



FOR INFORMATION

OPEN SESSION

TO: Academic Board

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

CONTACT INFO: christopher.lang@utoronto.ca

PRESENTER: See Sponsor

CONTACT INFO:

DATE: November 7 for November 24, 2016

AGENDA ITEM: 10b

ITEM IDENTIFICATION: **Academic Appeals Committee, Individual Reports, Fall 2016**

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 5.3.4 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.

GOVERNANCE PATH:

1. **Agenda Committee [for information] (November 14, 2016)**
2. Academic Board [for information] (November 24, 2016)

PREVIOUS ACTION TAKEN:

The last semi-annual report came to the Academic Board on May 30, 2016.

HIGHLIGHTS:

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 was bound by due process and fairness. The Academic Appeals Committee's decisions are based on the materials submitted by the parties and are final.

FINANCIAL IMPLICATIONS:

There are no financial implications.

RECOMMENDATION:

For information.

DOCUMENTATION PROVIDED:

- Academic Appeals Committee, Individual Reports, Fall 2016

UNIVERSITY OF TORONTO

GOVERNING COUNCIL

Report # 383 of the Academic Appeals Committee
June 1, 2016

To the Academic Board
University of Toronto.

Your Committee reports that it held a hearing on Wednesday, May 25, 2016, at which the following members were present:

Professor Andrew Green (Chair)
Professor Hugh Gunz, Faculty Governor
Mr. Ridwan Olow, Student Governor

Secretaries: Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances
Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Ms. P.M. (the Student)

For the School of Graduate Studies and the Department of Civil Engineering:

Mr. Robert A. Centa, Counsel
Professor Luc De Nil, Vice-Dean, Student, School of Graduate Studies
Ms. Emma Thatcher, Associate Director, Graduate Affairs, School of Graduate Studies

The Appeal

The Student appeals a decision of the Graduate Academic Appeals Board (“GAAB”) of the School of Graduate Studies (“SGS”) dated November 13, 2015 (the “GAAB Decision”). The GAAB Decision dismissed an appeal by the Student from a decision by the SGS to accept a recommendation of the Department of Civil Engineering (the “Department”) to terminate the Student’s registration in their Master of Applied Science Program. The Department’s decision to terminate the Student’s registration was based on the Student’s failure in two courses in the Program.

The Facts

The Student entered the Program in the Fall of 2013 having relatively recently emigrated with her family to Canada from Iran. Unfortunately in the Fall, she experienced significant stress from family issues relating to her parents' marital issues which began in September 2013. She did not drop any courses at the Drop Date of October 28, 2013. She failed two of her courses in the Fall.

On January 24, 2014, the Department's Graduate Programs Coordinator emailed the Student noting that she had failed the two courses and asking whether she was appealing these failures. The Student appealed both of these failures and continued to take courses in the Program. She was successful in her appeal for one of the courses. Her father had broken his wrist the night before her exam on December 6, 2013 and she had spent the night caring for him. She was granted a late withdrawal without academic penalty.

She was unsuccessful in her appeal of the failure in the other course, CIV531H. She had written her exam on December 20, 2013. She based her appeal on the stress and responsibilities arising from her parents' marital problems. The Department's Graduate Departmental Academic Appeals Committee dismissed the appeal on June 9, 2014, stating that:

While the Committee acknowledges your request for special consideration and is sympathetic towards your circumstances, there is not sufficient proof of your distress without the documentation of a medical certificate.

The Student appealed this decision to the GAAB which denied the appeal of the failure on October 14, 2014, stating:

The Student's family circumstances, though difficult, did not change after the drop date. Moreover, the Student has never provided any documentation of any unanticipated circumstances that affected her performance in CIV531H. The GDAAC's dismissal of her appeal from the FZ in CIV531H was eminently reasonable.

The Student appealed this decision of the GAAB to the Academic Appeals Committee of the Governing Council (the "AAC"). On July 27, 2015, the AAC unanimously dismissed the appeal of the failure stating:

This Committee accepts that the Student was distressed by her family situation in the fall of 2013, and that the Student's academic performance was likely affected by these factors. However, such a finding is insufficient to merit the extraordinary remedy of late withdrawal without academic penalty.

...

In this case, the Student argues that her situation became unexpectedly more difficult after the drop date. Yet, the Student did not file sufficient medical or psychological evidence to support this finding, and her own affidavit does not mention the psychological distress that she claims impacted her performance in CIV531H.

