

**UNIVERSITY OF TORONTO  
GOVERNING COUNCIL**

Report # 395 of the Academic Appeals Committee  
**May 23, 2018**

To the Academic Board  
University of Toronto.

Your Committee reports that it held a hearing on Thursday, April 12, 2018, at which the following members were present:

Ms. Vanessa Laufer (Chair)  
Professor Avrum Gotlieb, Faculty Governor  
Ms. Mama Adobea Nii Owoo, Student Governor

Hearing Secretaries:

Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances  
Ms. Tracey Gameiro, Associate Director Appeals, Discipline and Faculty Grievances

**Appearances:**

**For the Student Appellant:**

Mr. F.Z. (the “Student”)

**For the Faculty of Arts and Science:**

Mr. Robert A. Centa, Counsel, Paliare Roland Rosenbert Rothstein LLP  
Ms. Emily Home, Counsel, Paliare Roland Rosenbert Rothstein LLP  
Professor Melanie Woodin, Associate Dean, Undergraduate Issues and Academic Planning,  
Faculty of Arts and Science

**The Appeal**

The student appeals a decision of the Academic Appeals Board of the Faculty of Arts and Science (the “AAB”) of June 12, 2017 (the “Decision”) that denied the student aegrotat standing, late withdrawal without academic penalty, and the opportunity to rewrite the deferred exam of September 23, 2011, regarding course PHY331H1S (the “Course”). The student is seeking the above-noted remedies on medical, procedural and compassionate grounds.

## The Facts

In winter 2011, the student, a member of Woodsworth College, was enrolled in the Course at the Faculty of Arts and Science. Due to a transit delay, all deferred exams being written on September 23, 2011 commenced at 9:10 instead of 9:00 am. The Student arrived just after that time and began writing the exam.

At 11:43 a.m., two-and-a-half hours into a three-hour exam, the Student got up and approached the Chief Presiding Officer (CPO), stating that he felt sick to his stomach. The CPO indicated that the Student could go to the washroom and then return to finish the exam. The Student indicated that he could not come back. The CPO asked whether the student wished to abandon the exam. His reply was that he was unsure. The CPO explained that if the Student were not abandoning the exam, it would be graded. The Student reiterated that he wasn't sure and said he would follow up with the CPO later.

After the exam, the Student visited a walk-in-clinic. However, it was closed.

On September 23, 2011, the Registrar of Woodsworth College wrote to the Student about his exam and requested they meet on September 27<sup>th</sup>. The Student accepted the appointment by email.

Later on September 23, 2011<sup>1</sup>, the Registrar communicated that Students cannot retroactively abandon an exam. Since the Student had not requested that the exam not be marked, it was delivered to the department for marking.

On September 24, the Student returned to the same walk-in-clinic where Dr. Kuzumi completed a University of Toronto Student Medical Certificate based on information supplied by the Student. It indicated that on September 23, 2011, the Student suffered from acute abdominal pains and diarrhea that "prevented the student from completing the exam on Sept 23, 2011."

The Student received a grade of 48% on the final exam.

Five homework assignments had been assigned in the Course of which the best three were to count for 10% of the final grade. The midterm test in the Course was supposed to count for 25% of the total grade. However, for reasons that are not relevant here, the Student missed the midterm.

The Student requested and received a reread of the final exam and recheck of the Course mark. Review of the final exam determined that all marks were assigned correctly and that grade did not change. However, as a result of an error in weighing the Student's course work, the Student's instructor re-weighted the Student's completed coursework from 10% to 35% of the Course.

The Student received a final mark of 61% in the Course.

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<sup>1</sup> Respondent's Submissions at para 14 indicate September 23, 2011 while the General Exam Anomaly Report Form, Book of Documents, Tab 5 indicates September 26, 2011. The date discrepancy was noted but considered of no relevance by the Panel.

The Student graduated from the University of Toronto with an Honours Bachelor of Science in November 2014.

## **Decision**

### Preliminary Issues

#### *Timeliness*

At the outset of the April 12, 2018 hearing, the Committee asked for clarification from the parties regarding their mutual agreement about waiving issues of timeliness. Both sides confirmed that they had waived issues of timeliness with regards to the AAB 2014 Statement of Appeal. The Committee accepts this agreement by the parties.

