

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report #307 of the Academic Appeals Committee
January 23, 2006

Your Committee reports that it held a hearing on Thursday January 19, 2006, at which the following were present:

Assistant Dean Bonnie Goldberg, Chair
Dr. Pamela Catton
Professor Yuki Johnson
Dr. Joel Kirsh
Ms Coralie D'Souza

Dr. Anthony Gray, Judicial Affairs Officer

In Attendance:

the Appellant
Mr Ronald Bohm, counsel for the appellant

Mr Rob Centa, counsel for the Respondent, the Faculty of Applied Science and Engineering
Ms Barbara McCann, Registrar, Faculty of Applied Science and Engineering
Professor Kim Pressnail, Applied Science and Engineering
Ms Ella Lund-Thomsen, Counsellor, Faculty of Applied Science and Engineering

The Appeal

The student is appealing from a September 16, 2005 decision of the Ombuds Committee of the Faculty of Applied Science and Engineering ("Faculty") affirming the July 28, 2005 decision of the Examinations Committee. This decision granted the student retroactive withdrawal from the 2005 Winter session. The student chose not to accept this remedy, and instead, asks this Committee to increase the grades from the April 2005 examination period by 10%. In the alternative, he is asking that his sessional average be increased 1.8% to obtain the requisite 60%, so that he can be allowed to proceed to fourth year and that the five courses he took in the Fall of 2005 be counted.

Facts

The student enrolled in engineering in the fall of 2001. While the student got off to a weak start, and has had to repeat a semester, his grades have improved. He received a 65.0% sessional average in the Fall 2004 term, the term prior to which the student experienced the difficulty that is the subject of this appeal.

The student became ill before and during the April 2005 exam. His physician diagnosed acute maxillary sinusitis on April 12. He saw the doctor again on April 18. He has two

medical certificates from this period, attesting to his illness and inability to write the examinations. There is no dispute between the parties as to the student's illness or the veracity of the medical documentation.

The student was scheduled to write five examinations in April. The student wrote the first exam on April 11, and the fourth and fifth exams on April 20 and 22 respectively. The student did not write the second and third exams on April 13 and 18 respectively.

Previous Decisions

On May 17, 2005, the student petitioned to the Faculty's Examinations Committee for relief for the two examinations he did not write, and relief for the three examinations he did write. The Examinations Committee followed its "Guidelines for the Examinations Committee." The results of the Committee's deliberations were communicated to the student on May 31, 2005.

With respect to ECE315 and ECE 335, which were not written, the Examinations Committee "assessed" the student's results according to a Faculty-endorsed formula. The assessed grade formula considers the student's term work and the class average on the exam. The result was that the student received an assessed grade of 64.6% in ECE315 and an assessed grade of 52% in ECE335.

With respect to ECE 331, ECE 371 and ECE 311, which were written, the Examinations Committee again turned to their Guidelines. In this situation, an assessed grade is calculated based on the same formula but is then compared to the actual grade; the student is granted the higher of the two. In each case, the student's actual grades were higher than the assessed grades and the student received final grades of 53% in ECE 331, 50% in ECE 371 and 75% in ECE 311.

The combined effect of the assessed and actual grades as determined by the Examinations Committee was a sessional average of 59.2%. This was below the 60% average necessary to permit the student to proceed to fourth year engineering.

Another issue arose during the summer, which resulted in a second petition to the Examinations Committee. The Committee includes the details of this incident for two reasons. First, the student relied on this incident to petition again, and it is this petition and its result that form the basis of this appeal. Second, the outcome of this incident had a direct bearing on the student's sessional average.

The student was alleged to have committed an academic offence during a mid-term examination in ECE 331, a course in which the student wrote the final examination. He met the Acting Vice-Dean on June 22, 2005 as required under the University's *Code of Behaviour on Academic Matters*. The bare bones of this allegation are that the student's calculator was found to have formulae pencilled onto its case, and this calculator and case were brought into the examination. The meeting concluded with an academic sanction imposed on the mid-term mark, which when factored into his term results, further lowered the student's sessional average to 57.2%.

By June 2005, the student was denied further enrollment in the engineering program.

On July 5, 2005, the student filed a second petition to the Examinations Committee in light of the academic sanction imposed and other personal and financial concerns. He requested that his sessional average be calculated without reference to the course in which he was alleged to have committed an academic offence, that he be permitted to repeat that course, and that he be allowed to proceed to fourth year.

The Examinations Committee granted the petition in part on July 28, 2005. The Examinations Committee refused the student permission to enter fourth year, but granted him retroactive withdrawal from the entire Winter 2005 session. This would permit the student to maintain the credit he earned across five completed academic terms, and would permit his re-enrolment in January 2006 to repeat the second term of his third year.

The student appealed to the Ombuds Committee on September 16, 2005 which dismissed the appeal, holding that the result was “entirely equitable and fair” and that proceeding to fourth year was not advisable given the student’s weak academic background.

Concurrently, the student took the position that he had not admitted an academic offence and therefore the imposition of the academic sanction could not stand. Accordingly, The Vice-Provost Academic communicated the student would be charged under the *Code of Behaviour on Academic Matters*. The student was charged, and the charges were resolved through Minutes of Settlement on December 23, 2005. The student admitted the academic offence and was subjected to a 50% reduction in the grade on the mid-term. The student’s sessional average for Winter 2005 was recalculated to 58.2%.