While these appeals were going forward, the Student continued to take courses in the Program. Unfortunately she failed another course, CIV1532H, in the Winter of 2014. The Student stated at the hearing in this appeal that she had been concerned both about her parents' marital problems as well as the fact that her mother revealed to her that she (the mother) had a brain tumor. The Student did not drop any courses by the drop date that term nor did she appeal the failure in CIV1532H.

In the Fall of 2014, the Student took three further courses. She obtained marks of A-, A- and B+ in these courses.

As result of the unsuccessful appeal of the failure in CIV531H at the GAAB and the failure in CIV1532H, the Department recommended to the SGS in December 2014 that the Student's registration be terminated. The Department states that its policy is that any student who fails two or more courses be asked to withdraw from the program. On December 16, 2016 Professor De Nil, the Vice Dean, Students of the SGS, emailed the Student to inform her of the request for termination and offered the Student the opportunity to provide any relevant information about the termination. He and the Student met in person to discuss the termination. The SGS subsequently terminated the Student's registration on January 13, 2015.

The Student appealed this termination to the GAAB. In the GAAB Decision dated November 13, 2015, the GAAB unanimously dismissed the appeal. After reviewing the prior decisions, the GAAB stated:

As the Department's policy is to require students who have failed two courses to leave the program, SGS and the Department argued that the FZ in CIV 531H, which still stands after multiple levels of appeal, in conjunction with the failed course in the Winter of 2014, CIV 1532H (Fundamentals of ITS and Traffic Management), satisfy the requirement for termination of the Student's program.

While the members of the committee were sympathetic to the Student's situation, the fact remains that she did not appeal the Winter 2014 failure (it stands uncontested) and the failure in CIV 531H certainly stands after having been considered by three levels of adjudicators. This makes for two failures that justify the Department's decision to recommend termination of the Student's program and for SGS to act on it and terminate the registration.

The Student appeals this GAAB decision to your Committee.

Decision

The Committee's task is to decide whether the GAAB decision upholding the termination is reasonable. We are not revisiting the failures of the courses themselves. These failures stand. The Student's appeals of the failure in CIV531H were unsuccessful and she did not appeal the failure in CIV1532H.

The SGS Calendar states that "[i]f a student fails to complete a graduate course in a satisfactory manner (i.e., receives a grade report of FZ or NCR in a course or receives a grade report below the minimum acceptable by the graduate unit), then the graduate unit in which the student is registered may recommend to the School of Graduate Studies the termination of registration and eligibility of that student." The Department indicated to the Student that it is the Department's policy to recommend termination of registration to the SGS if a graduate student fails two or more courses. Unfortunately this policy does not appear to be written down anywhere. However, as the SGS noted at the hearing, the policy is more lenient than the SGS general policy of at least one failure.

The SGS does not automatically terminate registration upon request of a graduate unit. It exercises discretion in deciding whether to accept a unit's recommendation. At the hearing Professor De Nil stated that there have been cases where students with two failures have not had their registrations terminated (although not from this graduate unit). The Vice Dean appropriately recognized the need to take into account the whole of the circumstances relating to students facing termination in providing the Student with the opportunity to make submissions concerning her potential termination. The question then is whether the GAAB was reasonable in upholding the SGS's decision to terminate registration in this case.

In this case, the SGS followed a fair process in making its decision. The Student had warning as early as the Winter of 2014 that the Department viewed two failures as a basis to request that the Student leave the program. She had opportunities to provide information to the SGS and to appeal the underlying marks that eventually formed the basis of the termination decision. Moreover, the Student was informed of the Department's request to the SGS to terminate her registration, was offered the opportunity to make submissions to the Vice Dean about the termination and in fact met with the Vice Dean to discuss the circumstances around the failures.

In terms of the substance of the SGS's decision, the Student argues that the circumstances surrounding her failures militate in favour of the SGS exercising its discretion to not terminate her registration. In particular, she argued that the events of the Fall of 2013 and Winter of 2014 led to her failures. Your Committee is of the view that it would be reasonable for the GAAB to uphold the SGS decision based on the fact that the Student was unsuccessful in her appeals relating to CIV531H and she did not appeal her failure in CIV1532H. The Student needs to show not just that allowing her to remain in the program may be reasonable but that the SGS termination of her registration (and the GAAB upholding that termination) was unreasonable. Based solely on the information relating to the events of the Fall 2013 and Winter 2014 that was before the SGS and the GAAB, the Student failed to do so. The Student is in effect asking the SGS and the GAAB to review the facts underlying the failures of the courses and come to a

different decision. The GAAB in reviewing the termination found that the failures and the circumstances surrounding the failures provided a sufficient basis to support the termination. The Committee finds that this decision is not unreasonable given the many different bodies that had reviewed and not accepted her submissions relating to CIV351H (including a panel of this Committee) and her lack of appeal of the failure in CIV1532H.

