



UNIVERSITY OF
TORONTO

OFFICE OF THE VICE PRESIDENT & PROVOST

TO: Members of the Academic Board

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

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DATE: October 26, 2009

AGENDA ITEM: 13(b)

ITEM IDENTIFICATION:

Semi-Annual Report: Academic Appeals Committee, Individual Reports, Fall 2009

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 decisions 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 UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT # 332 OF THE ACADEMIC APPEALS COMMITTEE

Tuesday April 14, 2009

Your Committee reports that it held a hearing on Friday, March 27, 2009, and further met *in camera* on Tuesday, April 7, 2009. The following members were present:

Professor Emeritus Ralph Scane (Senior Chair)
Professor Jan Angus
Mr. Kenneth Davy
Dr. Joel Kirsh
Professor Elizabeth Smyth

Secretary: Ms Mette Mai

In Attendance:

For the Student Appellant:

Mr. M. S. (the Student)
Mr. R. S.

For the University of Toronto at Mississauga:

Professor Gordon Anderson

This is an appeal from the Decision of the Academic Appeals Board of The University of Toronto at Mississauga (UTM), dated September 26, 2006, which dismissed an appeal from the Committee on Standing at UTM, dated April 26, 2006. The latter decision dismissed a petition for an extension of time to complete the term work for the course POL340Y1Y, taken in the Fall and Winter terms of 2005 and 2006.

The Academic Background

The Student first enrolled at Erindale College in 1991-92. Following his first term, he was placed on academic probation. His results in the 1992-93 year were also unsatisfactory, and he received a one year suspension. On returning to classes in 1994-95, he took three courses, but on receiving an insufficient GPA, was suspended for three years. On returning in the 1998-99 academic year, he took three courses, achieving an annual GPA of 3.2, and was allowed to

continue on academic probation. However, in the 1999-2000 academic year, his annual GPA dropped to 1.0, largely due to a failure in POL340Y1, and he was refused further registration. After petitioning, he was permitted to re-register on academic probation. In the 2005-06 academic year, he enrolled in one course, POL340Y1. He did not submit the second assigned term paper, but did write the final examination. On receiving a grade of F in the course, he was again denied further registration.

Before your Committee, the Student raised a major ground of appeal which had not been placed before any of the appeal levels below, namely his apprehension during the relevant period of being charged with a major criminal offence, and the effect of this on his performance and judgment in his dealings, or lack of them, with the University with respect to his academic problems in that year. This is not the first time your Committee has encountered a similar situation. Past panels have noted the waste of time of the reviewing agencies below, who might have made an appeal to your Committee unnecessary had they been aware of the additional arguments now being advanced, and have warned that there is no certainty that your Committee will hear such new arguments. However, your Committee has said that it will not raise the extremely high bar that appellate courts raise against the attempted introduction of new evidence at the appellate level, as students are frequently appearing here and below without legal advice. Your Committee will try to balance the competing goals of efficiency in the appeals process, and arriving at a decision on all the evidence now available on the facts of each case. In this case, after deliberation, your Committee decided to receive the new evidence, which will be discussed more fully in the next section of this decision.

The Personal Background

When the Student enrolled in the 2005-06 academic year, he was fully employed in the internal audit division of a major Canadian bank. In his one course taken in that academic year, POL340Y1, he wrote a mid-term examination in December, 2005, and states that he received a mark of 75%, and that this examination carried a 25% weight in the total course grade. He also wrote the final examination in the course in early May, which he states was weighted at 40% of the total grade, and in which he received a mark of 66%. As mentioned above, he received no mark for the paper not submitted, and consequently failed the course.

The paper in question was due March 3, 2006. The "drop date" for the course was February 19, 2006. On February 21, 2006, major legislation came into effect in the U.S.A., which seriously affected many of the employer's clients, and consequently greatly increased the immediate work load of the division in which the Student was working. The Student was advised that he would have to work in the London, England office for a two week period commencing March 7, 2006, to assist with these problems in that office. The Student, dealing with his increased workload even before going overseas, did not complete and submit the paper on time, but felt that even allowing for a lateness penalty, he could submit it soon enough that the penalty would not affect his success in the course. He did not discuss his situation with the course instructor or any other officials at UTM. However, once in England, he not only found that the volume of work was keeping him from completing the paper, but his time in England was being incrementally extended by his employer, two or three days at a time. Eventually, he was kept in England until the latter part of April, 2006. He filed a petition for an extension of time to complete his term

work to the Committee on Standing, which was refused in the decision of April 26, 2006, referred to above.

