

REPORT NUMBER 258 OF THE ACADEMIC APPEALS COMMITTEE

November 19, 2001

To the Academic Board,
University of Toronto

Your Committee reports that it held meetings on Thursday, November 8, 2001, and Monday, November 19, 2001, at which the following members were present:

Professor Emeritus Ralph Scane (Acting Chair)
Professor Luigi Girolametto
Professor Gretchen Kerr
Ms Karen Lewis
Ms Geeta Yadev

Mr. Paul Holmes, Judicial Affairs Officer, Secretary to the Academic Appeals Committee

In Attendance:

Mr. Craig Coughlan, Counsel for the Appellant
Ms A.M., the Appellant (the Student)

Ms Sari Springer, Counsel for the Faculty of Applied Science and Engineering
Ms Colleen Kerluk, Faculty of Applied Science and Engineering
Ms Barbara McCann, Faculty of Applied Science and Engineering
Professor Kim Pressnail, Faculty of Applied Science and Engineering

This is an appeal from the decision of the Ombuds Committee of the Faculty of Applied Science and Engineering, dated February 28, 2001, dismissing an appeal from the decision of the Committee on Examinations of that Faculty, dated January 29, 2001. The latter Committee had dealt with a petition by the Student for relief in the Course CIV424, taken in the Fall Term of 2000. The Committee ruled that the final examination in the course, which the Student did not write, should not be counted in computing the final course mark. That mark was to be calculated by computing the average of all of the other grading components in that course, including the second of the term tests, which the Student also did not write. This test, which comprised one-fifth of the possible marks on which the final mark was to be calculated, was graded for the purpose of arriving at the final course mark as 0/20. On the basis determined by the Examinations Committee, the Student received an "F" in CIV424.

The Student entered the Faculty's B.A.Sc. programme in 1998. She completed the first full year of the programme with a cumulative 3.43 GPA. After completing her second full year, she had slipped to a cumulative GPA of 2.50, and was placed on academic probation. In the Fall Term of 2000, she received a sessional GPA of 1.69, including the "F" in CIV424. She was required to withdraw for eight months, and to repeat the session upon her return. She did withdraw, has now

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completed her period of suspension, and has returned to continue with her programme. During the period of her suspension, she was permitted to attend classes and laboratories, pending the resolution of the appeal process she had launched with respect to CIV424. Her unofficial grades during this period were poor, as she failed three of four courses. As the Student has served her suspension, and is repeating the last term taken by her, success on this appeal cannot restore the *status quo ante* for her. However, she does ask that the failure in CIV424 be removed from her transcript, and be replaced with a permitted late withdrawal without academic penalty.

The original petition by the Student was for relief on medical grounds. However, in responding to the appeal, the Faculty introduced a strong collateral attack against the Student personally. Your Committee was invited to find that she was not credible, was a chronic absentee from lectures, laboratories and seminars, and was a frequent petitioner for special relief during the course of her undergraduate programme. These factors were argued to be relevant in considering her petition based upon medical grounds, and in justifying the decision arrived at by the tribunals below.

In determining the result of this appeal, your Committee first considered what the result would be if the appeal were to be considered on the medical grounds only, stripped of the "collateral" factors.

The second mid-term examination in CIV424 was scheduled for November 20, 2000. The Student gave evidence that the symptoms of which she complained commenced shortly before that date, and increased to the degree that, on the date of the mid-term examination, she felt unable to attend at the examination. She went to a medical clinic. She received an extremely terse medical "certificate" as a result of that visit, which did little more than corroborate the fact that the Student had attended a doctor on that date. It could be read as offering some slight corroboration that the doctor thought that there was justification for her missing examinations on that day, but standing alone, it could not justify relief from the consequences of missing the examination. The Student continued on with her courses, but acknowledged that her attendance was poor for the balance of the term, attributing this to the symptoms of the illness from which she was suffering.

The final examination in CIV424 was written on December 12, 2000. The Student stated that, on that date, she was again very ill, and attended another physician, who advised her to rest. He also prescribed a CT scan, to be taken in January, 2001. She did not write that examination, but did attend to write final examinations in other courses on December 14 and December 17. She obtained a much more detailed medical certificate from this doctor.