However, the Student adduced new medical evidence that was not available before the GAAB in its decision in the appeal of the termination. The Student provided a letter from a psychologist dated February 17, 2015 noting that the Student had been under his care since November 2014. She also provided a letter dated January 7, 2016 from a psychologist in Iran who stated that he was in contact with the Student by phone since November 2013 and saw her in person beginning in the Fall of 2015. However, the Committee does not believe either the SGS or the GAAB would have come to a different decision if they had had this information. The February 17, 2015 letter refers to a period (November 2014) after the terms in which the Student took the courses she failed and during which she was performing well academically. The letter dated January 7, 2016 does not significantly add to the information that was before either the prior decision-makers or the GAAB and was not convincing given the timing of the production of the evidence and its limited nature. The Student was unable to provide any reason why she could not have adduced this letter in prior hearings relating to the failure of CIV 531H or in the GAAB hearing in this appeal. She had been informed both by the Department and in the various decisions that medical evidence was important and had not seen fit to obtain this documentation before. Because of its limited nature, the new medical evidence does not support a finding that the GAAB decision was unreasonable.

The Student also argues that the SGS should take into account her record in the Program following her failures (that is, while undertaking the appeal process). She notes that she was able to obtain good marks in the Fall of 2014 which point to her ability to successfully complete the Program. The SGS argued that the Student's academic record following her failures is irrelevant to the reasonableness of her termination. It refers to AAC Report #307, a prior decision of this Committee, where the Committee held that the student's performance in courses subsequent to the events central to that appeal were not relevant.

The Committee is of the view that it may be appropriate in some cases for the SGS to take into account the performance of a student in courses taken subsequent to the events central to the appeal. A complete exclusion of such information would be unfair to the students subject to termination and may in some cases lead to an unreasonable termination decision. In this case, however, the majority of the Committee is of the view that even taking into account the grades in the Fall of 2014 the GAAB decision was not unreasonable. The Student had failed two courses. One of the courses had been the subject of decisions of a number of bodies, including this Committee, which did not accept that there were grounds for any exceptional relief based on the evidence. The Student had not appealed the other decision. Before making its decision, the SGS provided the Student with a fair opportunity to explain the circumstances surrounding the failures. Given these facts, it was not unreasonable for the GAAB to dismiss the appeal on the basis that there were sufficient grounds to support termination. One member of the Committee

considered the grades relevant to the SGS decision and the failure to consider them at all made the decision unreasonable.

The Committee dismisses the appeal. However, at the hearing, the SGS and the Department offered to the Student that if the appeal was dismissed and the termination upheld, she could contact the SGS within seven days of release of the decision and request that she be allowed to withdraw from the program as opposed to having her registration terminated. The Committee recommends that the Student take this option.

The appeal is dismissed.

UNIVERSITY OF TORONTO
GOVERNING COUNCIL

Report #384 of the Academic Appeals Committee
June 23, 2016

To the Academic Board
University of Toronto.

Your Committee reports that it held a hearing on Friday, May 27, 2016, at which the following members were present:

Professor Malcolm Thorburn (Chair)
Professor Avrum Gotlieb, Faculty Governor
Mr. Faizan Akbani, Student Governor

Secretaries: Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances
Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Mr. Alex Redinger, Law Student, Downtown Legal Services
Ms. Ejona Xega, Observer, Downtown Legal Services
Ms. Melanie Warren, Social Work Student, Downtown Legal Services
The Student

For the Faculty of Arts and Science:

Mr. Robert A. Centa, Counsel
Professor Adrienne Hood, Associate Professor, Dept. of History and Acting Associate Dean, Undergraduate, Faculty of Arts and Science
Ms. Shelley Cornack, Registrar, University College
Mr. Michael Nicholson, Coordinator, Student Academic Progress, Office of the Assistant Vice-President

The Appeal

This appeal relates to a decision of the Academic Appeals Board (“AAB”) of the Faculty of Arts and Science dated 17 November 2014. The AAB decision rejected The Student’s petition for second consideration of his earlier petition for a further extension of time for filing a petition to appeal a 5 September 2012 decision of the Faculty of Arts and Science

Committee on Standing which had rejected his petition requesting a re-write of his final examination in PSY 290H1 and late withdrawal from six other courses.

