



TO: Members of the Academic Board

SPONSOR: Christopher Lang, Director, Appeals, Discipline and Faculty
Grievances

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AGENDA ITEM: 11a

ITEM IDENTIFICATION:

Semi-Annual Report: Academic Appeals Committee, Individual Reports, Winter 2010

JURISDICTIONAL INFORMATION:

Section 2.1 of the Terms of Reference of the Academic Appeals Committee describes the function of the Committee as follows:

To hear and consider appeals made by students against decision of faculty, college or school councils (or committees thereof) in the application of academic regulations and requirements and to report its decisions, which shall be final, for information to the Academic Board. The name of the appellant shall be withheld in such reports.

Section 5.3.3 of the Terms of Reference of the Academic Board provides for the Board to receive for information Reports of the Academic Appeals Committee without names.

RECOMMENDATION:

For information.

The purpose of the information package is to fulfill the requirements of the Academic Appeals Committee and, in so doing, inform the Board of the Committee's work and the matters it considers, and the process it follows. It is not intended to create a discussion regarding individual cases or their specifics, as these were dealt with by an adjudicative body, with a legally qualified chair and which was bound by due process and fairness. The Academic Appeal's committees decisions are based on the materials submitted by the parties and are final.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #338 of the Academic Appeals Committee
January 12, 2010

Your Committee reports that it held a hearing on Thursday October 29, 2009 at which the following members were present:

Mr. Tad Brown, Chair
Mr. Adam Heller
Professor Doug McDougall
Professor Elizabeth Smyth
Dr. Sarita Verma

Secretary: Mr. Christopher Lang

Appearances:

The Student Appellant (Mr. H■■W■■K■■) and his counsel Mr. Jordan Giurlanda from Downtown Legal Services

For the University of Toronto Scarborough (UTS):
Professor John Scherk, Vice Dean of UTS

I. The Appeal

The Student is appealing a decision of the Subcommittee on Academic Appeals (SAA) at the University of Toronto Scarborough dated March 31, 2008. The decision of the SAA dismissed an appeal by the student for late withdrawal without academic penalty for three courses taken in the Winter Session 2007, namely ECM A06H3 (Introduction to Macroeconomics: A Mathematical Approach), EES A10H3 (Human Health and the Environment) and PSY A02H3 (Introduction to Psychology Part II) (collectively the "Courses"). The Student is appealing on medical and compassionate grounds. The Student is seeking a remedy that would allow him to be granted late withdrawal without academic penalty from the Courses or, in the alternative, that he be granted Aegrotat standing in the Courses.

II Facts

The Student first enrolled at the University of Toronto Scarborough in the 2005 Fall Session in Honours Bachelor of Arts and completed 1.5 credits by the end of that session. The Student registered for 2.0 credits in the 2006 Winter Session and

completed 1.5 credits by the end of that session. At that time, his status was assessed as "on academic probation".

The Student next registered for three half-credit courses during the 2007 Winter Session (the Courses). The Student failed all three Courses. The Student failed EES A10H3 (Human Health and the Environment) and PSY A02H3 (Introduction to Psychology Part II) after writing the final examinations. On April 26, 2007 the Student petitioned to write a deferred examination in the course ECM A06H3 (Introduction to Macroeconomics: A Mathematical Approach). This petition was granted on medical grounds based on a Student Medical Certificate indicating acute headache, malaise, fever, nausea and dizziness. The deferred examination for ECM A06H3 was scheduled for August 16, 2007. This examination was to be worth 100% of the grade as the Student did not write the mid-term examination. The Student did not sit the examination on August 16, 2007. The Student obtained a medical note on August 20, 2007 indicating that the Student has been suffering from abdominal problems. The Student did not contact anyone or seek a medical note between August 16th and August 20th as he indicated that he was too ill to leave his house. The Student petitioned to write a second deferred examination which was denied by the University on August 29, 2007.

In September 2007, the Student petitioned the Office of the Registrar for late withdrawal from the Courses citing "psychological illness". In support of the petition, the Student provided a medical certificate from his doctor which stated that the Student was suffering from "depression-major affective disorder". The medical certificate described the Student's problem as "progressive onset and deterioration, depressive disorder since July 2006 to present". On October 23, 2007, the Student's initial petition was denied. In the decision, the Office of the Registrar stated "We are sympathetic to your illness. However, you have been aware of your illness since July 2006. As a student on academic probation, you should have assessed your situation carefully and withdrawn from your courses by the appropriate deadline (March 25, 2007)".