The Committee on Examinations considered that the medical evidence was sufficient to excuse the Student from writing the final examination in CIV424, (worth 40% of the total marks for the course) but not from writing the second mid-term examination. Although the Ombuds

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Committee heard evidence from the Student, it decided not to recommend a variation from the decision of the Committee on Examinations.

As the Faculty has accepted the sufficiency of the medical evidence to justify the absence of the Student from the final examination in the course, the key factual question, so far as the medical issues go, is whether the Student should have been relieved from the consequences of also having missed the second mid-term examination. As mentioned, the medical certificate issued on the date of that examination can itself have little weight. However, it does not stand by itself. Your Committee had the oral evidence of the Student, given in circumstances where she could be cross-examined on behalf of the Faculty. It also had available the medical certificate issued with respect to the visit to the doctor on December 12, 2000. That certificate indicated the onset of the problem which the issuing doctor was considering as being November 20, 2001. Almost certainly, the doctor would have had to rely upon the Student for that information, but at least the December certificate suggests that the doctor saw no inconsistency between that onset date and the condition with which he was presented in December. Bearing in mind the Faculty's attack on the Student's credibility (which is always relevant in considering evidence), your Committee made its own assessment of the available evidence. It concluded that it was more probable than not that the Student had been seriously affected on November 20, 2000 by the same illness that was admittedly affecting her on December 12, 2000, and that she had valid medical grounds for missing the second mid-term examination in CIV424. Accordingly, that examination should not have been included in the calculation of the final course mark.

This raises the question of what the final course mark should have been. If it were to be computed on the basis of the marks received in the first term test, her laboratory performance and her assignments, she would still have a failing grade in the course. Your Committee decided that it would be unsafe to extrapolate a final course grade from components worth only 40% of the total available marks in the course. Thus, the proper remedy should be either the granting of *Aegrotat* standing in the course, or permitted late withdrawal without academic penalty. The Student's performance in the course and in the other courses taken in the session did not justify consideration of *aegrotat* standing. Thus, if the medical issues in this appeal were to be considered alone, your Committee would allow the appeal and grant this remedy.

However, as mentioned, the Faculty took the position before the Committee that the Student was not credible, that she was a persistent petitioner for academic relief (which appears to be linked to the issue of credibility), and that she was a chronic absentee from classes and laboratories, and one who missed completing many assignments. The Faculty submitted to us that these factors justified the withholding of relief from the Student with respect to the final mark in CIV424 even if the medical grounds otherwise justified granting it.

Your Committee considered whether, as a matter of policy, the University should have a discretion to withhold relief in the case of a petition based on medical grounds on the basis of the factors (other than credibility) indicated. (As stated above, credibility issues, if they arise, must

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necessarily be relevant in consideration of medical or other petitions). For the purpose of considering this policy issue, all of the facts alleged by the Faculty were assumed to be true.

Your Committee decided that such matters independent of the questions of the existence of the medical condition and the degree to which a student's performance was affected by it should not be allowed to affect the result of the consideration of those questions. Where the University grants relief to a student on medical or similar grounds, it does so because it accepts that the student's ability to perform to the standards normally demanded was so adversely affected that the University cannot rely upon the results obtained, or on the failure to undergo an evaluation process, to visit the student with the normal consequences of inadequate or missed performance. To do so would be regarded by our community as unfair. Whether a student has in other respects been academically delinquent is irrelevant in determining this issue.

Your Committee is *not* asserting that the missing of lectures, seminars and the like cannot or should not be penalized by the University. If a division makes attendance mandatory, spells out its requirements, and the penalty to be assessed for failing to meet those requirements, sets up a reliable mode of policing for compliance, and formally advises the student that a penalty is being assessed, your Committee does not see any objection. What your Committee *does* say is that the University should not attempt to deal with this type of academic delinquency through the back door, by withholding otherwise proper relief in the case of a petition based on medical or similar grounds.

Accordingly, your Committee does not have to engage in a fact-finding exercise with respect to the charges, denials and counter-charges arising out of what your Committee has, for convenience, termed "collateral" issues. As the Student and the Faculty, and particularly her department, must co-exist for the remainder of her time in her programme, your Committee feels that it would be unwise for it to enter upon such an exercise gratuitously.