The Facts

The Student first enrolled at University College in the Faculty of Arts and Science in the fall of 2005. He experienced a number of difficulties over the first few years of his studies. On the advice of Shelley Cornack, the Registrar of University College (“Ms. Cornack”), The Student registered with Accessibility Services in the fall of 2009.

In the summer of 2011, he enrolled in three half courses: POL380H1, PSY372H1 and PSY290H1. On 15 July 2011, The Student’s godfather died, causing The Student a great deal of upset. The Student then dropped one of his courses (PSY372H1) on the advice of Ms. Cornack.

On 22 August 2011, The Student advised Ms. Cornack and Mily Van, the Registrarial Advisor at University College (“Ms. Van”) that he had had a panic attack during his final exam in PSY 290H1, which prevented him from completing the exam. He also advised them that he had documentation of the incident and that he would be filing a petition seeking academic accommodation.

In light of his struggles in the summer and in the years before, Ms. Cornack advised The Student on numerous occasions that he should take a reduced course load in the fall of 2011. The Student wrote to Ms. Cornack on at least three occasions (9, 12, and 15 September 2011) indicating that he would heed her advice and take a reduced course load, take courses that did not require exams or take courses that were independent studies. Ms. Cornack continued to write to The Student through the fall but received no reply from him until 2 December 2011.

The Student did not, in fact, heed Ms. Cornack’s advice. Instead of reducing his course load, he enrolled in six challenging courses in the fall of 2011 (BIO120, CHM139, POL341, PSY333, UNI330, and UNI373H1S.). In his testimony at the appeal before this Committee, The Student indicated that he enrolled in these courses on the advice of a family friend, the then-registrar of Trinity College. The Student suggested in his oral testimony that the Trinity College Registrar advised him that these courses would help him to prepare for studies in global health, which was his career objective at the time.

The Student did not attend any classes nor did he complete any assignments in any of these six courses. Indeed, The Student indicated that he resided in London Ontario (and not Toronto) during the fall semester. However, The Student did enter into the ROSI system on 27 September 2011 in order to withdraw from another course (HIS496H1) in which he had enrolled at the same time as the six courses he now seeks to have removed from his record. He was awarded a grade of “0” in all of the six courses.

On 2 December of 2011, The Student contacted Ms. Cornack for the first time since the summer. In his email to her, he indicated that he had been out of touch due to his anxiety. He also indicated that he had enrolled in these six courses because of a panic attack. Ms.

Cornack, in her reply email, advised him that his only option was to come in to the office to have his course removed through the late withdrawal process (“LWD”). The Student did not reply to this email nor did he reply to another email from Ms. Cornack, dated 13 December 2011.

The deadline for commencing a LWD petition in the Faculty of Arts and Science is the last day of classes in the relevant term. This is undertaken by making a request to the College Registrar who has the authority to grant such requests if the circumstances warrant approval of an exception to the normal drop deadlines. According to the faculty rules, this process is usually available for a maximum of three courses. However, in oral testimony, Ms. Cornack indicated that she has the discretion to grant LWD for more courses should the circumstances warrant this.

Once the last day of classes in the relevant term has passed, the only means through which a student may have a course removed is by petitioning through the “WDR” process. According to the Faculty of Arts and Science’s rules and regulations, the WDR process is available only when the reason for The Student’s withdrawal from a course “has been caused by circumstances beyond The Student’s control, arising after the last date for course cancellation. Changes to the record will be authorized by petition only in exceptional circumstances.” The deadlines for submitting an appeal through the WDR process are the following 28/29 February for summer courses and the 15 November of the following academic year. The faculty’s rules clearly state that “[l]ate petitions and petitions with late documentation will not be considered.”

On 20 July 2012, The Student submitted a petition to the Committee on Standing (“CS”) through the WDR process for late withdrawal without academic penalty from the six courses in which he had received a mark of “0” in the fall of 2011 and for either a re-write of the exam or for late withdrawal without academic penalty in PSY290H1 from the summer of 2011. This was more than four months after the deadline for WDR petitions regarding summer courses. It was, however, within the deadline for petitioning regarding the six fall courses.