III Previous Decision

The Student appealed this decision to the Subcommittee on Academic Appeals (the "SAA") of the University of Toronto Scarborough in January 2008 and cited depression as the reason for his failure of the Courses. The Student described the two causes of his depression being the death of his closest friend in February 2007 and the fact that his parents returned to Korea in April 2006 and that his father had subsequently developed worsening heart conditions. The SAA denied the appeal in a decision dated March 31, 2008. The SAA concluded that "The committee agreed that you had experienced several difficulties which might well have impacted your studies. Unfortunately, you did not provide evidence that might show how these conditions had caused the crisis in your studies during the Winter and Summer Sessions 2007". In addition, the SAA noted that the Student had been diagnosed

with depression by his doctor as early as July 2006 but had not been treated medically for this condition nor had he consulted with a specialist. The SAA urged the Student to consult with a doctor about ways to deal with his depression and to consult with an Academic Advisor about managing his academic load.

IV Decision

The Student provided additional evidence to your Committee which was not presented to the SAA. In particular, the Student provided additional supporting documents in the form of an affidavit and a medical note to substantiate his claims of the death of his close friend and the heart problems of his father, respectively. Your Committee accepts that these events did in fact take place.

The Student also took the advice of the SAA and sought additional medical help. Shortly after receiving the decision of the SAA, the Student received a referral to a psychiatrist. After numerous meetings, the psychiatrist in a report dated June 8, 2008 diagnosed the Student as having been "suffering from bipolar II disorder, generalized anxiety disorder, attention deficit disorder-adult type and social phobia for more than two years". The Student is now taking medication and undergoing regular counseling sessions with his psychiatrist.

The Student has also taken the advice of the SAA and sought advice from academic advisors which has been beneficial to his studies.

Your Committee commends the Student for taking these actions and is pleased to see that his academic performance has improved. Your Committee is also sympathetic to the situation in which the Student found himself in the Winter and Summer Sessions 2007.

However, your Committee agrees with the SAA that the Student was aware of his depression as of July 2006 at the latest. Your Committee also agrees with the SAA that, as the Student was on academic probation, he should have sought academic counseling if he was struggling with his academic load. The drop date for the Courses was March 25, 2007 which provided the Student with ample time to have assessed his situation and to withdraw from the Courses without academic penalty. The Student has confirmed that he did not seek any academic counseling during the Winter and Summer Sessions 2007.

Your Committee has on a number of occasions dealt with petitions for late withdrawal from a course without academic penalty and has consistently stressed that this remedy will not be lightly granted. The remedy of late withdrawal without academic penalty is an extraordinary remedy, reserved for unusual and unique situations. The idea of "drop dates" indicates that the University expects that a student will make a decision whether to continue in a course by a set date in the term. But by the drop date, a student is expected to have assessed his or her

situation and made a decision. Once the drop date passes, the implication is that the student has decided to continue on in the course. Exceptions to this policy are rare, but could include situations where unexpected and unforeseeable circumstances occur after the drop date, where already existing circumstances become unpredictably worse, or where already existing circumstances do not reasonably resolve.

While your Committee accepts that the death of the Student's friend and his father's ill health were challenging for the Student, there was not enough evidence to support the impact that these events had on the Student's academic performance that would justify allowing this extraordinary remedy in accordance with the parameters set out above. In particular, both of these situations had presented themselves well before the required drop date.

Again your Committee commends the Student for seeking further medical attention after the decision of the SAA and is pleased that the Student's current mental health has been assessed and that he is receiving required medical treatment and counseling. However, the diagnosis of the Student's mental health issues of bipolar II disorder, generalized anxiety disorder, attention deficit disorder-adult type and social phobia was not made until June 2008. This diagnosis is one year after the examination period in question for the Courses. Your Committee is unanimously of the view that there was insufficient evidence presented of the Student's medical condition during the Winter and Summer Sessions 2007 and the impact that the Student's mental health at that time had on his ability either (i) to write the examinations or (ii) to seek academic counseling and withdraw from the Courses by the required drop date. Therefore your Committee has determined that this case is not one which justifies the extraordinary remedy of granting late withdrawal from the Courses without academic penalty.