That being said, your Committee must also say that, had it come to the opposite conclusion on the "policy" issue, and been forced to make findings on the factual allegations, it would have been very uneasy in finding against the Student on the basis of much of the case made against her. A large portion of the evidence against the Student was hearsay, or consisted of statements made in reports and e-mails, where those making the statements did not appear before the Committee. While the absence of the instructor in CIV424 was explained by his illness, the absence of other faculty members who contributed to the case against the Student by reports or e-mails they had submitted to Faculty authorities, or by statements made to a Faculty member who did give evidence, was not explained, other than by a reference by counsel to a desire not to lengthen the proceedings. In their absence, neither counsel for the Student nor Committee members could examine them on the existence and accuracy of their records and recollections of attendance, or on their experiences with the Student from which inferences of lack of credibility had been drawn. Such evidence is not necessarily inadmissible, but the more contentious the facts sought to be proved, the more cautious a tribunal must be in acting upon it. In particular,

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where a party determines to lead evidence intended to bring about a finding of fact that, as here, must necessarily impugn the character of a student, a member of the University or anyone else, the witnesses from whence that evidence emanates should be present to be confronted and cross-examined. If a tribunal's proceedings are thereby protracted, so be it.

Your Committee also notes that neither the Committee on Examinations nor the Ombuds Committee published any reasons for the decisions they delivered in this matter. Your Committee believes that 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 regard to future matters. They will also be of assistance to superior tribunals to which an appeal is taken. In particular, where expertise in the discipline, which higher tribunals almost certainly will not have, would be useful in the review of the original decision being appealed, the benefit of the review by a departmental review body is lost if no reasons are given for a decision. Obviously, the effort of preparing even summary reasons is a substantial burden on the resources of large divisions. However, if the University is to have a credible academic appeal process, it is one which the University must arrange its affairs to bear.

The appeal is allowed. The grade of "F" awarded to the Student in CIV424 in the Fall Term of 2000 shall be vacated, and the Student shall be deemed to have been permitted to withdraw from that course without academic penalty. If this requires a consequential change to the present annotation on the Student's official transcript, requiring her withdrawal and repetition of the term, such change shall be made in accordance with the Faculty's rules at that time.

Your Committee must also deal with the fact that the Student was permitted to attend classes unofficially during the Winter Term of 2001. As mentioned, her results were poor, but she did get a low passing grade in one course. The Student did her work that term with the dispiriting knowledge that, unless successful before your Committee, her efforts would be fruitless. Unfortunately, this Committee could not deal with her appeal during that term. Your Committee considers that the fair result should be that the Student may elect, within two weeks of the date of this decision, whether to retain credit for any one or more of the courses she took in that term. If she does so elect, she must accept the mark awarded in that course without further appeal. If no election is filed with the Registrar of the Faculty within the time limited, the Student will be taken to have elected against being recorded as having taken any of those courses. Your Committee recommends that, if the Student elects to retain credit for a course or courses, she should be charged a *pro rata* portion of her annual fee. If she elects not to retain credit for any of those courses, no fee should be charged for that term.

December 14, 2001

REPORT NUMBER 259 OF THE ACADEMIC APPEALS COMMITTEE

November 26, 2001

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Monday, November 26, 2001, at which the following were present:

Assistant Dean Jane Kidner, Acting Chairperson
Professor Philip Byer
Professor Olga Pugliese
Professor Donna Wells
Ms. Wendy Swinton

Mr. Paul Holmes, Judicial Affairs Officer, Secretary to the Academic Appeals
Committee

In Attendance:

Mr. R.N., the Appellant (student)
Mr. Craig Coughlen, Downtown Legal Services, for the Appellant
Professor Ian McDonald, Associate Dean, for the University of Toronto at
Scarborough

The student appealed from a decision of the Scarborough Sub-Committee on Academic Appeals dated June 20, 2001, dismissing his appeal from the decision of the Scarborough Sub-Committee on Standing dated September 13, 2000, refusing his petition of September 8, 2000 to rewrite the final examination in the 2000 Summer Session course CHM 133H.