On 5 September 2012, the CS rendered its decision denying The Student’s petition. In its reasons, it rejected The Student’s petition on its merits concerning late withdrawal from the six fall courses, stating: “You have not presented appropriate documentation nor compelling reasons why you could not withdraw in a timely manner.” With respect to PSY290H1, the AAB indicated that re-write of an examination is not an available remedy. It further indicated that the appeal was filed past the deadline (of 28/29 February 2012). Finally, it also indicated that “[a]s you have had consideration given on two occasions you will not be provided with others as the Faculty rules are clear on appropriate procedures.”

There was some disagreement as to precisely when The Student became aware of the CS’s decision of 5 September 2012. The decision was emailed to The Student’s “utoronto.ca” email account on 5 September 2012. The Student indicated that because of his anxiety, he was not able to log in to that email account. However, on 7 November 2012, he emailed Ms. Van (from his Gmail account) to ask if there was a decision from the CS. She replied that there was and offered to forward it to The Student’s Gmail account, which she then did.

Due to his anxiety, The Student says that he was also unable to check his Gmail account to read the CS's decision. However, on 15 November 2012, Dr. Gillis, The Student's family doctor (who was also seeing him for psychiatric treatment), write in his clinical notes that "things haven't been good for a while, he has started smoking marijuana because his anxiety is out of control, he's not eating well, his appeal at U of T didn't go through..." This note seems to suggest that The Student was aware of the CS's decision at least by 15 November 2012. In the proceedings before the AAC, however, The Student and his counsel argued that he had not actually read the decision; rather, he was ruminating about the possibility of his appeal not going through, and the doctor had misinterpreted this to mean that he knew that it had not gone through.

It is now agreed by both sides that The Student was aware of the CS's decision by 30 November 2012 when his roommate accessed The Student's email account to read the decision and informed The Student of the decision. The Student contacted the University Ombuds office about this matter on 3 December 2012 indicating his intent to appeal the CS's decision. The Student's first contact with University College's Registrar's office after this was on 11 December 2012 when he emailed Ms. Van to ask what panel or adjudicator had rendered the earlier decision. Ms Van replied with the information he requested. She also reminded him that there was a 90-day appeals window from the date when the decision was rendered.

The Student did not make the 90-day deadline for appealing the CS's decision, nor did he request an extension of time to appeal. Instead, approximately nine months later, on 17 September 2013, he filed a petition to the CS requesting an extension of time to file a petition for a second reconsideration to that body. That request for an extension of time was denied on 16 December 2013. The Committee stated: "You have not provided compelling reasons or documentation for not appealing within the required 90 days. Your first communication with your College concerning the appeal was made after the 90 day deadline."

On 27 March 2014, The Student filed a petition to the AAB for yet another second consideration of the earlier petition requesting an extension of time to appeal the CS's earlier decision. This appeal was heard on 31 October 2014 and the AAB's decision was released on 17 November 2014. The AAB again denied The Student's request for an extension of time to appeal its earlier decision. In its decision, the AAB stated:

While the Board felt that you had provided evidence of a chronic health issue, the Board needed to consider whether there was sufficient evidence that you encountered difficulties within the 90 day period that would have prevented you from filing the petition on time. The majority of board members did not find that you had presented compelling evidence that you were unable to check your email account around the time the Committee on Standing released the decision, and that you were only aware of the decision after the 90 day window had passed (as you testified).

The Student now appeals the AAB decision to the AAC, seeking the following remedies:

1. Aegrotat standing or Late Withdrawal without academic penalty in PSY290H1; and

2. Late Withdrawal without Academic Penalty in BIO120, CHM139, POL341, PSY333, UNI330, and UNI373H1S.

Decision

This is a difficult case. The Student clearly suffers from very painful anxiety and associated problems. The issues in this appeal have caused The Student a great deal of worry and upset over many years. This committee is very sympathetic to The Student's difficult situation and we wish him the very best.

