Professor Nayak, Director-General of CIPET. The Student and the Division are in agreement that Professor Nayak communicated with the Student every week when the former was onsite at CIPET, and every two weeks when he was not. Indeed, Professor Nayak and the Student often worked in the same research facility (though according to Professor Nayak, the two only met when *he* requested a meeting with the Student). The Student also engaged regularly with Professor Sain, typically via email and/or Skype on a bi-weekly basis. In addition, Professor Sain travelled to India every 2-3 months in order to meet with the Student. The majority of Professor Sain's discussions with the Student focussed on his coursework and research, and how to develop a strong thesis proposal, including identifying a novel problem set. Professor Sain also engaged Professor Nayak in these discussions given that it was the latter who was onsite and thus in the best position to oversee the Student's work.

According to the Student, Professor Sain provided him with guidance and instructions regarding the type of research he was to conduct and how to do so. Professor Sain elaborated on the nature of these communications, noting that when he and the Student met in person, he would provide him with very specific advice on how to improve his research and how to draft his report in such a way as to help the Supervisory Committee understand what progress he was making. Professor Sain also told the Committee that he encourages all of his students to keep a record of their research which records become the basis of his advice to them and the framework for their meetings.

Professor Nayak also described his relationship with the Student as one in which he gave the Student the necessary advice and guidance requested by the Student and contemplated by the Guidelines for Graduate Supervision. By the Student's own admission, he understood that he was expected to conduct his research independently, engaging with his supervisors as needed to advance his work, and was required to submit bi-weekly reports on his research via email. When asked at the hearing, the Student acknowledged that he received weekly feedback from Professor Sain on his research. Despite his regular contact with the Student and regular provision of feedback on the Student's work, Professor Sain told the Committee that the Student's reporting was irregular

and, that from time-to-time, he would have to email the Student to remind him to submit his reports. The Student never provided Professors Sain or Nayak with an explanation for his late submissions.

Although in this appeal the Student alleges that his research progress was inhibited by, among other things, the lack of sufficient feedback from his supervisors, it is important to note that the first time that he objected to the quality of that supervision was when he commenced the appeal to the GDAAC. This failure is, in this Committee's determination, telling and part of a much larger failure on the Student's part to communicate with his supervisors about his illness, his struggles in the program, and his need for more support. As described in further detail below, it became clear to this Committee that although invested in his success, Professors Sain and Nayak were, at an early point, concerned with the Student's research progress. Their communications with the Student following their regular meetings often attest to this fact. Notwithstanding their early concerns about the Student's progress, and as described further below, they were stalwart in their attempts to support and guide him.

First Supervisory Committee Meeting and First Attempt at Qualifying Exam

On July 18, 2013, the Student had his first meeting with his Supervisory Committee, which consisted of Professors Sain, Nayak, Tjong, and Farnood. Following this meeting, the Committee permitted the Student to proceed with his studies.

On July 19, 2013, the Student made a first attempt at his comprehensive qualifying appraisal exam. It was found to be unsatisfactory and the decision was deferred. He retook the exam on October 24, 2013 and achieved his Ph.D. candidacy.

The Student Becomes Ill

In September 2013, the Student developed dengue fever and malaria and experienced a fever, vomiting and dizziness as a result thereof. On September 10, 2013, the Student was admitted to the Intensive Care Unit of a local hospital for treatment. Following his discharge, the Student claims that he continued to feel unwell. The Student obtained a note from Dr. Seetharaman, dated September 26, 2013, that provides that he would be able to resume his studies as of September 27, 2013. Both Professors Sain and Nayak were aware of the Student's illness. At the hearing, the Student acknowledged that when he did disclose his illness to his supervisors in September 2013, they encouraged him to get well and, once he felt better, to focus on his research.

The Student's viral fever recurred in October 2013, at which point he returned to Dr. Seetharaman and retroactively obtained a note dated October 21, 2013 which confirms his need for a one-week medical leave from October 15, 2013 to October 21, 2013. It bears noting that this note is the only documentation that the Student provided to his supervisors to support his claim that he continued to experience symptoms in October, and was the last communication of any sort that he had with them in which he alerted them to his ongoing illness.