On August 14, 2000, the student failed the final exam in CHM 133H and as a result failed the course. His sessional GPA fell to 0.00 and his cumulative GPA fell to 1.49, and pursuant to policy at the University of Toronto at Scarborough ("UTSC"), he was automatically placed on three-year suspension from the University. The student seeks the remedy of retroactive late withdrawal from CHM 133H and permission to re-enroll in courses in January 2002. The student's appeal is based on medical and compassionate grounds.

The Facts:

From the Fall of 1991 to the Fall of 2000 the student was periodically enrolled as a part time student at UTSC. Throughout the period 1992 to 2000 the student performed poorly and was on academic probation in every session in which he was registered for failure to meet the minimum cumulative GPA requirement of 1.60. During this period of time he

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was also placed on a one-year suspension following the 1993 Winter session, and a three-year suspension in 1999 for failure to meet the requirements of his academic probation. The three-year suspension was later deferred, and the student was warned in writing that if he failed to achieve a sessional GPA of 1.60 his three year suspension would automatically be triggered. He was also strongly advised to carefully evaluate his situation in each course before the deadline for withdrawing without academic penalty.

In 1999 the student suffered a series of set backs in his personal life. In April 1999, he was diagnosed with chronic sinusitis. In December 1999, the student's aunt, who had been very close to him, passed away. In March 2000, the student's girlfriend terminated their five-year relationship. In April 2000, the student's parents asked him to move out of their home. In that same month, the student was demoted in his position at work.

In May 2000, the student enrolled in CHM 133H, a summer session course. The student also enrolled in ANA 300Y but dropped that course prior to the course drop deadline of July 23, 2000. The student retained his registration in CHM 133H but performed poorly on his term work. He missed two term tests on June 20th and July 25th and obtained a 20% average on term quizzes. The student was permitted to write the final exam re-weighted to compensate for the work that he had missed.

On August 14, 2000 the student failed the final exam for CHM 133H, achieving 5 to 7%, and as a result failed the course. His sessional GPA fell to 0.00 and his cumulative GPA fell to 1.49, and pursuant to policy at UTSC he was immediately placed on three-year suspension.

On September 8, 2000 the student filed a petition to the Scarborough Sub-Committee on Standing asking for permission to rewrite the final examination in CHM 133H on medical grounds. The student argued that his chronic sinusitis caused him to suffer from nausea, headaches, and an ear infection as a result affected his ability to prepare for and write the final exam. A University of Toronto Student Medical Certificate from Dr. Betty Choi-Fung dated August 14, 2000 supported the petition. The student's petition was denied on September 13, 2000 on the grounds that he was aware of his chronic medical problem and his poor performance in the course, and therefore he could have reasonably anticipated difficulty in completing the course and withdrawn from the course prior to the course drop deadline of July 23, 2000.

On May 30, 2001 the student appealed this decision to the Scarborough Sub-Committee on Academic Appeals. He asked for one of three remedies – late withdrawal from CHM 133H; permission to rewrite the final exam in CHM 133H; or a reduction of his three-year suspension to one year to be permitted to return to studies in September 2001. The student argued that the cumulative effect of the personal stressors in his life affected his ability to concentrate, and ultimately caused him to suffer a depression in May 2000, which was unrecognized and undiagnosed until February 2001. He argued that although he was aware that he faced a three-year suspension if he did poorly, he found it difficult to make rational decisions because of his then unrecognized depressive disorder. He introduced medical evidence to support his case. The appeal was denied. While the

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members of the panel were sympathetic to the student's ongoing health problems, they noted that he had already been granted one deferral of suspension, there was no significant difference on the student's performance on the quiz and the final exam, and the remedy of late withdrawal should be reserved for extremely rare cases.

In the present appeal, the student is seeking the remedy of late withdrawal without academic penalty. He argued that his chronic sinusitis, in conjunction with his depression during the relevant time period caused him to fail CHM 133H and further interfered with his ability to make the rational decision to withdraw from the course. The student introduced a new piece of evidence, a letter from Dr. Parviz Jamal dated August 2001, which outlined the stressors the student had been facing which precipitated his depression.

