

REPORT NUMBER 262 OF THE ACADEMIC APPEALS COMMITTEE

December 3rd, 2001

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Monday, December 3rd, 2001 at 10:00 a.m. in the Counsel Chamber, Simcoe Hall, 27 King's College Circle, at which the following were present:

Professor Ed Morgan, Acting Chair
Dr. Alice Dong
Professor Luigi Girolametto
Professor Gretchen Kerr
Ms. Heather Schramm

Mr. Paul Holmes, Judicial Affairs Officer

In attendance:

Ms. P.H., the appellant
Ms. Emily Morton, Downtown Legal Services, counsel for the appellant
Ms. Sari Springer, Cassels Brock, counsel for the Faculty of Applied
Science and Engineering
Professor Raymond Kwong, for the Faculty of Applied Science and
Engineering
Professor Doug Lavers, for the Faculty of Applied Science and
Engineering
Ms. Ella Lund-Thomsen, Undergraduate Counselor, Faculty of Applied
Science and Engineering
Ms. Barbara McCann, Faculty Registrar, Faculty of Applied Science and
Engineering

This is an appeal by Ms. P.H., a student in the Faculty of Applied Science and Engineering (the "Faculty"). The appeal involves two issues: (a) an appeal of a retroactive withdrawal granted to the appellant with respect to the courses she took in the fall of 2000, and (b) an appeal of the grade the appellant received in ENG 182 in the winter of 2000.

On or about January 12, 2001, the appellant petitioned the Committee on Examinations requesting that she be permitted to proceed "without hindrance" into the next term as her failures in the fall of 2000 were attributed to medical reasons. In a decision dated February 16, 2001, the Committee on Examinations refused this request, but agreed to allow the appellant to retroactively withdraw from the courses for which she had

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registered in the fall of 2000. On May 22, 2001, the appellant submitted a further petition for special consideration to the Committee on Examinations, and by decision dated June 11, 2001, the Committee denied this further request and confirmed its earlier decision to grant her retroactive withdrawal. In effect, the failures during the fall 2000 term would be expunged from her record, but she would be required to repeat the courses she had taken during that term.

The appellant further petitioned the Faculty Ombuds Committee, and a decision from the Ombuds Committee was released on July 26, 2001. The Ombuds Committee upheld and reconfirmed the prior decisions to grant the appellant a retroactive withdrawal regarding the courses taken in the fall of 2000. The present appeal is an appeal of the Ombuds Committee decision dated July 26, 2001.

The appellant began her studies at the Faculty in the fall of 1999. The Faculty's regulations, as set out in the Faculty calendar, provide that a student must obtain a sessional average of at least 60% in order to have passed the term. A student who receives less than 60% but more than 55% is on probation but may proceed to the next term; and a student who obtains less than a 60% sessional average for the second consecutive term is placed on repeat probation and must repeat the session immediately when it is next offered. A student who obtains a sessional average of less than 60% while on repeat probation will have failed the program and will not be reconsidered for readmission.

Since the appellant had received an average of 59% during the winter 2000 term, she was on probation for the fall 2000 term. During the fall 2000 term, the appellant took the following courses and received the following unofficial marks:

ECE 212H	51%
ECE 241H	50%
MAT 290H	62.2%
MAT 291H	50%
PHL 255H	73%

This record would produce an average of 57.2%. Since this was the second consecutive term that her average was less than 60%, she was placed on repeat probation. The appellant petitioned the grades which she received during the fall 2000 term. Both committees of the Faculty found that due to the medical problems that she had been suffering she should be permitted to retroactively withdraw from the fall 2000 term and repeat it when next offered. This would have the effect of eliminating the repeat probation status and would afford her an opportunity to improve her grades and put herself back in good standing with the Faculty.