While it does not affect the outcome of this appeal, Your Committee would also like to express its views on two additional matters raised in the context of this appeal.

First, the SAA in its decision stated that "The committee noted that your primary stated concern in the hearing was to raise your grade point average in order to enter the Specialist program in Management. We appreciate that many students would like to remove courses in which they obtained poor marks from their transcript, but the University of Toronto is generally unsympathetic to this sort of cosmetic change". This position was reiterated in the context of the submissions made by UTS in this appeal. Your Committee strongly endorses the view that there is nothing improper about a student's desire to improve his or her academic record in order to gain entry into a program of choice. There must be actual circumstances and evidence which supports and justifies a change to the student's academic record in each specific case beyond the motivation for entry into a particular program. However, if and only if those circumstances exist, the motivation of a student to launch an appeal based on his or her desire to open the opportunity to gain entrance into further academic programs is entirely reasonable.

Second, your Committee notes that the Student filed his Statement of Appeal with the University of Toronto Governing Council on July 2, 2008. The University of Toronto Scarborough filed submissions responding to the Statement of Appeal on March 13, 2009. No meaningful explanation was provided by the University of Toronto Scarborough for the delay of over eight months in responding. Your Committee is of the view that the University should implement formal guidelines which set out specific time deadlines for filing of the various documents required in a student academic appeal so as to prevent these types of delays in the future.

The appeal is dismissed.

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report #339 of the Academic Appeals Committee
January 8, 2010

The Academic Appeals Committee reports that it held a hearing on Tuesday December 1, 2009, at which the following were present:

Assistant Dean Kate Hilton, Chair
Ms Min Hee Margaret Kim
Dr. Joel Kirsh
Dr. Chris Koenig-Woodyard
Professor Louise Lemieux-Charles

Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

In Attendance:

Ms H■■■■ S■■■ (the "Student")
Professor John Scherk, University of Toronto at Scarborough (UTSC)

I. The Appeal

The Student is appealing the decision of the UTSC Subcommittee on Academic Appeals dated November 5, 2008, denying her an extension of time to write deferred examinations in two 2008 Winter Session courses (EESB03H3 and MAT135Y1).

II. Facts

The Student enrolled at UTSC in the 2005 Fall Session, in an Honours Bachelor of Science program. The Student immediately began to experience serious academic difficulties, such that by the end of her third year of study, she had earned only 3 credits towards her degree and had a cumulative GPA of 0.59. Her record shows a striking number of failed courses, numerous petitions for deferred examinations and three separate suspensions for failure to meet the minimum GPA requirements of her program.

The Student suffers from severe, chronic back pain, which makes it extremely difficult for her to sit for long periods of time. There is significant medical evidence in the Student's file to indicate that her condition has compromised her academic performance throughout her career at UTSC. Although neither the Student nor UTSC could confirm the date, it appears that the Student registered with UTSC Accessibility Services in the 2007 Winter term, and wrote some of her examinations with accommodations. It also appears that she was more successful on examinations that she wrote under the supervision of Accessibility Services than she was under normal examination conditions.

At the end of the 2008 Winter term, the Student was scheduled to write examinations in EESB03H3 (a one-term course at UTSC) and MAT135Y1 (a full-year course at St. George). The Student was unable to write the examinations at the scheduled times due to her medical condition. She petitioned to write a deferred examination in EESB03H3 and MAT135Y1, and these petitions were granted on April 29, 2008 and May 16, 2008 respectively.

The Student was scheduled to write deferred examinations in EESB03H3 and MAT135Y1 in August 2008. At some point prior to the examination dates, the Student realized that she was required to register separately with Accessibility Services on the St. George campus in order to write MAT135Y1 with accommodations. She made two separate trips to the St. George Accessibility Services Office, one to obtain information about the registration and accommodations procedures at St. George, and the other to register. On her second visit, she arrived at the end of the day and learned that it was the last possible day to register with the Accessibility Services Office for the upcoming examination period. Since the office was about to close, the staff member on duty advised the Student to take her forms home and submit them by fax. She did so. Subsequently, she was informed by another staff member that the St. George Accessibility Services Office was not prepared to accept forms filed by fax after the deadline, and that she was not entitled to access any accommodations with respect to MAT135Y1.