According to the Student, he continued to feel unwell after October 21, 2013. He vomited frequently, and felt faint, dizzy, nauseated and was easily exhausted. However, by the Student's

own admission he neither told his supervisors or anyone else at the University that he continued to be unwell nor submitted any documentation to support this claim. This, as will be further described below, is in this Committee's opinion fatal to the Student's suggestion that his illness ought to have been accommodated by the Division and, ultimately, to the first ground of his appeal.

The Student's Illness in February 2014

According to the Student, on February 3, 2014, he again sought medical attention for his ongoing symptoms. He obtained a medical note of the same date from a Dr. Ghanasekaran, whose note, the Student submits, confirms the prognosis and provides that his recovery would take a couple of months. It is important to note that this medical note was neither submitted to the Student's supervisors, nor put before the GDAAC or the GAAB for consideration on those appeals. Further, as noted above, at the start of the hearing before this Committee, the Student abandoned his motion to admit the February 3, 2014 note, which would – had it been admitted – have been the only evidence to support his submission that his research, and therefore progress in his Ph.D., was impeded by his ongoing illness.

The Student's appeal submissions also provide that he continued to feel unwell after the February 16th meeting of his Supervisory Committee, and that he was hospitalized five times between February and September 2014. There is no evidence to support the fact that these hospital visits took place and the Student told this Committee that he never told his supervisors or anyone at the Faculty that he continued to be ill or that he was hospitalized as a result.

This Committee has not made a determination as to whether the Student continued to be sick between October 2013 and September 2014 and does not consider such a determination necessary for the purpose of rendering its decision on this appeal. The Student repeatedly confirmed that he did not alert his supervisors or anyone at the Faculty to his illness after October 21, 2013. According to him, he chose to withhold this information because he assumed that his supervisors would believe that he was using his illness as an excuse. We are not in a position to cast judgment on that decision, but do note that his failure to disclose his illness absolved the Faculty of the duty to accommodate it. Put another way, in the face of this unequivocal admission by the Student that the Faculty didn't know he was sick, there is no need for this Committee to consider whether the Faculty would have had a duty to accommodate the Student in the circumstances. There is no evidence that the Faculty knew, or ought to have known, that the Student was sick and the Faculty could not have accommodated an illness of which it was unaware.

The Student's Failure to meet Supervisory Committee's Expectations

The Student's Supervisory Committee met three times in 2014: on February 16th, August 6th, and August 7th. The Report of the Supervisory Committee dated February 16th, 2013 notes that the Student had "lost two months due to health" in the Fall of 2013, and concludes that he had "no specific project objectives yet" and "originality [was] missing" from his proposal. Despite its concerns in this regard, they elected to give him another chance to "demonstrate [his] ability to work at a Ph.D. level." Email correspondence from late April 2014 also indicates that Professors

Sain and Nayak were not satisfied with the Student's understanding of the concepts discussed in the February meeting.

The Supervisory Committee met with the Student again on August 6, 2014. As before, they found that his progress towards his thesis topic was insufficient. During this meeting, the Supervisory Committee noted that the Student had failed to engage in a sufficient review of the relevant papers in the field and highlighted his inability to provide satisfactory answers to questions relating to his field of study.

The Student's Alleged Illness from Chemicals

Paragraph 15 of the Student's appeal provides that in February 2014, the Student began to find that the chemicals with which he was required to work during his research triggered vomiting and nausea whenever he carried out his experiments. The appeal further provides that toward the end of February 2014, the Student informed Professor Sain that he was having adverse reactions to the chemicals and asked to change his thesis topic as a result.

Your Committee finds the Student's evidence on this topic to be inconsistent and untrustworthy. At the hearing of this appeal, Professor Nayak told this Committee that the Student's research was conducted entirely in a mechanical lab (the machinery in which was operated by a technician), and that the Student was never required to handle chemicals or work in a chemical lab. This Committee also heard from the Student that, contrary to his written submissions, he did not tell Professors Sain or Nayak that he was being made ill by the chemicals with which he may or may not have actually had to work.