The appellant testified that she was "shocked" to receive a letter regarding the retroactive withdrawal from fall 2000 only two weeks before the final exams in the winter 2001 term. She maintains that she was under the impression that, having not heard from the Faculty Ombuds Committee regarding her petition to proceed "without hindrance", she

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was properly registered in the winter 2001 term and could proceed with those courses. The evidence presented by the Faculty demonstrated that the appellant met with the Faculty's undergraduate counselor, Ms. Lund-Thomsen, on January 26, 2001, and that Ms. Lund-Thomsen explained to the appellant that a retroactive withdrawal would be recommended to the Committee. Further, the Committee confirmed this decision to the appellant in a letter dated February 16, 2001. According to the appellant, this correspondence inexplicably took roughly 6 weeks to get to her in the mail. In addition, the appellant received a 100% refund of her tuition fees for the winter 2001 term during the course of that term. Furthermore, the appellant testified that she had checked her own status with ROSI continuously during the winter 2001 term and that ROSI indicated that she had withdrawn from the program.

The appellant also maintained that she had several conversations with Professor Lavers that amounted to an agreement that she be allowed to proceed with the winter 2001 term, and that if she performed adequately in those courses her retroactive withdrawal would be revoked. The Faculty, and in particular Professor Lavers, denied any such agreement was ever reached.

It is your Committee's unanimous view that the Faculty committees' decisions to grant retroactive withdrawal for the fall 2000 term should be upheld. Whatever the content of the conversations between the appellant and Professor Lavers may have been, Professor Lavers did not have any authority to make the purported "agreement" with the appellant. The appellant was aware of this, and pursued the appropriate appeal procedures through the Faculty's Committee on Examinations and Ombuds Committee. Further, she did not in any way rely to her detriment on the conversations with Professor Lavers. These conversations caused her to do nothing more than to attend some winter 2001 classes for which she was not registered and which she was not required to attend (but which she will have to take in the future if she continues in the Faculty's program).

Your Committee also finds that the appellant received notice of the Faculty's committee decisions in a timely manner, and that even if there was a postal mishap with the notification letters, the decisions were valid. Moreover, Ms. Lund-Thomsen had already advised the appellant orally that the written decisions would be forthcoming, and the tuition fee refund and the fact that ROSI indicated that she had withdrawn from the program had already effectively notified her of the decision. The appellant has provided no grounds on which to overturn the valid decisions of the Faculty's committees.

The other point raised by the appellant is that the grade she received in ENG 182, which she took during the winter of 2000, had been raised from a 74% to a 79%. The effect of such an increase in this one grade would have been to raise the appellant's sessional average from 59% to 60% for the winter 2000 term. This, in turn, would eliminate her probation upon commencing the fall 2000 term, which would, in turn, eliminate her repeat probation upon receiving below a 60% average for the fall 2000 term.

The appellant's argument is based on a conversation she had with the instructor for ENG 182, Professor McDayter. The appellant states that Professor McDayter had agreed to

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adjust her mark for the course upward and that this adjustment must be taken into account in calculating her sessional average. While Professor McDayter is no longer on faculty at the University of Toronto (having moved to Trent University), he provided an explanatory letter which was put in evidence by the Faculty. In a nutshell, Professor McDayter explained that the relatively subjective nature of an English test or paper means that there is some flexibility in the grading, and that he would be inclined to accede to the request for a modest increase given the appellant's history of medical problems.

Your Committee finds that Professor McDayter did not have the authority to increase the appellant's grade for ENG 182 in the manner described by the appellant, and that the appellant never properly appealed her grade for that course. While a course instructor can amend a mark if there has been a clerical error in recording it, a course instructor does not have the authority to entertain an appeal of a grade for medical reasons. Such an appeal would have to go through the proper committee procedures. The appellant testified that she was aware of these procedures, but that much time had passed by the time she approached Professor McDayter and that she was no longer in a position to proceed in accordance with the Faculty's appeal procedures.

Your Committee finds that the grade received by the appellant for ENG 182 during the winter 2000 term stands at 74% and that there are no grounds on which to adjust it upward or otherwise amend it.

For all of these reasons, the appeal is dismissed.