Decision

A retroactive late withdrawal from a course is an extraordinary remedy reserved for the most serious cases. The Committee considered all of the medical and other evidence submitted by the student. It was the opinion of the Committee that the medical evidence did not meet the test for granting the extraordinary remedy of late withdrawal. The student had been warned in writing and knew the consequences of failing even one course. The committee also noted that the student had decided to drop another course in which he had been enrolled during the summer of 2000, yet had decided to remain in CHM 133H. The Committee was not satisfied on a balance of probabilities that even if the student had been suffering from a depression during the summer session of 2000 that the depression was the cause of his failed exam in CHM 133H or his decision not to withdraw from CHM 133H prior to the course deadline for withdrawal.

The appeal is dismissed.

December 14, 2001

REPORT NUMBER 260 OF THE ACADEMIC APPEALS COMMITTEE

November 29, 2001

To the Academic Board,
University of Toronto

Your Committee reports that it held a hearing on Thursday November 29, 2001, at which the following were present:

Assistant Dean Bonnie Goldberg, Acting Chairperson
Professor Clare Beghtol
Professor Sherwin Desser
Professor Ian McDonald
Ms Geeta Yadav

Mr. Paul Holmes, Judicial Affairs Officer, University of Toronto

In Attendance:

Mr Vaino Poysa, for the appellant, student caseworker, Downtown Legal Services
Ms S.G., the Appellant
Ms Barbara McCann, Registrar, Faculty of Applied Science and Engineering
Professor Raymond Kwong, for the Faculty of Applied Science and Engineering
Professor Andrew Jardine, for the Faculty of Applied Science and Engineering
Ms Margaret Tompsatt, for the Faculty of Applied Science and Engineering

The student appealed the decision, dated November 1, 2000, of the Faculty of Applied Science and Engineering Ombuds Committee confirming a decision, dated September 21, 2000, of the Faculty Registrar, Applied Science and Engineering ("the Faculty"). The Registrar determined that there was no basis on which to alter the assessed grade awarded the appellant in MIE262 taken in the 2000 Winter Session.

The appellant enrolled in Mechanical Engineering 262 - Operational Research I ("the course") in the Winter 2000 term. The evaluation in the course was comprised of the first midterm (worth 25% of the final grade), the second midterm (worth 25% of the final grade) and the final examination (worth 50% of the final grade).

The Appellant obtained a grade of 94% on the first midterm (the class average was 88%) and 48% on the second midterm (the class average was 69%). This was the second time the appellant took MIE262, having obtained a grade of 50% in Winter 1999.

On April 12, 2000, the appellant experienced what was later diagnosed as the flu. She wrote the examination on April 13th anyway, and performed very poorly. Accordingly, on July 13, 2000, the appellant submitted a Petition for Consideration in Final Examination

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for the course. On September 11, 2000, the Faculty Registrar notified the appellant that her petition had been granted for medical reasons, and that she would be awarded an assessed mark based on her session work performance. The Appellant was assessed a mark of 59% in the course. On September 21st, the Appellant received a second letter from the Registrar stating:

Please be advised that the Committee on Examinations has now reviewed your request to re-examine the assessed grade in MIE262 taken this past Winter Session. The Committee has decided that there is no academic basis to award an enhanced grade for this course. Instructor assessments continue to be very important in determining the appropriate grade to be assessed in an exam.

The Faculty does not offer students the ability to write supplemental, or make-up examinations when a student is unable to write a final examination, or circumstances beyond the student's control adversely affect the student's performance. Rather, the Faculty uses a "Term Work Report" which states that to make the necessary assessment of the student's performance on the final grade, the Committee on Examinations requests information about the student's term work and any additional information from the professor. The Report includes a table with information about the Final Examination, Closely Supervised Term Work, Term Work Not Closely Supervised, and class averages for each category. When the student performs poorly on the final exam for valid reasons, the Report states that the Committee "often infers a candidate's final course mark" using a formula.

To arrive at a decision in the appellant's case, the Committee on Examinations had requested and received a Report back from the instructor with his recommended grade, and indicating that he used only one of the student's midterm tests to determine her assessed grade. The instructor reported that the first midterm was "easy". Professor Andrew Jardine wrote

My best estimate is that the student's performance in the final exam would be reflected by the performance in my second midterm test i.e. there she [received] 70% of the class average [therefore] for final exam she "should" have received 70% of 32, i.e. 23 rather than 16. Her final mark would then be 58.5%.