This Committee needn't make a determination as to whether the Student was actually required to work with chemicals in order to conduct his research because for the purposes of this appeal, it is only necessary that the decision of the GAAB be found reasonable. There was no evidence before the GAAB that the Student ever mentioned his difficulties working with chemicals to Professor Sain, Professor Nayak, or any other member of his Supervisory Committee. On that basis, and others, the GAAB determined that it was unable to accept the Student's assertion that he continue to be ill during 2014. Before this Committee, the Student admitted to never telling his supervisors that he was being made ill by the chemicals with which he claims to have had to work. For that reason alone, this Committee must accept the decision of the GAAB as reasonable on this front.

The Supervisory Committee provides the Student with Options

Regulation 8.5.2 of the SGS Calendar provides that if a student's supervisory committee reports that the student's progress is unsatisfactory in two consecutive meetings, the Supervisory Committee has the right to recommend that the student's registration in the Ph.D. program be terminated. Instead of doing so in this case, after finding the Student's progress to be unsatisfactory in two committee meetings, it provided the Student with two options: (1) write a "science based report of the data of swelling to evaluate his ability to explain, interpret and conclude science based knowledge from theory and experimental results based on his thesis work" within ten (10) days of the meeting; or (2) transfer into the Masters program. The Student chose the first option and submitted his report on August 22, 2014. In early September, the Supervisory Committee informed

the Student that his report was unsatisfactory and articulated reasons for their finding. As noted above, he did not tell any members of the Supervisory Committee that he was sick and he did not ask for additional time to submit the report or seek an accommodation for his alleged illness, despite having had to twice alert his supervisors of his illness previously and knowing exactly how to do so.

IV. Decision

The role of this Committee is to evaluate the decisions of the bodies it reviews. In this case, we are tasked with deciding whether the GAAB decision upholding the Student's termination from his Ph.D. program is reasonable.

The Student's appeal focussed on two submissions before GAAB, which were described as follows:

“At the GAAB, the Student made essentially two submissions. First, he ... asserted that the chemicals used in his experiments made him ill. Second, he submitted that the supervision was discouraging and unhelpful.

Before this Committee, the Student submitted that his appeal ought to be granted and his registration in his Ph.D. program reinstated on this basis that: (1) that his performance had been adversely affected by his illness (either medical or as a result of allergies), resulting in a delay in his research progress; (2) the supervision he received from Professors Sain and Nayak was discouraging and unhelpful; and/or (3) his registration in the program was terminated prematurely. Each of these points will be discussed in turn below.

The Student's Illness

The GAAB, like this Committee and the GDAAC before it, closely examined the materials submitted by the Student and the Respondent.

The GAAB decision provides as follows:

“At the GAAB, the Student made essentially two submissions. First, he once again asserted that the chemicals used in his experiments made him ill. Second, he submitted that the supervision was discouraging and unhelpful. As he put it in his written submission to the GAAB, “all the mails [from Professor Sain] show the poor performance, and if [I] send the report he always discouraged me, and that time my health was not good I agree Professors gave me [a] lot of changes, but the technical input is not given to me...”

Like the GDAAC, the GAAB accepts that the Student was ill in September and October, 2012, but is unable to accept the Student's assertion that he continued to be ill during 2014. There is no evidence that the Student ever mentioned his difficulties with chemicals to Professor Sain, Professor Nayak, or the other members of his supervisory committee or that he sought any accommodation for them. At no point

in the proceedings before the GDAAC or the GAAB did the Student provide any documentary evidence to support his assertion.”

The GAAB accepted that the Student was ill in September and October 2013, but concluded that it could not accept the Student’s assertion that he continued to be ill during 2014. The GAAB noted that there was no evidence to support the assertion that anyone at the Division knew of the Student’s ongoing illness. Likewise, there was no additional documentary evidence before this Committee to support such an assertion. However, although the Student relied on the same evidentiary record as was before the GAAB, this Committee had the benefit of hearing definitively from the Student that he never informed anyone at the Division of his ongoing illness or alleged allergies to the chemicals with which he claims he had to work (an admission which undermines his written submissions at paragraphs 32 and 33 of the Student’s appeal, and paragraphs 14 to 16 of the Student’s Affidavit dated February 10, 2016).