February 11, 2002

REPORT NUMBER 263 OF THE ACADEMIC APPEALS COMMITTEE

October 10th, 2001

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Wednesday, October 10th, 2001 at 1:30 p.m. in the Counsel Chamber, Simcoe Hall, 27 King's College Circle, at which the following were present:

Professor Ed Morgan, Acting Chair
Professor Luigi Girolametto
Ms. Karen Lewis
Mr. Kasif Pirzada
Professor Olga Pugliese

Mr. Paul Holmes, Judicial Affairs Officer

In attendance:

Mr. T.T., the appellant
Mr. Alex Henderson, Downtown Legal Services, counsel for the appellant
Professor Raymond Kwong, for the Faculty of Applied Science and
Engineering
Ms. Barbara McCann, for the Faculty of Applied Science and Engineering

The student appealed a decision of the Faculty Ombuds Committee of the Faculty of Applied Science and Engineering (the "Faculty") dated February 28th, 2001. The Committee's decision denied the appellant's request to grant permission to continue to the second term of fourth year in the civil engineering program. On appeal to the Academic Appeals Committee of the Governing Council, the appellant requested late withdrawal without academic penalty from three courses (CIV 424, CIV 540, and CIV 550).

In the fall of 2000 the appellant entered the first term of the fourth year of the civil engineering program. He was on academic probation at this time and was taking the three courses noted above. Of these, CIV 424 was a required course and the latter two were technical electives. He received failing grades in all three courses and was suspended by the Faculty for eight months.

The appellant presented new evidence to the Academic Appeals Committee and requested late withdrawal from CIV 424, CIV 540, and CIV 550. It was the appellant's position that he should have been granted special consideration by the two committees of the Faculty.

The Academic Appeals Committee of Governing Council rendered the following decision orally on October 10th, 2001:

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Taking into account the medical evidence presented by the Appellant, much of which was not before the Faculty of Civil Engineering's Ombuds Committee, and the apparent severity of the injuries suffered by the Appellant in an automobile accident on November 29, 2000, the appeal is granted. The Appellant is granted permission for late withdrawal from CIV424, CIV540, and CIV550 without academic penalty. The Academic Appeals Committee is unanimous in this decision.

The medical evidence presented by the appellant included a history of respiratory problems which hindered his class attendance as well as his concentration and studying ability. These problems, which were apparently allergy-related, were accompanied by severe headaches and other symptoms which made it difficult for him to function through much of the fall 2000 term. He presented evidence indicating that he had also been forced to miss classes during that term due to the stomach flu and that, in addition, he was in a serious automobile accident on November 29, 2000. A medical and insurance report submitted by the appellant demonstrated that he saw a doctor immediately after the accident, and was put on pain killing medication. He also underwent a course of treatment that included physiotherapy for neck and spinal injuries, as well as acupuncture and manipulation of the spine.

In all, the car accident appears to have had a very severe effect on the appellant, and caused him to miss his exams entirely at the end of the fall 2000 term. During the December 2000 exam period, he was suffering from episodes of pain as well as stress, and his doctor advised him that it would be overly stressful to write his exams. The appellant testified that during this period he could not stop his hands from shaking. The appellant has now recovered sufficiently from the injuries he suffered in the accident to continue his studies, although he testified that he continues to experience lower back problems.

The appellant petitioned the Faculty Committee on Examinations and the Ombuds Committee of the Faculty. The Committee on Examinations found that the appellant had not completed the assignments for the courses in issue, and had failed to write mid-terms and some of the quizzes. The Committee on Examinations determined that the appellant should have sought counseling and should have requested withdrawal from his course prior to the November 3, 2000 deadline. The Ombuds Committee also noted that the appellant was having substantial academic problems prior to the automobile accident. It was noted that the appellant had only attended about 30% of the lectures and tutorials during the relevant term, and that he had not sought counseling and had not requested withdrawal from the three courses in a timely fashion. Accordingly, both Committees rejected the appellant's request for special consideration.

It would appear that the appellant failed to bring the accident report to the Ombuds Committee. He was under the impression that a doctor's note, written in general terms, would suffice for the Committee's purposes. For that reason, it was difficult for the Faculty's Ombuds Committee to fully appreciate the severity of the accident and the symptoms suffered by the appellant as a result of the accident.