The Term Work Report filled out by Professor Jardine on behalf of the appellant did not use the "inferred mark" formula suggested by the Faculty for these particular cases.

The appellant's cumulative average for the term fell below the required minimum of 60%, and she was refused further registration in the Faculty. In addition to the 59% in the course in question, the appellant's grades for the term were all in the C to F range.

The Appellant appealed to the Faculty's Ombuds Committee, and her petition was considered in meetings on October 19th and 27th, 2000. The Appellant argued that the re-assessment was not fair as it had included only one of her midterm tests, not both, although both were of equal value. The Appellant was told that the professor considered

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the class average on the first midterm “too high” and instead compared the student’s performance on the second midterm against that of the class average. The Appellant requested that both midterms be used to assess her final examination grade. The Ombuds Committee declined to refer her petition back to the Committee on Examinations for a review and determined that:

- a) The Committee on Examinations considered in proper depth all aspects of the incidents and events which form the basis of your petition, including the assessed mark in course MIE 262.
- b) Their consideration of your academic status was equitable and fair.

The Appellant appealed the Ombuds Committee’s decision to Your Committee. The Appellant argued that not using the first midterm in her assessed grade meant the assessed grade failed to accurately reflect her ability in the course. The Appellant also contended that the drastic impact of the assessed grade – that the appellant could not continue in her program – demonstrated that when coming to its decision the Committee did not consider the totality of the student’s circumstances.

The Faculty argued that their Committee was guided by the instructor’s assessment of how this student would have performed in the final examination if she had not been ill. The Faculty acknowledged that the Committee often uses the formula to arrive at an assessed mark for a student. The Faculty noted that this formula is a guideline and the Committee continues to request an instructor’s own assessment of an appropriate grade for students who miss a final exam. In this case, the instructor notified the Committee that it was appropriate to include only the second term test in the calculations which was a better match to the performance in the final exam. There was no use of the formula in this particular case.

This case turns on whether the first midterm should have counted in the student’s assessed mark, and whether the Faculty erred in the procedure it used to determine the grade. In our opinion, there was no compelling argument made by the Faculty as to why it did not use the first midterm in the assessed grade or why it did not use the formula outlined in the Term Work Report.

Your Committee heard new evidence about the composition of the final examination. We learned that one-fifth of the exam was based on material covered by the first term test, two-fifths of the exam was based on material covered by the second term test, and two-fifths of the exam dealt with “new material.” Thus, the student was assessed a grade for an exam which included information from the first test, but the assessed grade did not take into account the student’s performance on the first test.

Your Committee concurs with the Faculty opinion that the Committee on Examinations should not ignore a professor’s impressions of the appropriate grade for a student. However, if the Faculty is going to offer assessed or inferred grades rather than supplemental exams, the Term Work Report should be used in its entirety and the full consequences of the assessed grade should be considered more closely. Your Committee

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heard that Professor Jardine's initial assessment was made by an "eyeball" analysis, followed by a more "careful" analysis, and then he did an analysis of the correlative relationship between the midterms to the final grade (based on the class results as a whole) to "confirm" his initial assessment.

The Committee on Examination's faith in the instructor's comments that the second test results more closely correlated with the final examination is not a sufficient reason to break from established and expected practice. An assessment that assumes so much about a student's performance, and which has such a drastic result is problematic. If the Faculty wishes to employ a system that infers marks, it must be cognizant that it cannot do so in an opaque manner. The Faculty accepted the student's petition that she was ill, and yet awarded her an assessed grade that in the end was punitive.

In deciding to allow the appeal, Your Committee must find a remedy that is equitable and fair. The Appellant offered three possible remedies:

- a) an assessed exam grade based on all closely supervised term work
- b) an assessed exam grade based on the formula outlined in the Term Work Report
- c) an assessed exam grade that accords some import to the first of the two tests.