It is this Committee’s opinion that the Respondent could not be expected to accommodate an illness of which it was unaware. By his own admission, the Student failed to advise anyone at the Division that his illness persisted after October 2013, whether such illness was borne of the dengue and malaria which he contracted or as a result of the allergies he claims to have had. The Student cannot now rely upon the Faculty’s failure to accommodate the very facts that he kept private as a ground on which to appeal his termination from the program. In the Committee’s opinion, the Student’s failure to disclose his allegedly ongoing illness ultimately deprives him of the right to then say that the Faculty ought to have recognized that his performance was impeded by an illness that it knew nothing about.

For that reason, this Committee accepts the GAAB’s decision with respect to whether the Student’s illness ought to have been accommodated and denies the Student’s appeal on this ground.

The Supervision provided was Inadequate

The GAAB also refused to accept the Student’s claim that the supervision provided by Professors Sain and Nayak was inadequate. In its decision, the GAAB held as follows:

“It is true that Professor Sain’s emails to the Student frankly describe some shortcomings in his work, but that may well have been appropriate in light of the Student’s progress. As for the quality of the supervision, the evidence before the GAAB was that the Student met regularly in Chennai with Professor Nayak and communicated with Professor Sain by email. Perhaps most important, after both attempts at the comprehensive examination and after all the supervisory committee meetings, the Student was given very specific directions as to how to move forward with his research. The Faculty’s conclusion that he was not making adequate progress was taken in accordance with SGS policy and was not unreasonable.”

Student should have been Afforded more time to Catch Up

As noted above, the Student did not alert the Supervisory Committee to his ongoing illness and its alleged role in his failure to make adequate progress in his research and the development of a thesis topic. The Student's representative argued that regardless of whether the GAAB accepted that the Student's illness persisted after October 2013, the Supervisory Committee ought to have accounted for impact of the loss of two months of work in the Fall of 2013.

In considering the Student's progress in his program, the GAAB found that "the evaluation process documented in committee meetings was fair and consistent with University policies on evaluation of Ph.D. student progress." The GAAB further held that the Faculty's conclusion in this regard "was taken in accordance with SGS policy and was not unreasonable." The Supervisory Committee's decision that the Student was not making adequate progress toward his Ph.D. and its resulting recommendation that his registration in the program be terminated, is one that this Committee is unwilling to interfere with. It has long been established that the question of the correctness of the Faculty's overall evaluation of the Student's performance, and the evaluations made regularly throughout the program are issues into which your Committee will not enter¹. The Student did not adduce any new evidence before this Committee which might warrant this Committee overturning the decision of the GAAB, particularly on this issue. All of the evidence that the Student raised at the hearing had either been addressed in the GAAB's decision, or was irrelevant to the question of the reasonableness of the GAAB decision. Indeed, to the extent that any light was shed on the exiting evidence, it was harmful to the Student's case.

Other grounds of Appeal

The Student raised three other considerations in support of granting his appeal, namely:

- That his academic performance indicates his knowledge of the relevant concepts and his capacity for success in the program;
- The financial hardship he will face if he is not reinstated in the program and, therefore, required to repay his program fees; and
- The adverse effect on his career prospects.

The Committee sympathizes with the incredible disappointment the Student must feel in having his registration in the program terminated and understands the resulting impact such termination may have on him. However, while members of the University community may feel compassion towards one adversely affected by its decisions, the University does not act upon, nor modify its decisions on this ground – and nor can this Committee.²

Given the lack of new evidence and in the face of the Student's admission that he never disclosed his ongoing illness or alleged allergies to his supervisors, the members of his Supervisory Committee, or to anyone at the Faculty of Forestry, this Committee is unable to find that the GAAB erred in its decision or that a different result should occur.

¹ AAC Report #323, at page 3.

² *Ibid* at page 5.

We therefore agree with the GAAB that the Respondent and SGS acted fairly and reasonably in deciding that the Student's registration in the Ph.D. program in the Faculty of Forestry should be terminated.

The appeal is unanimously dismissed.