The Faculty's calendar provides that "A student who believes that academic performance has been adversely affected by illness, mishap or other circumstance during the term or the

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examination period should submit a Petition for Consideration in Final Examinations.” The appellant submitted such a petition in a timely fashion. However, the Committee on Examinations and the Faculty Ombuds Committee both concentrated on the history of illness suffered by the appellant prior to the car accident on November 29, 2000, and either had insufficient information or placed insufficient emphasis on the consequences of the car accident itself. The petition was therefore not properly considered by the two committees.

It is the unanimous view of your Committee that the decision of the Faculty Ombuds Committee, which in turn upheld the decision of the Faculty Committee on Examinations, should be reversed. The appellant has demonstrated to your Committee’s satisfaction that his academic performance in CIV 424, CIV 540, and CIV 550 was adversely affected by the medical consequences of the car accident during the fall 2000 examination period. His petition for late withdrawal from these courses is therefore granted.

February 12, 2002

REPORT NUMBER 264 OF THE ACADEMIC APPEALS COMMITTEE

March 14, 2002

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Thursday, March 14th, 2002, at which the following were present:

Professor Emeritus Ralph Scane, Acting Chair
Professor Clare Beghtol
Professor Luigi Girolametto
Ms Wendy Swinton
Ms Geta Yadav

Secretary: Mr. Paul Holmes, Judicial Affairs Officer

In Attendance:

For the Appellant:

Ms A.H., the Appellant ("the Student")
Ms E. Morton, counsel

For the University of Toronto at Scarborough:

Associate Dean I. McDonald
Ms Sherylin Biason

This is an appeal from the decision of the Subcommittee on Academic Appeals of the U. of T. at Scarborough, dated July 5, 2001, denying an appeal from the Subcommittee on Standing of UTSC, dated April 9, 2001. The latter decision denied a petition from the Student, dated April 4, 2001, and, according to the UTSC submission, filed April 6, 2001, to drop the course CHMA02Y without academic penalty. April 6, 2001 was the last day of classes in that term.

The Student enrolled in the Honours B.Sc. programme at UTSC in the fall of 1999. She completed that academic year with an annual GPA of 1.67, entitling her to continue in good standing. However, in the following academic year, due in part to a grade of F in CHMA02Y, she dropped to a cumulative GPA of 1.43, and was placed on academic probation. If she is successful in this appeal, so that the grade in CHMA02Y is removed from the calculation, her

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cumulative GPA would be increased to 1.67, and she would be removed from probationary status.

The Student is a member of a family which immigrated to Canada. Her father is dead, and she was living with her mother, sister and an older brother who supported the family. The family comes from a cultural background in which marriages arranged by parents, or senior family members, were common in their home country. The brother decided that the Student should marry an uncle, still in the home country, whom the Student barely remembered, and in any case did not wish to marry. Intense pressure to carry out her brother's wishes was placed on the Student, to the extent that, although she had never lived apart from her family, and had no independent financial resources, she left home about the end of November, 2000, and went to share accommodation with a friend. To finance herself, she found a job which required her to work 30 hours per week. She also had a very lengthy commute to and from the campus.

Sometime near the end of February 2001, the Student returned to her home to help care for her mother, who developed a severe medical condition. The relationship with her brother was still strained, and she had to spend considerable time caring for her mother and assisting her to get to medical appointments.

The Student took four full courses in the 2000 - 2001 academic year. She passed three of these with grades sufficient to maintain standing, but for the failure in CHMA02Y. She failed all the term tests and tutorial quizzes in that course, and did not write the final examination, which was worth 35% of the overall grade. She asks to be relieved of the consequences of that failure on the ground that the stressful situation, merely outlined above, in which she found herself prevented her from performing adequately in the course in question.

Before addressing the substance of the appeal, your Committee notes an objection by UTSC to the Student introducing for the first time at this final appeal level the fact that she was subject to pressure, during the relevant period, to enter into an arranged and unwanted marriage. This situation was not disclosed by the Student either in the original petition, or in the material filed with, or her oral statement to the UTSC appellate committee. This is a serious objection, supported by the fact that several panels of your Committee have previously expressed concern about the waste of resources and time at all levels that failure to put forward the full case upon which the student is relying at the beginning of the process may entail. Your Committee has, in a previous appeal, decided that, due to the fact that, particularly in the early stages of the process, students often have little advice and no experience in what is involved in an academic appeal, it would be wrong to impose rules as rigorous as are imposed by appellate courts with respect to the receipt of new evidence before them. Nevertheless previous panels have made it clear that refusal to consider such evidence is an option open to your Committee. The issue will always be a difficult one for academic appeals committees. Your Committee believes that the best way to deal with it is to make sure that all students are clearly warned in writing, at the time that they are instituting the first steps of an appeal process, usually the initial petition, that they must make