The facts summarized in the preceding paragraph formed the sole basis for his petition and appeal below. Before your Committee, the Student raised what he considered an even more important factual ground of appeal. In late January of 2006, a person with whom the accused was acquainted was charged with a very serious sexual crime against another person with whom the Student was also acquainted. Suggestions were made that the Student was implicated in the offence, which the Student emphatically denies. However, the possibility that these suggestions would be taken seriously by the police, and that he would also be charged, frightened the Student, and led him to retain legal counsel for his protection. The Student felt that this possibility of being charged was lying over him until this year, when the person charged was acquitted. In fact, the Student never was charged with any offence by the police. The Student stated that during the entire period when he felt the possibility of being charged, he was under severe stress from this source, which affected his performance and his judgment on how to deal with his course obligations. The Student states that he had been instructed by his lawyer to refrain from discussing the case with anyone, and the lawyer has written a letter to your Committee corroborating that this instruction was given. The Student interpreted this instruction as precluding him from raising these facts in the original petition or in the appeal below.

Decision

Your Committee has decided that relief should be granted in this case, although not in the form requested in the original petition, in the appeal below, or in the appeal to your Committee. To permit the Student to submit his paper for credit at this late date is completely impractical. Some penalty for lateness was originally expected by the Student and would be justified, but your Committee declines to enter upon the exercise of deciding what would be the proper limits of such a penalty, and sees no justification in asking the then course instructor to weigh this issue, let alone try to fit his grading into the marking standards he was using in that course at that time. In addition, the academic goals of the course would be largely frustrated, as far as the Student is concerned, as the lapse in time would adversely affect the academic coherence of the course. Your Committee has decided that the appropriate relief is to grant withdrawal without academic penalty from the course. The facts of the case come within the requirements for granting this relief as set out in its previous decisions. The stress from the potential criminal charges was in existence before the "drop date", and would not have been expected to abate substantially during the rest of the duration of the course. Therefore, this factor alone would not justify the relief of withdrawal without academic penalty. However, the major increase in the work load of his job, and the assignment abroad was not foreseen or reasonably foreseeable by that date. Also, we accept that the potential criminal charge did seriously affect his judgment in deferring his application to the University for relief as long as he did, or in recognizing sooner that he could not get his assignment in within sufficient time to avoid time penalties so great as to make it impossible to secure anything close to a passing grade. However, to some extent the Student was being trapped by the employer's actions in extending his time abroad in small increments. Also, although very late in seeking relief, the petition was launched before the final examination was written, and before the final course mark could be known. The Student was not trying to gamble

that he could pass the course without the missed paper, and reserving the opportunity to appeal if he lost his gamble.

The appeal is allowed. The grade of "F" recorded for the course POL340Y1 in the Winter Term of 2006 shall be vacated, and the non-grade notation of WDR substituted for the grade. The status of the Student in the University will be reassessed in accordance with the application of this decision.

THE UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT #333 OF THE ACADEMIC APPEALS COMMITTEE

May 15, 2009

Your committee reports that it held a hearing on April 23, 2009 at which the following were present:

Professor Ed Morgan, Chair
Professor Elizabeth Cowper
Professor Michael Marrus
Ms. Anna Okorokov
Ms. Maureen Somerville

In Attendance:

For the Student Appellant:

Mr. A.M. (the Student)

For the University of Toronto at Scarborough:

Vice-Dean Professor John Scherk

I. The Appeal

The Student is appealing the decision of the University of Toronto Scarborough Subcommittee on Academic Appeals dated October 13, 2007 denying him permission to write a deferred examination in the 2005 Fall session Introduction to Micro Economics course ECMB02H3F (the "Course").

The Student's circumstances have changed since his original request to write a deferred examination and he now asks this committee to grant him permission to withdraw from the Course.

II. The Facts

The Student first petitioned to write a deferred examination in the Course on December 21, 2005. This petition was denied due to inadequate medical documentation, and the Student was advised to re-submit a petition with proper medical documentation.

The Student spent January to April 2006 in India in order to undergo medical treatment. On June 5, 2006 he re-petitioned to write a deferred exam for the Course. The petition was granted, and the examination was scheduled for August 23, 2006. The Student did not write the exam on the scheduled date.

On August 25, 2006 the Student again petitioned for an extension of time to write a deferred exam for the Course. The petition was granted. On October 10, 2006, the Student petitioned for a further extension of time to write a deferred exam at an outside centre. He had travelled to India seeking treatment for his medical condition. The petition was denied based on insufficient grounds. On June 11, 2007 the Student petitioned again for an extension of time to write a deferred exam, which petition was again denied.

In the Fall term of 2007, the Student registered to retake the Course. On December 21, 2007 he petitioned to write deferred examinations for several Fall term courses, including the Course in issue. He was granted permission to write the deferred examinations in the April/May 2008 examination period. The Student received a grade of 55 (D) for the 2007 version of the Course.