After much deliberation about the feasibility of the three remedies, Your Committee holds that in allowing the appeal, the Faculty must award the appellant an assessed exam grade based on the formula outlined in the Term Work Report. This formula, while complicated and mechanistic, is the formula suggested by the Faculty to provide additional information in these situations, and we found no compelling argument by the Faculty as to why it was not employed in this situation. Our rough analysis of the formula awarded the student an inferred mark that appears to allow the student to re-enter the program. However we leave it to the Faculty to do the proper analysis using the formula and to use this result to form the basis of the re-assessed grade. Although valuable, the instructor's comment should not form the basis of the assessment. We regret that this student's performance throughout her academic career has been marginal at best, and recognize that she may still face difficulty in obtaining the required 60% average each term to remain in the program.

The Appellant should not be penalized because an instructor gives an examination which he later considers too easy. The Faculty must be held to its own test as set out in the Term Work Report, although Your Committee is critical of its mechanistic nature (even with the addition of instructor comments), and its underlying premise that student's should receive assessed or inferred examinations rather than supplemental or make-up examinations.

The appeal is allowed.

December 19, 2001

REPORT NUMBER 261 OF THE ACADEMIC APPEALS COMMITTEE

January 8, 2002

To the Academic Board,
University of Toronto

Your Committee reports that it held a hearing on Tuesday January 8, 2002, at which the following were present:

Assistant Dean Bonnie Goldberg, Acting Chairperson
Professor Brian Corman
Professor Gretchen Kerr
Professor Donna Wells
Ms Geeta Yadav

Mr. Paul Holmes, Judicial Affairs Officer, University of Toronto

In Attendance:

Ms Emily Morton, for the appellant, student caseworker, Downtown Legal Services
Ms J.L., the Appellant
Associate Dean Ian McDonald for the respondent, University of Toronto at Scarborough

The appellant is appealing the decision of the University of Toronto at Scarborough ("UTSC") Sub-committee on Academic Appeals dated October 11, 2001 not to defer the one-year suspension imposed on the appellant at the end of the 2001 Winter Session. The appellant requests that your committee overturn this decision and defer her suspension.

The appellant enrolled in an Honours Bachelor of Science at UTSC in September 1999. At the end of her first year, the appellant was placed on academic probation. The condition of the probation was that the student maintain a GPA at or above 1.60 in each academic session. The appellant failed to meet this threshold during the 2000 summer session, and was suspended for one year. The appellant petitioned on August 29, 2000 ("the first petition") for a deferral of the suspension. This petition was granted on September 6, 2000.

The appellant continued on academic probation in the 2000-2001 academic year, on the condition that if her standing fell below an annual or cumulative grade point of average of at least 1.60, the deferral would be terminated. The appellant did not obtain the minimum GPA and the one-year suspension was imposed at the end of the 2000-2001 session.

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On June 27, 2001, the appellant petitioned for a second deferral of her suspension. This petition was denied on June 28, 2001. The appellant appealed to the Sub-committee on Academic Appeals of UTSC. The appeal was denied on October 11. The appellant remains on suspension at the time Your Committee heard the appeal, with re-entry scheduled for either the summer or fall session in 2002.

The appellant's first petition was based on, and granted as a result of, the obstacles that the appellant faced growing up with a congenital condition that affected her physical appearance. The appellant suffers from Ectodermal Dysplasia, which caused her to suffer serious dental problems, and brittle and discolored hair. She was taunted and teased in her native China. She underwent dental surgery in Canada in 1997, which involved a long period without teeth, reconstructive jaw surgery and implants.

At the time of the first petition, the appellant believed that the extent of the psychological impact of her illness was severe shyness, and that this shyness resulted in her poor performance in first year. She was unable to be part of study groups, ask for help, or speak in class. Subsequently however, the appellant learned that her problems were more severe.

Although her academic performance improved in second year, she was not able to overcome the overwhelming panic that arose when she had to take an examination. In November 2001, the appellant was diagnosed with anxiety disorder. Until she was diagnosed with the anxiety disorder, the appellant was not aware of the severity of her problem, nor of its impact on examinations.

The Committee heard evidence regarding the attempts by the appellant to deal with the psychological and emotional effects of her illness, and about the programs and services UTSC offered the appellant to improve her ability to succeed in university. When the appellant was placed on academic probation in May 2000, she received a letter outlining services provided by the Advising and Career Centre, including the Health and Wellness Service, and the *AccessAbility* Services. In September 2000, she was sent further details of available services, including information about a "student success seminar series." When the first petition was granted, she also received a letter discussing applicable services.

