

**UNIVERSITY OF TORONTO**  
**GOVERNING COUNCIL**

**REPORT NUMBER 291 OF THE ACADEMIC APPEALS COMMITTEE**

**June 14, 2004**

To the Academic Board,  
University of Toronto.

Your Committee reports that it held a hearing on Friday May 22, 2004, at which the following were present:

Assistant Dean Bonnie Goldberg, Chair  
Professor Clare Beghtol  
Dr. Pamela Catton  
Ms Françoise Ko  
Professor Jake Thiessen

Mr. Paul Holmes, Judicial Affairs Officer

In Attendance:

Ms T., the Appellant  
Mr. T., brother of the appellant  
Associate Dean Tony Duggan, Faculty of Law, University of Toronto

**THE APPEAL**

The student appeals a decision of the Faculty of Law Appeal Committee, dated December 12, 2002, which unanimously dismissed the student's appeal of two previous decisions, and which held that the grade of D assigned by Professor Andrew Christie in the course "Intellectual Property in the Digital Era" (LAW 450S) should stand. The student had appealed the decision of a third party reader, dismissing her appeal from a grade of D, and had also appealed from a decision of the Faculty of Law Academic Standing Committee, refusing the student's request for pass or aegrotat standing in this course. The student seeks one of three remedies:

- (i) "Aegrotat" standing; or in the alternative
- (ii) "pass" standing; or in the alternative
- (iii) an increase from the grade of "D".

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### **FACTS**

The student is a 2001 graduate of the Faculty of Law. She performed very well at the Faculty of Law, obtaining grades in the B and B+ range, and winning a prize for an essay written in a health law course. In the spring of 2001 she enrolled in Professor Christie's course. Professor Andrew Christie was an adjunct faculty member visiting from Melbourne, Australia. Students had two options in the course: write an essay worth 100% of the final grade or write an examination at the end of the term worth 100% of the final grade. The student chose the paper option.

The instructor advised students that they should only write a paper if they had a "burning" issue that they wished to explore, and not because they sought an easy way of avoiding an examination. He states that "I told the class a number of times that the research paper option was there for those students who had a strong interest in a particular topic covered in the course and who wished to undertake a detailed exploration of it... I was not in a position to provide topics to students – it was for them to identify an area of interest to them." The standard of the paper was expected to be high: that of a paper that could be published in a law review journal. The student states that these standards were not clearly communicated to the class and when they were explained, it was already several weeks into the term. She chose to write the paper because "I usually learn more by researching a specific topic in depth rather than taking a cursory glance of many topics."

Students were expected to meet with Professor Christie to obtain topic approval. The student met with the professor at least four times beginning on February 28<sup>th</sup>, 2001. Each time, her topics were not approved for reasons such as lack of depth in the proposed topic and/or lack of knowledge by the student of the topic. The student states that she raised a back-up topic in her meeting with the instructor on March 27<sup>th</sup>, 2001 and then confirmed in an email dated April 3, 2001 that this would be her paper topic. This was less than two weeks prior to the start of the examination period at the law school.

The student received a D on her paper, submitted anonymously, entitled "The Reverse Engineering of Computer Programs: The Canadian Perspective." The professor's written comments included the following remarks:

Overall, this reads as a very ill-thought piece, written with a lack of care, and resulting from insufficient thinking through of the issues. I don't recall speaking with any student about this topic. I am truly sorry you didn't take the opportunity to consult with me about it.

At a follow-up meeting in June 2001, the student reviewed the criticisms and admitted that this paper did not reflect "her finest work." Professor Christie admitted recalling that they had discussed this topic and that he had approved it.

The student introduced at the Academic Appeals Committee hearing a CD-Rom containing 182 articles which she claimed constituted her research for the proposed but rejected topics. Your Committee accepted the CD-Rom as evidence of the research performed by the student during her topic search.

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### **PREVIOUS DECISIONS**

The student sought review of the grade through two different avenues. First, she sought a review by a third party reader. On September 24, 2001, Professor Abraham Drassinower of the Faculty of Law, found that “I have no doubt whatsoever that a reasonable grader could have reached the conclusion reached by Professor Christie.”

The student then applied to the law school’s Academic Standing Committee (“ASC”) for aegrotat standing in the course. She argued that the following factors should be taken into account in the awarding of aegrotat standing: the excessive time she devoted to preliminary research while seeking topic approval; her frustrations in obtaining topic approval; the lack of guidance provided by the instructor in topic development and on the final topic; and the very late start date on which she had to begin writing her paper. She also disputed the instructor’s written comments on the paper implying that she would have performed better had they met to discuss the topic.