III. The Decision under appeal

On July 25, 2007 the Student appealed the denial of his petition of June 11, 2007 to the UTSC Subcommittee on Academic Appeals. That appeal was denied on the grounds that the Student failed to provide adequate medical documentation in support of his initial request to write a deferred examination. The Chair of the UTSC Subcommittee, in dismissing the Student's appeal, wrote *inter alia*:

The statement from Dr. Alka Dogra refers to *androgenetic alopecia* – male pattern baldness. While this condition can be disturbing to the sufferer, it is unfortunately a common problem. The committee was not convinced that alopecia has any significant impact on the ability of an individual to write a final exam.

IV. The Decision

As indicated at the outset, the Student changed his request after submitting his written Notice of Appeal, and began this hearing seeking permission for late withdrawal from the Course rather than permission to write a deferred exam. The Student was afforded an opportunity to make submissions on why he wanted this new form of relief. The Student explained that having

already passed the Fall 2007 version of the Course, the Student sought to withdraw from the Fall 2005 version of the Course in order to remove the failing grade from his transcripts.

After brief deliberation the Committee advised the Student that this is an appeal committee, whose jurisdiction is to hear appeals from decisions taken at the Faculty or College level. Since the decision of the UTSC Subcommittee on Academic Appeals was limited to a rejection of the Student's request to write a deferred examination for the 2005 Course, that is the decision presently under appeal. This Committee has no authority to hear new requests that have not yet been submitted to UTSC. Accordingly, the Student was asked to restrict his submissions to the request to take a deferred examination, if that was still relief that the Student wished to pursue. The Student indicated that he was still interested in seeking to write a deferred examination for the 2005 version of the Course, and made full submissions in support of that request.

The Committee is in agreement with the decision of the UTSC Subcommittee on Academic Appeals that there are inadequate medical grounds for seeking permission to write a deferred exam. The Student submitted a doctor's note from a medical practitioner in India indicating that he suffers from male pattern baldness. No other medical evidence was submitted by the Student. Despite his statements at the hearing that he was traumatized by this condition, no psychological or psychiatric report was submitted, and nothing in the medical file tendered by the Student indicated that there were psychological ramifications to his condition. The doctor's diagnosis was *androgenetic alopecia*, a condition which the Chair of the UTSC Subcommittee accurately described as a common problem that does not in the ordinary course impact on a person's ability to take an examination in a university course.

V. Conclusion

The Committee is mindful of the fact that the Student has had numerous opportunities to take the examination in the Course, and failed on each occasion to show up at the appointed examination time. Male pattern baldness is the latest ground in his series of requests. Until this latest request, UTSC had been more than generous in accommodating his various requests. This Committee is of the view that the series of requests for a deferred examination in the Course, which has been going on since 2005, must now come to an end.

The appeal is dismissed.

THE UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 334 OF THE ACADEMIC APPEALS COMMITTEE

May 7, 2009

To the Academic Board
University of Toronto.

Your Committee reports that it held a hearing on Wednesday, April 22, 2009, at which the following members were present:

Professor L. Sossin (Chair)
Mr. Grant Gonzales (Student)
Professor Ellen Hodnett
Mr. John Stewart
Professor Cindy Woodland

Secretary: Ms Nancy Smart

Appearances:

For the Student Appellant:

Ms. T.D. (the Student)
Mr. Michael Hamilton (Downtown Legal Services)

For the School of Graduate Studies:

Mr. Robert Centa

This is an appeal from a decision of the Graduate Academic Appeals Board ("GAAB") dated March 14, 2008, dismissing an appeal of the Student from a decision of Professor Susan Pfeiffer, Dean of the School of Graduate Studies ("SGS"), dated July 27, 2006 (the "July 2006 Revocation Decision"). Dean Pfeiffer's decision was that because the Student had withheld material information from her admission application, SGS was "revoking and canceling" the Student's "offer of admission and/or registration" in the Master of Health Science Program (the "Program").

Dean Pfeiffer also indicated that she was requesting that the Provost lay a charge against the Student under the *Code of Behaviour on Academic Matters* (the “Code”). The Provost did not lay such a charge, and the Vice Provost, Academic, subsequently confirmed in a letter dated September 24, 2008, that Dean Pfeiffer’s decision to revoke the Student’s “admission and/or registration” was not imposed as a sanction under the *Code*. Therefore, the Student could not appeal the decision under the *Code*.

GAAB, in its March 14, 2008 decision, concluded that it lacked jurisdiction to hear an appeal from the July 2006 Revocation Decision because it was an admissions decision.