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full disclosure of all relevant facts upon which they rely, however embarrassing or intrusive upon their personal sense of privacy and dignity those facts may be, at risk of not being allowed to raise these facts at later stages of the process. Appeal committees might then feel more comfortable in taking a much stricter view on admissibility. Your Committee recommends to the Governing Council that it take the necessary steps to make such a warning mandatory throughout the University.

In the instant case, the issue is not so clear-cut as it has been in some other cases. In her original petition the Student did disclose that the core problem was a "difference of opinion" at home, involving her brother, who "made it impossible to live at home". She did not elaborate further in her documentation, and apparently was not asked to do so when she made her oral submissions. However, your Committee considers that the essential nature of the issue, severe family friction leading to the Student feeling required to leave home, and find work to support herself, was sufficiently disclosed that it is prepared to allow the details to be filled in at this level.

With respect to the substance of the appeal, some of your Committee were concerned that corroborative evidence of the family problems at the root of this appeal which might be expected to be forthcoming from family members who would have direct knowledge of the situation was not tendered, nor was any explanation for its absence given. However, your Committee is satisfied that the pressure on this Student occasioned by her family circumstances was severe enough to justify relief, if that were the only requirement for success on the appeal.

The problem is that the last date for dropping this course without academic penalty was February 18, 2001. It is clear from previous decisions of your Committee, as well as from regulations of the various divisions of the University, that permission for late withdrawal without penalty may be granted, but such relief is far from a matter of course. The very existence of "drop dates" demonstrates that those charged with legislating University academic rules and regulations have adopted a policy that is far from paternal in this regard. Up to the "drop date", the University leaves the matter entirely in the uncontrolled discretion of the student. The student's reasons for dropping a course may range from merest whim to desperation. However, by that date, the student is expected to have assessed his or her circumstances, and made an election. If the student elects to continue with the course, the consequences of that election must be accepted, and no allowance will be made for the effect of circumstances existing at the drop date, including the continuation of those circumstances after that date if continuation should reasonably have been anticipated, however detrimental to the student's performance they may be. In short, the University, by adopting "drop dates" which are set considerably before the end of the relevant terms, has set its face against a student, at the time the "drop date" forces a choice, from gambling, substantially risk free, that the situation with respect to a course can be repaired.

Without attempting to be exhaustive, the obvious circumstances where this policy does not apply are when unanticipated circumstances arise after the "drop date", when then existing

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circumstances unexpectedly become significantly more severe, or when then existing circumstances were reasonably expected to abate, but did not.

Applying this analysis to the present case, your Committee finds that the Subcommittee-committee on Academic Appeals of UTSC was correct in its reasons and its decision. By the "drop date", the Student was only too well aware of the burdens placed upon her by her family situation and the time demands of her job and her commuting. She knew that she had failing grades in her Fall Term tests and her midterm examination in CHMA02Y. She states that she did not know of her failing grade in a test in that course taken on February 10, 2002 until the day after the "drop date". If she had petitioned promptly after receiving that test mark, it is possible that the late receipt might have justified awarding the relief asked, but she did not. The difficulties she faced due to her mother's medical condition did not occur until around or after the critical date, but here, the Student cannot have it both ways. If her return to the family home as a caregiver was foreseen at the drop date, the caregiving burden should have been factored into her appraisal of her chances of completing all of her courses successfully. If it was not foreseen, the Student must have anticipated that her situation of living away from home and holding a job to support herself would continue. Your Committee believes that the Student gambled that she might somehow pull her courses together in the time remaining in the term, or, if she could not, would seek to withdraw from one or more of her courses near the end of term. This is exactly what the University's policy on dropping courses without academic penalty is designed to prevent.

The appeal is dismissed.

March 25, 2000