The ASC refused the student’s grade appeal and noted that “while the Professor does have an obligation to assist the student in the process of choosing and developing a paper topic, the student also bears significant responsibility for developing the paper topic.” The ASC held that the Professor discharged his responsibility.

The student appealed further to the Faculty of Law Appeal Committee, which unanimously dismissed the student’s appeals. The Appeal Committee considered whether the student’s circumstances were sufficient to award the aegrotat standing and found that implicit in the ASC decision is the belief that these circumstances could qualify. However, the ASC held that the student did not make out a case on the facts. The Academic Appeal Committee agreed with the ASC and found that the instructor adequately discharged his responsibilities to the student.

### **DECISION**

Your Committee is unanimously of the view that the student’s appeal should be allowed and that aegrotat replace the D grade.

The University of Toronto policy on Grading Practices defines aegrotat standing as follows:

AEG: Aegrotat standing granted on the basis of term work and medical or similar evidence.

AEG is assigned by a divisional committee upon approval of a student's petition. It carries credit for the course but is not considered for averaging purposes.

The Faculty of Law defines aegrotat standing as follows:

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If as a result of the faculty's policy of encouraging students to write examinations as scheduled, you attempt an examination and do poorly because of the effect of illness or other personal circumstances, the appropriate remedy is to apply for *aegrotat* in the course or courses affected. ... *Aegrotat* is a standing which, in exceptional circumstances, may be awarded to students who for medical or compassionate reasons are unable to satisfactorily complete the requirements of a course or courses in situations where the faculty is otherwise satisfied that the student would have performed successfully. The student's academic record in the Faculty is an important consideration.

Your Committee heard that the Faculty of Law awards *aegrotat* based on the following considerations. First, one must consider whether the facts of the particular case are personal circumstances as contemplated by the definition. If the facts could be considered personal circumstances, then one must decide whether the facts of this particular case are such that without these circumstances, the student would have performed successfully. Second, one must consider whether the disputed grade is markedly different than those obtained by the student in other courses.

Neither the decision of the ASC nor the decision of the Academic Appeals Committee conclusively decided that the student's particular circumstances could not meet the definition of personal circumstances as contemplated by the definition.

Despite common practice at the Faculty to use this designation when a student becomes ill, or suffers a traumatic personal experience, the student's argument that the frustration and delay she experienced constitute exceptional circumstances in this situation is accepted. It was already several weeks into the course when the students were informed of the professor's expectations for the paper. On the earliest possible occasion permitted by the professor, the student met with the professor, only to spend the next month in a cycle of researching topics and having the topics rejected. Once she received topic approval, she had only a few weeks left to write her paper, as well as complete the requirements of her other courses. The student did not receive any further suggestions for her research on this topic. Your Committee accepts that without the delay and frustration, she would have had more time; with earlier instructions and greater supervision, she would have performed better.

Further, the grade of D is inconsistent with the other grades awarded to this student during her three years at the Faculty of Law. This point was agreed to by the Faculty of Law at the hearing.

We would have appreciated more information and evidence about the stress of the student during this time but are prepared to give her the benefit of the doubt and accept that as a result of these circumstances, she was unable to satisfactorily complete the requirements of a course where otherwise she would have performed successfully.

Your Committee expresses its hope that the Faculty of Law provides its faculty – particularly adjunct professors – with consistent and clear information regarding orientation, evaluation methods, and the obligations of its teaching staff. We trust that at the earliest opportunity, the Faculty ensures that law students are given adequate and comprehensive written material about

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course expectations and evaluations that is in keeping with the high standards of the University of Toronto.

Beyond the circumstances of the writing of the paper and her interactions with Professor Christie, the student alleges unfairness related to the processes for appealing grades at the Faculty of Law. Your Committee believes that these other complaints are immaterial to our decision to allow the appeal. However, your Committee wishes to comment on one particular aspect of the process. The student complains that the third party reader received written information from Professor Christie regarding the circumstances relating to topic approval. The student was not allowed to submit similar material. While the Faculty of Law's position is that the information submitted by the instructor to the third party reader did not influence his decision in any way, the Faculty acknowledges and agrees that the third party reader should not have received extraneous comments. This violated the procedure by which third party readers are meant to evaluate only the paper.

The appeal is allowed. The grade of "D" recorded in the course LAW 450S taken in the 2000 - 2001 session will be vacated and replaced with a grade of AEG. The sessional and cumulative GPA of the student shall be adjusted if necessary according to the Faculty of Law regulations.

Paul Holmes  
Secretary

Bonnie Goldberg  
Chair