GAAB also separately considered its jurisdiction to hear an appeal from the Student against a decision of the School of Graduate Studies, dated February 2, 2006, which terminated the Student from the Master of Health Science Program due to failures in three separate courses (the “February 2006 Termination Decision”). GAAB concluded that the appeal from this decision was moot due to the subsequent decision of SGS to revoke the Student’s admission to the Program.

While this decision relates to the question of the jurisdiction of your committee, it is important to provide a brief background of how the Student has come to be in this situation.

Background

The Student had applied for admission to the Program in January of 2005 and was admitted in May of 2005. She registered in the Program in the Fall of 2005. After completing the Fall semester, on February 2, 2006, the Student was notified that she had failed three of the five classes in which she had enrolled, and as a result, she was notified that her registration was being terminated because of poor academic performance. The Student was also notified of her right of appeal the February 2006 Termination Decision to GAAB, and on March 26, 2006, the Student filed her appeal.

Prior to a GAAB hearing on the appeal of the February 2006 Termination Decision, SGS became aware of information which had been omitted from the Student’s application to the Program. This information related to certain courses the Student had taken at Ryerson University and the grades received in those courses.

On July 17, 2006, the Student was notified in writing that she was to attend a meeting with Dean Pfeiffer to investigate a possible *Code* violation. The meeting took place on July 19, 2006, and in that meeting, the Student indicated that she did not intend to mislead the University and she did not admit any guilt in the allegations of academic dishonesty raised by Dean Pfeiffer. Following this meeting, on July 27, 2006, the Student was informed of the Dean’s decision to revoke her admission.

After argument before the Chair of GAAB (exercising his authority to determine whether an appeal is outside the jurisdiction of GAAB), GAAB concluded that,

After the Dean's decision, the University must treat the Student as never having been a student in the Program, or, treating the decision as a revocation or cancellation of *registration* in the Program, as having been removed from the Program by a penalty purportedly imposed under the Code. The Board must accept the Dean's decision as a valid decision, so long as it has not been reversed or amended by some agency, within or without the University, with the ability to do so... the Board is not such an agency. (Emphasis in original)

In short, GAAB accepted that there is no appeal from the July 2006 Revocation Decision, as admission decisions by the University are not within the jurisdiction of GAAB. Having reached the conclusion that GAAB lacked the jurisdiction to hear an appeal from the July 2006 Revocation Decision, GAAB found the prior, pending appeal on the February 2006 Termination Decision, while clearly within GAAB's jurisdiction, to be moot, as it could have no practical consequences for a student whose admission has been revoked.

The Student sought an appeal to your Committee both on the grounds that GAAB does have jurisdiction to hear the appeal from the July 2006 Revocation Decision, and that, irrespective of how the jurisdiction issue is decided, GAAB should consider the Student's appeal against the February 2006 Termination Decision on its merits.

The Chair of your Committee, after a pre-hearing consultation with the parties, concluded that your Committee would first hold a hearing to determine GAAB's jurisdiction to hear an appeal from the July 2006 Revocation Decision. Only if the Student were successful on this hearing would it be necessary to remit the merits of the July 2006 Revocation Decision back to be dealt with by GAAB. The Chair also concluded that your Committee could decide whether, irrespective of the outcome of the jurisdiction issue, GAAB should proceed to hear the merits of the appeal from the February 2006 Termination Decision.

Analysis

The Jurisdiction Issue

GAAB concluded that the decision of SGS "revoking and canceling" the Student's "offer of admission and/or registration" was an admissions decision. Your Committee does not believe GAAB erred in this finding. While the July 2006 Revocation Decision also purports to deal with the Student's registration status, and while a referral of a possible *Code* violation to the Provost was mentioned in the same letter, neither of these aspects of the decision alters the fact that the Student's admission was revoked by SGS as a result of Dean Pfeiffer's decision. The question, therefore, is whether GAAB (and, by extension, your Committee) has any role in the accountability of the University for admissions decisions.

The Terms of Reference of GAAB authorize it to:

hear and determine appeals of students registered in the School of Graduate Studies concerning grades in a course or component of a grade in a course, or concerning

any other decision with respect to the application of academic regulations and requirements to a student...

The Terms of Reference make no mention of admissions decisions. The SGS Calendar observes that graduate students may “dispute substantive or procedural academic matters, including grades, evaluation of comprehensive examinations and other program requirements ... Decisions related to admission to an academic program, including admission to the doctoral program for current master’s students, are not subject to appeal.” (Emphasis added.) Further, the policy of Governing Council regarding appeals within academic divisions, notes that an Academic Appeal is an appeal by a student of the University against a University decision as to his or her success in meeting an academic standard or academic requirement or as to the applicability of an academic regulation, but that no appeal lies from an admissions decision. In light of these policies, it is clear that the University has not conferred on GAAB or your Committee the jurisdiction to review a decision by the University relating to admissions.