The Student experienced a severe (and medically documented) flare-up of her back condition during the period of August 14-19 and was unable to write her examinations in either EESB03H3 or MAT135Y1.

UTSC's calendar states as follows: "If you miss a deferred exam, you may petition for an extension of time to write it; normally no other form of special consideration will be granted. Such a petition will be considered only if you provide compelling evidence of a significant medical or other emergency."

III. Previous Decisions

On August 15, 2008, the Student petitioned for an extension of time to write a deferred examination in MAT135Y1. The Student provided a UTSC Medical Certificate, completed by her treating physician, which stated that she had been unable to write her examinations during the period of August 14-19. The Student also provided a letter from the St. George Accessibility Services Office in support of her petition. The letter indicated that the Student was registered with Accessibility Services, and that she had been advised "not to attempt writing her exam without accommodations." The petition was denied on the basis that the Student had missed the deadline to register for Accessibility Services, and that it was the Student's responsibility to have accommodations in place in time to write her examinations.

On October 8, 2008, the Student petitioned for an extension of time to write a deferred examination in EESB03H3. The petition was denied on the basis that the Student had not

fulfilled her responsibility to have the appropriate accommodations in place in time to write her examinations.

On October 16, 2008, the Student again petitioned for an extension of time to write deferred examinations in EESB03H3 and MAT135Y1. The petition was denied.

On October 28, 2008, the Student appealed to the UTSC Subcommittee on Academic Appeals. The Subcommittee denied the appeal. In its decision, the Subcommittee wrote the following:

You are apparently registered with Accessibility Services at UTSC and at St. George, in order to write exams under their supervision. To do so, you needed to schedule these exams in advance. A letter from St. George Accessibility indicates that you did not register with them before their registration deadline.... On the dates of the deferred exams, you experienced extreme back pain. Without any consultation with either Accessibility Service, you decided not to write the exams.... The university expects students to take responsibility for their own well-being and to make any special arrangements which are necessary to allow them to complete their academic work. The committee judged that you were aware of resources available to deal with your condition but that you did not make appropriate use of these resources. For this reason, your appeal was denied.

On January 9, 2009, the Student appealed to the Academic Appeals Committee of the Governing Council.

IV. Decision

UTSC policy clearly states that a student's petition for an extension of time to rewrite a deferred exam will be considered in a situation where a student has experienced a documented medical emergency. In this case, the Student experienced a severe episode of back pain that was different in degree from the chronic pain she manages on an ongoing basis. The Student sought medical attention from her doctor on the dates of the examinations in EESB03H3 and MAT135Y1, and the doctor completed a UTSC Medical Certificate indicating that the Student was incapable of writing her examinations. This Committee is of the view that the Student did everything that UTSC policy requires, and that, in the circumstances, she should have been granted an extension of time to rewrite her deferred examinations.

The previous decisions in this case turned on the Student's responsibility for registering with Accessibility Services, her failure to secure the accommodations that she required to write her examinations and her failure to notify Accessibility Services when she realized that she was too sick to write her examinations. This Committee is of the view that the Student's responsibility for registering with Accessibility Services or notifying them of her illness is irrelevant to the determination of whether or not she should be entitled to an

extension of time to rewrite her deferred examinations. The Student was ill on the date of her examinations and provided adequate medical documentation in support of her petition. By denying her petition on the basis of her failure to register or communicate with Accessibility Services, UTSC is applying a higher standard to the Student than it applies to UTSC students who do not require the assistance of Accessibility Services. This is neither appropriate nor fair.

This Committee also wishes to note that it was troubled by the portrait of tri-campus Accessibility Services that emerged in the course of this hearing. As experienced by the Student in this case, the three campus-specific Accessibility Offices appear to be poorly integrated with each other and unnecessarily bureaucratic for students who take courses on more than one campus. This Committee accepts as true that the Student attempted to register with the St. George Accessibility Office before the deadline, that she received conflicting information from staff, and that she was extremely confused about the registration procedures at St. George despite the fact that she was already registered at the UTSC Accessibility Office and had written several examinations there. Therefore, had it been necessary to consider the question of whether or not the Student had fulfilled her responsibility to register with Accessibility Services, this Committee would have found that the Student had made best efforts to fulfill her responsibility and should not have been penalized for missing the registration deadline.