The Student’s Current Status

The student and the Faculty agreed via counsel to an arrangement wherein the student would be allowed to attend courses pending the resolution of the charges under the Code and this appeal. The parties agreed that if this appeal is dismissed, the student would receive no credit for these courses. The student took course in the Fall 2005 term applicable to the fourth year of the program.

Interim Motion

As part of the agreement between the parties to allow the student to take fourth year courses pending the resolution of his appeals, the Faculty agreed to provide the term results and final grades to the student. Prior to the hearing, and at the hearing, the Faculty provided the student’s average and final grade in each course.

Prior to the hearing, counsel for the student indicating he would be bringing a motion for an order compelling the University to produce the additional information about the student’s performance and an adjournment to consider the information when it was produced. Counsel for the student requested more detailed information from the Faculty about each course’s marks breakdown, contested the veracity of the specific information that was provided, and he also contested the lack of timely production of the grades.

Counsel for the student argued that this information was critical for the student to assess his current performance in the program and to dispute the Faculty contention that the student's poor academic performance required him to repeat a term.

The Committee heard lengthy submissions from both sides on this matter and deliberated *in camera*. Because both parties indicated that they were prepared to proceed with the submissions on the merits of the case regardless of the outcome of this dispute, the Committee decided to hear submissions and to reserve its decision as to the relevance of the grades.

Regarding the relevance of the grades, the Committee found as follows. The majority of the Committee was of the view that while it welcomes any and all material relating to a student's academic record while deliberating an appeal, the student's performance in courses subsequent to the events central to this appeal was not relevant to the Committee's ability to consider the appeal. One member of the Committee considered the grades relevant to the deliberations, but was satisfied with the information provided by the Faculty.

In light of this decision, there is no need to compel the further production of grades for courses that the student was permitted to take pending the outcome of this appeal or to make a determination as to whether the agreement between the parties on this matter was followed. The Committee wishes to note that it is unusual for a student to be allowed to continue in a program, when a student is contesting a Faculty decision that he has not met the academic standards of the program. This was an ill-advised interim arrangement.

Decision

First, the Committee rejects the student's request to raise his grades because he was sick. The Faculty accepted that the student was ill, took into account his illness through its formula and its adherence to its own guidelines. The Faculty provided the relief it would provide to any other student in the program. The Committee wishes to state its discomfort with the mechanistic nature of assessing grades by formula when a student is unable to perform due to reasons beyond his control. The Committee is troubled that the Faculty of Engineering persists in using an approach that provides accommodation in the form of assessed or inferred examinations rather than supplemental examinations. However, whether or not we agree with the Faculty policy is immaterial to the fact that Faculty applied its policy fairly and properly.

Second, the Committee rejects the student's request for a remedy that raises his average so that he can proceed. This remedy is well beyond the scope of both what any Faculty affords a student who is incapacitated during the examination period and what this Committee is empowered to do. This Committee does not and should not substitute its discretion for that of the instructors. We may, if we choose, vacate a grade, substitute an academic penalty for another, allow late withdrawal without academic penalty, or award *aegrotat* standing. But in the normal course of its duties, this Committee does not add percentages to grades to craft an average that would unlock an academic barrier to proceeding in a program.

Third, the Committee rejects the student's request for some other type of exceptional relief that would let him continue. In the academic world, the awarding of retroactive withdrawal without academic penalty is an extraordinary remedy. This allows a student "to wipe the slate clean" and possibly gain a competitive advantage by re-taking the material. It is very clear that the student was committed to proceeding to fourth year, and therefore chose to appeal the remedy of retroactive withdrawal without penalty rather than repeat another term. It is clear that he did not want any further delay in his program and would exhaust all avenues to that end. There is some dispute as to whether the Faculty was willing to offer the student an appropriate selection of third year courses, but this seems peripheral to the student's desire not to repeat the entire term.

In the second petition to the Examinations Committee, affirmed by the Ombuds Committee, the Faculty revisited its original decision, and provided constructive relief. The combination of continued poor performance, an academic sanction, and an illness could have resulted in the student leaving the program altogether; instead, he was given an opportunity to repeat and then proceed. The Academic Appeals Committee has, on numerous occasions, granted withdrawal without academic penalty to remedy unfair results in exceptional cases. In this case, the Examinations Committee pre-empted us and awarded this relief.

Accordingly, the Committee unanimously decides to dismiss the appeal and restore the remedy of retroactive withdrawal without academic penalty from the Winter 2005 term as provided by the Examinations Committee and affirmed by the Ombuds Committee. The Faculty has a positive onus to ensure that the student can complete an entire term of third year courses and proceed to fourth year in September 2006 (anticipated graduation June 2007). The onus is on the student to perform well enough academically to continue in his program and meet the Faculty's requirements. But the Faculty must work with the student to provide the opportunity to move forward. Given that the student has missed the first few weeks of term, we recommend that the Faculty proactively arrange academic accommodations to this student, such as deferred examinations and deadlines, and additional instruction and academic counselling. Although the Committee wishes the student had accepted the remedy offered to him by the Ombuds Committee and started his term in January 2006, he chose to exercise his right to appeal to this Committee. Therefore, in light of this Committee's decision to dismiss the appeal and affirm the remedy given by the Ombuds Committee, it is imperative that this remedy be real and not illusive. As per the parties' agreement, he is to receive no credit for the courses taken in the Fall 2005 session. Further, if the student does not accept this remedy, his status reverts to that of "denied further registration" based on the 58.2% sessional GPA and previous performance.

The appeal is dismissed.