The Student has raised the concern that by relying on the revocation of admission after the Student had been admitted, registered, and completed a full semester of classes, the University is seeking to terminate the Student in a fashion which deprives her of the procedural protections she would have been afforded had the University relied on its termination of the Student for her poor academic performance, or had the University pursued the allegations against the Student for violation of the *Code*. The University has submitted that this course of action is not improper, and has emphasized that admissions decisions are subject to a different framework of accountability from academic decisions.

Accountability of University for Admissions Decisions

The basis for the revocation of the Student’s admission was a provision of the Ontario Rehabilitation Sciences Programs Application Service (“ORPAS”). ORPAS is not a policy or document enacted by the University of Toronto. Rather, it is an Ontario wide service which Universities and applicants utilize in order to govern the application process. The ORPAS document describing the application process provides:

Admission Irregularities

The discovery that any information is false or misleading or that any material information has been concealed or withheld will invalidate your application and will result in its immediate rejection, or in the revocation and cancellation of an offer of admission and/or registration if you have been admitted.

The University has adopted the position that by submitting her application for admission through ORPAS, the Student agreed to be bound by the terms and conditions of ORPAS. ORPAS does not provide for any appeal route for decisions taken by Universities using its application process. ORPAS also does not provide for any procedural protections prior to a University determining that a student is in violation of the terms of ORPAS. In this case, the written notice provided to the Student in July of 2006, informing her of the allegations against her and requiring

her attendance at a meeting with the Dean, were procedural steps associated with laying a charge under the *Code*, not with a breach of the terms of ORPAS.

The Student submits that ORPAS is “vague” and “totally void of direction” as to how Universities should deal with potential concerns after a candidate has been admitted.

Once the University decides that the terms of ORPAS were breached by concealing or withholding material information in a student’s admission application, what recourse is available to the student subject to this decision? What if the student believes the information at issue in a decision to revoke admission was not in fact “material,” or was not “concealed” or “withheld,” within the meaning of ORPAS or where the student believes there is an explanation or justification which may mitigate the appropriate consequences? If GAAB and your committee lack jurisdiction over such a dispute, where can an aggrieved student turn?

At a minimum, as a public decision-making body, the actions of the University may be challenged through judicial review to the Superior Court. In *Mulligan v. Laurentian University* 2008 ONCA 523, the Court of Appeal for Ontario confirmed the jurisdiction of the Court to review admissions decisions by Universities, and confirmed that the Courts “should be reluctant to interfere with the core academic functions of Universities.” (at para. 20) Further, if a student believed that a revocation of admission (or simply the denial of admission in the first place) lacked impartiality or was decided in a procedurally unfair fashion, or was decided in bad faith, or for ulterior motives or improper purposes, the student could challenge the University’s decision by way of judicial review. A Court has jurisdiction to quash the University’s decision and remit the matter back to the University for a fresh decision, and also has the power to compel the University to take appropriate action. In other words, while no appeal route has been established from admissions decisions through internal mechanisms, the University in no way can shelter or insulate its decisions from legal accountability. As a practical matter, however, pursuing remedies through a judicial review may be costlier and more complex than appeals through internal mechanisms.

In her submissions, the Student raised a scenario in which the University was confronted by suspected dishonesty on the part of a graduate student who has been a successful student in a program for several years and is nearing graduation. In the scenario, the student’s alleged dishonesty included but was not limited to falsifying the transcripts that formed the basis of admission. Rather than investigate the dishonesty through laying a charge under the *Code*, could the University simply revoke that student’s admission, thus expelling the student from the program, erasing his or her progress to that point, and do so with no further proceeding or due process provided to the student?

The effect of the decision that GAAB and your Committee lack the jurisdiction to hear appeals from admissions decisions would appear to mean that there are no internal impediments to the University exercising discretion either to proceed under the *Code* or to revoke admissions in such a scenario. It is not open to GAAB to assume jurisdiction over an admissions decision, in other words, merely because the conduct underlying the revocation of admission *could have been* treated as an academic matter or as an academic offence.

Notwithstanding the decision to uphold GAAB's conclusion on the jurisdiction issue, your Committee appreciates the sense of unfairness perceived by the Student, who feels that she has been unable to have the merits of her challenge to the University's decision heard. While your Committee has no authority to direct that the University provide the Student with an opportunity to explain the basis for her challenge to the July 2006 Revocation Decision, your Committee notes that there is no bar to the University making available an opportunity for a reconsideration of that decision. Your Committee is mindful of the fact that the Student already has had one opportunity to provide information to Dean Pfeiffer during their meeting in July of 2006. An opportunity to provide additional information (in writing or orally) which the Student believes would be relevant to a reconsideration of the July 2006 Revocation Decision could be informal. A reconsideration process clearly could not lead to any remedies which would bind the University. The purpose of such a discretionary procedure, rather, would be to ensure the July 2006 Revocation Decision was appropriate in the circumstances, and to provide a safeguard against the possibility of error in that decision.