The appeal is allowed.

THE UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT # 340 OF THE ACADEMIC APPEALS COMMITTEE

January 29, 2010

Your Committee reports that it held a hearing on Monday, January 11, 2010. The following members were present:

Professor Emeritus Ralph Scane (Chair)
Mr. Kenneth Davey
Ms. Min Hee Margaret Kim
Professor Ronald Kluger
Professor Elizabeth Smyth

Secretary: Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Mr. M■■■■■ S■■■■■ (the Student)

For the University of Toronto at Scarborough:

Professor John Scherk

This is an application for leave to file an appeal late. The Notice of Appeal in the substantive appeal to this Committee, from a decision of the Sub-Committee on Academic Appeals (the Subcommittee) of the University of Toronto at Scarborough (UTSC), dated November 17, 2004, was filed at the Office of the Governing Council on December 1, 2008. The Student had communicated with staff at that office with respect to filing an appeal near the end of September, 2008, and had filed a statement with respect to his intended appeal on November 24, 2008.

The Terms of Reference of your Committee, as approved by the Governing Council on December 12, 2005, provide:

“3.1.6. An appeal to the Committee shall, except in exceptional circumstances, be commenced by filing a Notice of Appeal in accordance with the rules of the Academic

Appeals Committee no later than 5:00 p.m. on the ninetieth (90th) calendar day after the date of the decision from which the appeal is being taken. Where this deadline falls on a day when the University is closed, the deadline shall be deemed to fall on the next regular business day of the University at 5:00 p.m.

In view of the great lapse of time from the date of the decision being appealed to the filing of a Notice of Appeal to your Committee, the then Senior Chair of your Committee (who is also the Chair of this panel) directed that the question whether “extraordinary circumstances” existed which would justify an extension of time to file an appeal should be heard by a full panel of your Committee. He also directed that, if leave to file the appeal late should be granted, the substantive appeal should be heard and determined by a differently constituted panel of your Committee.

The appeal to the Subcommittee was from the denial of the Student’s petition to be allowed late withdrawal without academic penalty from all courses taken in the Fall, 2003 and Winter, 2004 sessions. The Student had petitioned and been permitted to defer his Winter term examinations to August, 2004, in circumstances which are at the core of his substantive appeal, and which will be adverted to later. He did very poorly in those examinations, resulting in very low sessional GPAs, which of course severely affected his cumulative GPA over his total program. However, he did receive credit for four courses towards the requirements for his B.Sc. degree. He ultimately graduated in June, 2008. He has found his overall results an impediment to hopes of entering a medical degree or postgraduate program, and now regards his 2004 decision to petition to defer his examinations, rather than to seek late withdrawal from his entire program as taken to that time, rather than writing the examinations and doing poorly, as an error of inexperience, compounded by extraordinary stress which he was then suffering, and his worries about extending his need for student loans. His petition and subsequent appeal to the Subcommittee in 2004 were attempts to repair this perceived error, by allowing him to retake the terms in question under better circumstances. Your Committee notes that, given the views of the Petitions Committee and the Subcommittee at UTSC on the petition he launched after receiving the results of the August, 2004 examinations, to withdraw from the entire 2003 – 2004 academic year, the chance that he would have obtained the same relief he was refused on his actual petition and appeal had he petitioned for the same relief before taking the August examinations, instead of petitioning for deferral of his examinations, is very speculative, at best.

The basis of the Student’s appeal to the Subcommittee was that, on March 26, 2004, the Student was arrested and charged with a serious criminal offence. Following his arrest, he was detained in custody for about one month, and then released on bail under onerous restrictive conditions, which kept him confined to his home, and only allowed to leave it in the presence of his mother, even to attend classes. In January, 2005, the bail conditions were modified to permit him to attend University classes without his mother. The Student has always denied any involvement in the crimes in question. In May, 2005, all charges against him were dropped. The Student alleged that, due to the effects of his confinement

and subsequent onerous restrictions upon his movements, certain medical problems resulting from injuries allegedly suffered shortly following his arrest, and subsequently from attacks by other inmates, and the high degree of stress he was undergoing during this period, his ability to function academically at his normal level was seriously impaired when he wrote the deferred examinations in August, 2004. As mentioned above, the Subcommittee, while sympathizing with the Student over a situation over which it acknowledged he had no control, found that the circumstances did not justify granting the requested relief.