With regards to the timeline between the submission of the petition in September 2011 and the petition being forwarded by the Registrar, the Committee put our minds to this and carefully considered the issues. We noted that page 619 of the Faculty of Arts and Science's Rules and Regulations outlines the elements that are required in petitions as follows: "Petitions must 1) state the student's request; 2) the reasons for the request in a clear and concise manner; and 3) be accompanied by relevant supporting documentation." It is the Student's responsibility to ensure their appeal is complete. Specifically, the Petition to the Committee on Standing form that the Student signed states: "You are responsible for submitting a statement and full and official supporting documentation with your petition. If the College permits you to submit an incomplete petition you will be given a maximum of 3 weeks to provide the documentation to make your file complete. After that time, the petition will be considered late and will not be considered unless you convince the Faculty that there were extraordinary reasons for the lateness." The Student also checked the box on the form indicating "Supporting documentation has been provided. I am aware that the petition **will not be forwarded** to the Faculty for consideration without complete documentation to verify the reasons for the request." (Emphasis added)

The Committee is of the view that it is reasonable for the AAB to determine that the Student had not met all of these requirements when he filed the petition on September 27, 2011. The petition was accompanied only by the signed medical certificate and the student's email to the Registrar dated September 26, 2011. This Committee is of the view that it was reasonable for the AAB to determine the petition submitted was incomplete and that the Student had "ample opportunity to inquire about the status" with the Registrar or Petitions Office. We also find it reasonable for the AAB not to consider the September 26, 2011 email from the Student to the Registrar to be an accompanying statement, as it could reasonably be viewed as a response to the Registrar's invitation to the Student to meet to discuss his exam.

This Committee notes, however, that going forward, it would be helpful for the College or Division, as the case may be, to establish a policy that indicates to the student when his or her

petition has been received, whether or not it is found to be complete and to notify him or her of what, if anything, is outstanding. A deadline for completion should be explicit.

### Remedies Sought

#### ***Aegrotat Standing***

According to the University Assessment and Grading Practices Policy, January 26, 2012, “Aegrotat standing granted on the basis of term work and medical or similar evidence where the student was not able to write the final examination in the course. AEG is assigned by a division upon approval of a student’s petition. It carries credit for the course but is not considered for averaging purposes.” According to page 617 of the Faculty of Arts and Sciences Rules & Regulations 2011-12 Academic Calendar, Aegrotat standing “... may be authorized only by petition....” Page 619 of the policy further indicates with regards to Medical Documentation in support of Petitions that “... The claim of illness ... is not sufficient grounds in itself to guarantee approval of the request.” Page 620 of the policy with regards to Petitions Regarding Examinations also states that “Students must not only take responsibility for making appropriate judgements about their fitness to attend examinations, but also must accept the outcome of their choices.”

On September 23, 2011, the student completed two-and-a-half hours of a three-hour exam. The Medical Certificate of Dr. Kuzumi contains information that was supplied to the doctor by the Student indicating abdominal pain and diarrhea. Your Committee finds it reasonable that the AAB came to the conclusion that the impact of medical circumstances were not severe enough to grant aegrotat standing. Furthermore, as per the policies outlined above, illness is not sufficient grounds in itself to guarantee approval.

The Student completed two-and-a-half hours of a three-hour exam and passed the Course. Your Committee finds that the fact that the CPO asked about abandoning the exam does not mean the Student could have actually abandoned the exam at that time, but rather, it was information that was to be relayed to others who would make that determination. Based on this, and the overall record, your Committee finds it was reasonable for the AAB to have concluded that the Student had completed, not abandoned, the exam.

Before the deferred exam, the Student had only completed 35% of the Course based on homework assignments as he had missed the mid-term exam. Moreover, the Student’s instructor had re-weighted the student’s completed coursework from 10% to 35%. On the basis of this term work, your Committee finds it reasonable for the AAB to conclude that the student had not completed sufficient coursework to warrant aegrotat standing.

#### ***Late Withdrawal Without Academic Penalty***

Late withdrawal without academic penalty after the end of classes (WDR) is a mechanism to assist students where circumstances beyond the student’s control arose after the last date for course cancellation, and as per the Faculty’s Petition Guide, is not appropriate where a student has

completed everything in the course. As stated earlier, it was reasonable for the AAB to determine that the Student did not abandon the exam, and therefore finished the course, especially since he requested (and received) a regrade. Further evidence that the Student finished the course was that when the Student encountered difficulties completing coursework, he was accommodated by his instructor who re-weighted the Student's completed coursework from 10% to 35% of the Course. Furthermore, when the Student was unable to write the final exam when first scheduled, he requested and received a deferral. Accordingly, your Committee does not find WDR an appropriate remedy under these circumstances, and we find the AAB determination reasonable.

The Committee has had the opportunity to consider the facts of the Student's case alongside the facts of what the Student suggested was a similar case. The Committee turned our minds to this and examined all the issues raised. We are of the opinion that there are significant differences between the Student's case and that which he cited. Thus, it is not persuasive, instructive or relevant here. We agree with the submissions of the respondent as stated at paragraphs 60, 61, 62.

### ***Re-write of Deferred Exam***

The Committee also turned its mind to the Student's request for a rewrite of the deferred exam. We note, as per page 619 the Faculty of Arts & Science policy regarding Medical Documentation in support of Petitions, "... The claim of illness ... is not sufficient grounds in itself to guarantee approval of the request." Moreover, as per page 620 of the policy with regards to Petitions Regarding Examinations, "Students must not only take responsibility for making appropriate judgements about their fitness to attend examinations, but also must accept the outcome of their choices."