Your Committee also believes these circumstances distinguish this case from other admission decisions. Revocations of admission occur rarely, and revocations of admission after a student has already registered and completed courses in a Program are rarer still. While the University may consider developing a policy to address such settings, there may also be advantages in approaching such revocations of admission on a case by case basis.

Delay might be a relevant consideration in the exercise of this discretion. Given the fact that the revocation of admission occurred in July of 2006, over ten months after the Student was permitted to register in the Program, and over a year from the time of her admission, and the fact that the University possessed the same information about the student at the time of admission as it raised subsequently as grounds for the revocation of her admission, your Committee believes there could be grounds to justify such a procedure in these circumstances.

Finally, your Committee recommends that if the July 2006 Revocation Decision is not modified, the University should return any fees paid by the Student for the Fall semester of 2005, and expunge any record of the Student's academic performance in the Fall of 2005.

Conclusion

In summary, your Committee upholds GAAB's conclusion regarding its jurisdiction. GAAB is therefore precluded from hearing an appeal of the July 2006 Revocation Decision. Your Committee also upholds GAAB's conclusion that, in light of its lack of jurisdiction over the July 2006 Revocation Decision, the appeal over the February 2006 Termination Decision is moot. Your Committee notes, however, that if the University does allow for a reconsideration of its July 2006 Revocation Decision, this could also have the effect of reviving the appeal of the February 2006 Termination Decision.

The appeal is dismissed.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report # 335 of the Academic Appeals Committee

June 1, 2009

Your Committee reports that it held a hearing on Friday February 6, 2009 at which the following members were present:

Mr. Tad Brown, Chair
Professor William Gough
Ms. Jacqueline Greenblatt
Professor Joel A. Kirsh
Professor Elizabeth M. Smyth

Secretary: Ms Nancy Smart

Appearances:

Ms. S.A., the Student Appellant

For the University of Toronto at Mississauga (UTM):
Professor Gordon Anderson

The Appeal

The Student is appealing the decision of the UTM Academic Appeals Board dated September 12, 2008 denying her permission to withdraw late without academic penalty from MAT134Y5 (2007/2008) (the "Course").

Facts

The Student has been enrolled at UTM since the fall of 2004. In the Fall/Winter 2007-2008 year, the Student enrolled in 6 courses including the Course. The breakdown for the Course mark consisted of 60% term work and 40% final exam. The Student completed the Course and wrote the final exam. The Student received a final grade of F on the Course.

Previous Decision

On September 12, 2008, the UTM Academic Appeals Board denied the appeal for late withdrawal from the Course with the following comments:

"1. On the basis of your presentation at the meeting and your overall academic record, the members of the Board decided that you did not have a compelling case for an exemption from the University regulations that apply to all students.

2. The Board also believed that you did have sufficient information that would normally lead a student in the circumstances you described to drop a course prior to the drop date. There seemed little reason then for you to demonstrate your intent to complete the course by writing the final exam."

Decision

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 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.

In the present case, the Student had sufficient information about her progress in the course to make an informed decision. From her own evidence and her past experience of withdrawing from courses in previous years, the Student was well aware of the timelines and rules for dropping a course. In addition, the Student chose to write the final exam stating that she believed that she could pass. The guidelines for late withdrawal clearly state that students will not be eligible to withdraw from a course after the final exam has been written.

The Student's mother received a kidney transplant in May 2007. As the Student's parents were divorced and she was the only other adult in the house, she had additional responsibilities such as household chores and managing the household finances. The Student also introduced new evidence in the form of a doctor's letter indicating that her mother had been severely depressed over the previous year.

The Committee is sympathetic to the personal circumstances of the Student during this year and the burden of dealing with an ill parent. However there was no evidence presented of the impact of the parent's ill health had on the ability to complete the course. In particular, there was no evidence that the situation became worse after the drop date which would warrant an exemption.

The Student also cited the fact that she had taken a heavy course load of six courses as a contributing factor on her poor performance in the course. The Student was previously advised by UTM to seek academic counseling. Indeed the Student conceded that she had sought

academic counseling and was advised to take a lighter load. However the Student chose to take six courses regardless because of her desire to try to complete her studies quickly.

Lastly, the Student introduced at the hearing a new contributing factor to her poor performance. The Student indicated that there had been a robbery at her house on or about April 11, 2008 which resulted in the family moving out their house and into a new rental house during the exam period. Unfortunately, the Student did not raise these grounds at any previous level and did not present the Committee with any supporting evidence.