Whether, had the Student made a timely appeal to your Committee from the Subcommittee's decision, or, in the present circumstances, if your Committee gives leave for this appeal to proceed late, and it is subsequently heard and determined by another panel of your Committee, the Student would be successful, is speculative. Your Committee's view is that success was and is not impossible, but by no means certain.

The Student's grounds for arguing that he should be permitted to proceed with his appeal to your Committee at this late date are that he discussed his situation, including the possibility of a further appeal with an academic advisor at UTSC after receiving the result of his appeal to the Subcommittee. He states that he was told that the likelihood of such a sweeping request being granted was small, that delay in his program while waiting for a result might result, and that he would probably be better off putting the unfortunate episode completely behind him and doing the best he could with the remainder of his program. He also states that he remained at that time under the same stress level, and that he "was simply too exhausted to fight the University's decision."

In opposing the application, UTSC notes that, if the substantive appeal were to be granted, the results actually obtained in the 2003 – 2004 academic year would have to be vacated, to be replaced by the results obtained on the prospective rewriting of the examinations. This would leave the Student short of the number of credits required for the degree he presently holds. The Student has told your Committee that he is in fact prepared to surrender his existing degree if his appeal should be successful, and he is allowed to attempt to replace his 2003 -2004 academic year. Your Committee was not given any advice as to whether such a surrender procedure exists. While this would primarily be a matter for a panel considering the substantive appeal to consider, if leave to proceed were to be given, it is also a consideration when determining the issue of leave to proceed.

Your Committee considers that provision for extension of the stipulated time to institute appeals is chiefly intended to protect against situations where appeals are not filed in timely fashion due to mishap or inadvertence, where a genuine intention to appeal was formed within the allowed time, or where some major event of illness or other incapacitating situation prevented or seriously impeded a student's ability to formulate or effectively implement an intention to appeal. That is not this case. While the Student was still suffering some adverse effects from his unfortunate situation following his arrest, these did not affect his ability to determine to, and to effectuate a petition for relief and appeal to the Subcommittee from the denial of that petition in 2004. Your Committee

sees no reason to find that they so affected his ability to determine to, and to effectuate a further appeal to your Committee within the allowable period following receipt of the Subcommittee's decision.

Your Committee does not absolutely rule out the possibility that some other extraordinary circumstances might also give rise to an extension for time to appeal, but it does not find such circumstances here. The allegation that the Student was given misleading advice on appealing to your Committee by an advisor at UTSC's Advisory Service does not meet that requirement. No evidence was tendered by UTSC to contradict the Student's allegations, and no explanation was offered as to why this evidence was not available to be tendered. Accordingly, your Committee is entitled to assume that such evidence, if tendered, would not assist the University's position. Nevertheless, even on that basis, your Committee does not consider that such advice as described could give rise to relief here, in the circumstances of this case. In hindsight, given the Student's present desire to apply to a medical school, it *might* have been better for the Student to try his hand at a final appeal. He *might* have succeeded on his appeal, and he *might* then have raised his sessional and cumulative GPA sufficiently for a medical school or a graduate program to admit him at the present time. However, advice as to the future lacks the benefit of hindsight. Even with the present benefit of such hindsight, your Committee does not find that the advice given at the time was wrong, or ill-advised. Stressed as he might have been, the Student must still take responsibility for acting on the advice given.

Furthermore, your Committee has grave concerns as to the policy implications of allowing a former student who has accepted his or her degree from returning thereafter, long after the time for launching an appeal from a pre-degree academic decision has passed, to appeal for the purpose of improving the appearance of the transcript of the academic record leading to the degree he or she has accepted. Although it might be conceivable that there could be circumstances so egregious that such relief should be given, this is not such a case.

Decision

The application for permission to file a late Notice of Appeal is denied. The appeal is quashed.