Furthermore, as noted above, the Committee is of the view that the Student did not abandon the exam. The Student completed two-and-a-half hours of a three-hour exam and passed the Course. Your Committee believes it was reasonable for the AAB to determine that writing for two-and-a-half of three hours is close to the end of the exam. We were not persuaded by the Student's oral submission that ten minutes before the end of the exam is the definition of close to the end. Rather, we find that there are other reasonable explanations for the rule requiring candidates to remain seated at their desks during the final ten minutes of each examination (Rule 10, page 615 Faculty of Arts and Sciences Rules & Regulations 2011-12 Academic Calendar), such as reducing potentially distracting movement or noise that could negatively impact candidates during the final ten minutes, and allowing for presiding officers to collect and tally the exams while remaining students stay seated.

Rule 9 on the same page of the Faculty of Arts and Sciences Rules & Regulations states that "In general, candidates will not be permitted to enter an examination room later than fifteen minutes after the commencement of the examination, nor to leave except under supervision until at least half an hour after the examination has commenced." Such a rule makes it clear that leaving after a half hour of commencing an exam is acceptable. Accordingly, it is reasonable for the AAB to

determine that leaving after two-and-a-half hours of a three-hour exam is not “close to the end” under the policy.

Even if this were not the case, your Committee believes too much time has passed so that it would place an undue burden on the Student to review all contents of the course and prepare for a supplemental examination, while an instructor would also be required to recreate an appropriate exam after considerable time passage, especially since grades were assigned to the class over six years ago. Even if we are incorrect about the reasonableness of the AAB decision with respect to the issues of illness or abandoning the exam, given that it has been some time since the Student both took the Course and graduated, the Committee is of the view that an exam rewrite is neither fair nor reasonable under these circumstances.

### Allegations of Bias

At the hearing, the Student submitted that the Registrar of Woodsworth College is biased. In paragraph 8 of his written reply dated November 2017, he also indicated his concern that she was on the Committee on Standing in 2012-13 “... and any inquiry for this course in 2012 may jeopardize ... other petitions in failed courses.” However, no evidence was presented supporting this argument, and there is nothing in the record to indicate to us that there is any merit in this argument.

During the April 12, 2018 hearing, counsel for the respondent, Mr. Centa, mentioned that the Student had applied for judicial review of an AAC case included in the Respondent’s materials. The Respondent was advising this Committee of the status of that case, in the eventuality that the AAC case was overturned on judicial review. In response, the Student submitted that the disclosure of this information could bias the Committee and is irrelevant. Your Committee does not believe that this would bias us, but we agree with the Student that it was irrelevant for our purposes, and therefore bore no influence on our deliberations or conclusions.

### Adequacy of Reasons

The Student also argued that the reasons of the Petitions Committee were inadequate. With regards to this issue, the decision that is the subject of this appeal is that of the Academic Appeals Board of the Faculty of Arts and Science (the “AAB”) of June 12, 2017, for which detailed reasons were provided. We find no basis for this argument.

Even if this Committee is wrong about the reasonableness of the AAB in terms of the merits of the appeal and the various remedies requested, the Student still fails on the issue of timeliness, as he was responsible for ensuring the appeal was filed correctly and in a timely manner. It is clear that it is the Student’s responsibility to do so for his appeal. The Student submits that by signing at the top of the sheet, the Registrar accepted it as complete. However, there is no evidence supporting this proposition, and we are not in a position to make any conclusions about what the Registrar’s signature means – does it confirm what the Student is saying; does it simply acknowledge she saw

the medical form; does it mean that is what the Student handed in to her? The answer is that we simply do not know.

On April 27, 2018, just over two weeks after the April 12, 2018 hearing had been completed, the Chair was forwarded an email with attachments from the Student by way of the Office of Appeals, Discipline and Faculty Grievances (“ADFG”). The Student and then ADFG, copied counsel for the Respondent on these materials. The Chair reviewed the Student's information very carefully, which mentioned two issues – the fact that the Student arrived ten minutes late for the hearing, and the fact there was a fire alarm in another building during part of the hearing. The Chair found this information irrelevant. The Committee simply waited after the scheduled start time to give the ADFG Office time to try to contact the Student, as we did not want to start without him, especially if he were on his way. In terms of the fire alarm, it did not prevent us from hearing everything the Student said at the hearing. Neither of these would have changed the outcome of this appeal.

This Committee reviewed all materials and submissions very carefully, and turned our minds to all the issues raised.

For the reasons outlined above, your Committee affirms the decision of the Academic Appeals Board of the Faculty of Arts and Science of June 12, 2017, finding it to be a fair and reasonable application of its policies.

The appeal is dismissed.