In response to her academic difficulties, and the information contained in the letters, the appellant took the following steps. She met with the coordinator of *AccessAbility* Services in August 2000 to discuss issues of low self-esteem. She was referred to a social worker at the Health and Wellness Centre and invited to attend a learning skills seminar. She was also invited to contact the office again if she continued to experience difficulties.

Although the appellant returned to school in the fall of 2000, and continued to experience difficulties, she did not seek further help until her suspension. The appellant went to a psychiatrist at Psychiatric Services at the St George Campus on August 8th, and 15th, 2001. She was diagnosed with a high level of anxiety as a result of her long history of difficulties arising from her congenital condition. She returned to *AccessAbility* Services

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on October 16, 2001, after the denial of her second petition. Based on her new diagnosis, *AccessAbility Services* recommended exam accommodations and a support group.

The appellant submits that having been unaware of the nature and extent of her problem meant she was not able to take steps to overcome her problems, nor could she have reasonably anticipated the impact of her anxiety disorder on her academic performance. She believed that the treatment she sought in August 2000 at the time of her first suspension was neither adequate nor sufficient, and as result, she chose not to pursue that line of assistance. Since the time of her appeal of the second petition, the appellant notes she has been diagnosed with an anxiety disorder, learned about the correlation between the disorder and her poor performance on exams, begun to receive treatment, and made arrangements for exam accommodations (although as a student under suspension, the appellant cannot make use of student services). For these reasons, the appellant contends that her suspension, of which she has already served eight months, should be deferred, and that she be allowed to enroll this month in the 2002 Winter Session.

The University argued to Your Committee that the assistance sought by the appellant in the summer of 2001 could have been provided in 2000-2001 had she followed through on her initial contacts. The University noted that the appellant was provided with ample information about available services, and that the University showed compassion to this student by allowing her first petition. The University brought to the Committee's attention that a second deferral of a suspension is virtually unprecedented. The purpose of lifting a suspension is to allow a student a second chance to prove their capability to succeed, when the circumstances that interfered with the student's performance have been or will be ameliorated. At the time of the second petition, the Sub-committee found that little had changed in the year since she was first suspended, concluding that it was "unrealistic and premature" for the appellant to return to classes for the Fall 2001 session. The University contends that even with the addition of new information, there are still no compelling circumstances to warrant the granting of such an extraordinary remedy. Further, there is no precedent for the University to shorten the obligatory one-year suspension because a student has sought help or dealt with a problem.

The Committee wishes to express its deepest sympathy for the unimaginable obstacles the appellant has struggled with as a result of her congenital condition. The appellant's commitment to obtaining her degree and her persistence in seeking to remain in the program is admirable. Your Committee is impressed by the attempts made by the appellant to work on her low self-esteem and shyness, to work with a psychiatrist to address her anxiety disorder, and to seek accommodations for her examinations.

Your committee believes, however, that the appellant requires additional time and assistance to fully realize her potential in a rigorous university setting. While we have more information than the Sub-committee had at the time it determined that "little had changed", we note that this is because the appellant did exactly what is expected of a student on suspension. She sought help. However, the appellant has not progressed in her treatment since she cannot access services as a suspended student, and moreover, she testified that she is reluctant to seek help from an external source. The appellant is

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encouraged to use this time to continue to seek help and to ask her family doctor, her psychiatrist, or UTSC Health and Wellness for a referral to a private psychiatric service. Your Committee is also concerned that if the appellant returned to school now, she would have missed most of her introductory lectures, and could feel further alienated. We note that the appellant has the ability to do well in University, as evidenced by her performance in some of her courses. We encourage her to think carefully about her course selection and program before she returns to school.

Your Committee is of the view that these circumstances do not warrant the extraordinary remedy of a second deferral. UTSC demonstrated appropriate compassion to this appellant when they allowed the first petition and UTSC offered the appellant ample services to assist her. Your Committee would rather the appellant have the best opportunity to succeed in university, and a second deferral of a suspension would not be in her interest. The appellant can use this time to further prepare for her return to school. For these reasons we affirm the decision of the Sub-committee on Academic Appeals of the University of Toronto at Scarborough.

The appeal is dismissed.

January 15, 2002