Therefore the Committee finds that there is no evidence of circumstances occurring after the drop date which would warrant the extraordinary remedy of a late withdrawal from the Course without academic penalty. The additional evidence provided at the hearing is insufficient for this Committee to find that UTM erred in its decision or that a different result should occur. The Student was well aware of the drop date requirements and chose to write the final exam.

The appeal is dismissed.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report # 336 of the Academic Appeals Committee
July 23, 2009

Your Committee reports that it held a hearing on Thursday May 28, 2009 at which the following members were present:

Mr. Tad Brown, Chair
Mr. Ken Davy
Professor Ronald Kluger
Professor Chris Koenig-Woodyard
Professor Elizabeth M. Smyth

Secretary: Ms Nancy Smart

Appearances:

The Student Appellant and his counsel Mr. William Reid

For the University of Toronto School of Graduate Studies (SGS):

Mr. Robert Centa (Counsel)
Professor Leonard Brooks
Professor Martha Dunlop
Mr. Hans Harding
Professor Berry Smith

The Appeal

The Student is appealing the decision of the Graduate Academic Appeals Board (GAAB) of the University's School of Graduate Studies dated November 18, 2008. The decision of the GAAB dismissed an appeal by the student of the decision of SGS to terminate the student from the Master of Management and Professional Accounting Program ("Program"). This termination was based on the requirement of the Program that any student who fails more than two courses will automatically be asked to withdraw from the Program. In particular, the issue is the treatment of the third course in which the student did not received a passing grade; MGT2205 (Advanced Financial Accounting) (the "Course"). The Student is appealing the GAAB decision "on the ground of procedural error of the GAAB both in making false and unreasonable findings of fact, and in making decisions that are unreasonable and/or are based on false and unreasonable findings of fact."

Facts

The Student entered the Program in June 2006. In the fall term of that year, he failed two courses. There is a requirement in the Program that any student who fails more than two courses in his candidacy will be asked to withdraw from the Program. The Student acknowledges that he was aware of this requirement.

In fall term of 2007, the Student was enrolled in 6 courses. On December 10th, the Student was scheduled to write his final exam in the Course. On December 8th, the Student was involved in an accident and injured his back. He visited a doctor on December 9th and received a medical note indicating that he should take three days rest. However the Student decided to write the final exam in the Course regardless. He experienced severe back pain during the exam. The Student was scheduled to write a final exam for another course MGT2207 (Taxation 2) on December 12, 2007. After receiving a further medical note, the Student was granted a deferral of the examination in MGT 2207.

Initially a deferred examination was requested by the Program for the wrong course. However this error was noted by the Student and a new examination was requested from the instructor of MGT 2207 about December 14, 2007. The instructor advised that the new examination would not be available until January 2008. The Student entered the co-op portion of the Program in January 2008. The co-op portion was scheduled to continue until April 18, 2008. The Student was informed that the deferred examination for MGT 2207 was ready in February 2008. The Program suggested that it be written during the week of February 19. However the Student requested that the writing of the deferred examination be deferred until after the co-op period had been completed because of the work load in the co-op placement. The Program granted this request on the condition that the examination be completed before the Summer term commenced on May 7, 2008. When the Student later became aware that he would also be required to rewrite the examination for the Course during the same period, he requested and, on April 29, 2008, was granted an extension to May 15, 2008 to write the deferred examination for MGT 2207. The Student did write the deferred examination for MGT 2207 on that date and passed the course.

In January 2008, the Student learned that he has failed the Course. The Student had performed poorly on the term work in the Course consisting of two mid term examinations and the average of the best of two assignments. The Student received a grade of 73% on the final examination but required a grade of approximately 88% on the final examination in order to pass the Course. The Student appealed on the basis of his medical condition at the time of writing the final examination. On April 14, the Program advised the Student that his appeal had been granted and that he was permitted to rewrite the final examination in the Course. He was also advised at that time that the rewritten examination must also be completed before May 7,

2008. The Student rewrote the examination on May 5, 2008. The Student failed the supplementary examination with a mark of 48% and therefore his failure in the Course stood. With three failed courses on the Student's record, the Program recommended termination and SGS accepted the recommendation.

Previous Decision

The Student appealed this decision to the GAAB on the basis that:

- (a) he was not given enough time to sufficiently prepare for a supplemental final examination in the Course;
- (b) he did not receive timely notice of the format of that same examination;
- (c) he was unfairly disadvantaged because the structure of the rewritten examination diverged markedly from that of the original examination; and
- (d) the course instructor in the Course failed to provide him with suitable guidance and support while he was preparing to rewrite the final examination.

In its decision dated November 18, 2008, the GAAB dismissed the Student's appeal stating that "neither individually nor cumulatively do any of the Student's complaints justify inference with the decision of SGS to terminate the Student from the Program."

Decision

It should be noted that the Student does not dispute the reasonableness of the GAAB's decision as it relates to the fourth listed basis of appeal being the amount of guidance and support provided by the course instructor.

Your Committee finds that the decision of the GAAB was reasonable based on the evidence presented. Both the Student and SGS presented your Committee with a comprehensive record of the relevant documents including the extensive communications between the parties and the academic records of the Student. Your Committee thoroughly considered all of the evidence presented by the parties. It was acknowledged that there was no additional evidence presented to your Committee that was not presented to the GAAB. Your Committee finds that the actions and decisions of SGS in administering the supplemental examination in the Course were fully compliant with University policies and guidelines and were fairly applied in accordance with the Program guidelines.

In particular, your Committee finds that the amount of notice time given the Student for the supplemental final examination in the Course was fair and reasonable.

Your Committee finds that there is no University guideline which requires it to provide a detailed analysis of an examination model. There was no suggestion that the supplemental examination was not based on the course outline or the material discussed in class.

Your Committee finds that the supplemental examination itself was fair and within the guidelines that it cover the course material. There is no obligation that the supplemental examination mirrors the original examination. Your Committee also finds that shift in balance in the examination between qualitative and quantitative questions was neither unfair nor material.

Your Committee also finds that the rescheduling of the deferred examination in MGT 2207 was done in accordance with University guidelines and that it does not provide grounds which justify interference with the outcome of the Student's failure of the Course.

While your Committee sympathizes with the situation of the Student, it finds that the decision to terminate the Student from the Program was reasonable and fair in the circumstances.

The appeal is dismissed.

THE UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 337 OF THE ACADEMIC APPEALS COMMITTEE

October 10, 2009

To the Academic Board
University of Toronto.

Your Committee reports that it held a hearing on Thursday, September 3, 2009, at which the following members were present:

Professor L. Sossin (Chair)
Mr. Adam Heller
Professor Ellen Hodnett
Dr. Chris Koenig-Woodyard
Mr. Gregory West

Secretary: Mr. Louis Charpentier

Appearances:

For the Student Appellant:

Mr. A.H. (the Student)

For the University of Toronto at Mississauga:

Professor Gordon Anderson

This is an appeal from a decision of the Academic Appeals Board ("AAB") of the University of Toronto at Mississauga ("UTM") dated November 12, 2008, which refused to allow the Student permission to withdraw without penalty from STA220H5 and PSY320H5 20071.

The Student suffers from hypothyroidism ("Graves Disease") and received a range of accommodations to deal with the serious consequences of this medical condition, for which the Student provided substantial medical documentation.

The Student believes his medical condition, compounded by anxiety, led to his poor performance in the exam for PSY320H5 and his decision not to write the exam in STA220H5 scheduled for the next day. The Student asserts that these factors were outside of his control and justify the remedy he is seeking.

The AAB took no issue with either the existence or the seriousness of the Student's medical condition. In its decision, the AAB provided three reasons for its decision not to grant the Student's petition:

1. On the basis of your presentation at the meeting and your overall academic record, the members of the Board decided that you did not have a compelling case for an exemption from the University regulations that apply to all students.
2. You have had a history of deferring exams and withdrawing from courses, and you had previously been warned by the Office of the Registrar that you would be responsible for observing deadlines.
3. The Board strongly recommends that you obtain help from Mississauga's Robert Gillespie Academic Skills Centre ... regarding the development of your academic skills.

In its written submissions before this Committee, the AAB offered the following reasons for deciding not to grant the petition:

The committee felt it could not grant the petition on the following grounds. I was familiar with the drop process, he had been warned to meet deadlines in an orderly fashion, had plenty of evidence throughout the term that he should drop the courses in a timely fashion and was well aware that his illness was impeding his progress.

This Committee agrees with this conclusion reached by the AAB. While the Student's belief that he should have been permitted the late withdrawal based on his situation is rooted in a clearly established medical record, the academic record makes clear that UTM had accommodated the Student in the past, and would have been prepared to do so again in the context of the courses appealed from, had the Student requested the relief in a timely fashion. There is no indication that UTM treated the Student unfairly.

The Student's own account of his performance confirms that his situation impaired his ability to keep up with the course work in these courses. The difficulties the Student experienced, in other words, were persistent throughout the term and did not arise only after the deadline for late withdrawal (for example, the Student indicates that he had missed five of the seven assignments in PSY320H5). There is no indication in this case that the Student was unable to seek relief prior to the deadline for withdrawal without penalty.

For these reasons, the appeal is dismissed.