This appeal is about delay at three stages of the process:

1. The Student's petition to the CS requesting a re-write of his examination in PSY290H1 was denied because he filed it on 20 July 2011, five months after the deadline of 28 February 2011.
2. The Student was unable to withdraw from the six courses in which he had enrolled for the fall of 2012 because he did not do so in time. He could simply have withdrawn through ROSI (as he did for another course, HIS496H1) at any time up to 3 November 2011. Having missed the add/drop deadline, The Student could also have withdrawn through the LWD process by petitioning his College Registrar up to the last day of classes on 6 December 2012. Because The Student missed both of those deadlines for dropping his courses, however, his only remaining option was the extraordinary WDR process, which was denied by the CS on its merits.
3. Finally, The Student was unable to appeal the CS's decision of 5 September 2012 because he missed the 90-day window for filing his appeal. His appeal was never heard on its merits because the CS held on 16 December 2013 and the AAB again held on 17 November 2014 that The Student did not have reasonable grounds for missing the deadline.

The Student does not deny that he was late in all three of these ways. Rather, he argues that his delays at each stage were reasonable given his special circumstances. The Student argues, first, that his request for an extension of time to appeal the CS's decision of 5 September 2012 should be allowed because his delay in filing the appeal was reasonable in light of his circumstances. He then argues, second, that his appeal on the merits of the CS's 5 September 2012 decision should be allowed because his failure to withdraw from those courses in a timely way was also reasonable given his special circumstances.

This Committee will consider each of these matters in turn. Before we do, however, we should note that we have not been asked to decide these matters *de novo*. Even if this Committee might have come to a different substantive conclusion on a specific matter, we should let the earlier decisions stand if they were rendered through a process that was fair and reasonable. However, we have been presented with some new evidence at this appeal (such as The Student's second affidavit (dated 13 February 2015) in which he acknowledges that some of his testimony before the AAB was incorrect. Specifically, he now acknowledges

that he provided incorrect testimony regarding when he learned that the CS rendered its decision. That is, he acknowledges that he was aware of the decision on 30 November 2012. He insists that this misstatement was simply the result of confusion on his part attributable in part of the fact that he did not have legal representation at that hearing. In our decision, we consider this new evidence afresh.

1. Delay in Filing Appeal of CS Decision

On 17 November 2014, the AAB refused to consider the merits of the Student's appeal of the CS's 5 September 2012 decision because the appeal was brought outside the 90-day window for bringing such appeals. We are asked, first, to consider whether that decision to insist on the 90-day filing period is fair and reasonable to The Student under the circumstances.

The Student argues that this would be unreasonable given his circumstances. He now argues that because of his anxiety and associated problems, he only became aware of the CS's decision on 30 November 2012, when his roommate opened his email and read the CS's decision and informed The Student of its contents. This was only six days before the deadline for filing an appeal. Further, since The Student was continuing to suffer from anxiety when he learned of the CS's decision, he argues, he was unable to draft an appeal in a timely manner.

The AAB considered The Student's request for special consideration on the issue of timeliness. It considered the evidence he presented of his anxiety and associated problems and made a determination of what could reasonably be expected of him under the circumstances. In its decision of 14 November 2014, the AAB wrote to The Student that it "did not find that you had presented compelling evidence that you were unable to check your email account around the time the Committee on Standing released the decision, and that you were only aware of the decision after the 90 day window had passed (as you testified)."

The AAB's decision indicates two important (and distinct) findings. First, the AAB did not consider The Student's anxiety and associated problems to be a sufficient reason for him not to check his email. Second, the AAB did not believe The Student's representation that he was only aware of the decision after the 90-day window has passed. In this appeal, The Student has made clear that his representation at the 2014 hearing that he was unaware of the decision only after the 90-day window had elapsed was incorrect. He was without representation at that hearing and he attributes that mistake to his own lack of experience at such matters.

This leaves the first of the AAB's reasons for judgment: that they did not take The Student's anxiety and associated problems to be sufficient reason for him not to check his email in a timely manner. It is clear that The Student suffers from an anxiety disorder and that this has led to a number of associated problems including substance abuse, insomnia, anxiety, and gastro-intestinal troubles. However, The Student's failure to file an appeal in a timely way must be read within the context of a very strong obligation on all students (which is made explicit in the Faculty of Arts and Science regulations) to read their emails in a timely way and to be aware of deadlines and to keep to them.

The question for this Committee is whether the AAB was reasonable in its determination that these issues did not constitute compelling evidence that The Student was unable check his email or to draft an appeal once he had learned of the Committee on Standing's decision. In the absence of any expert testimony on the matter, we are left to decide this matter on the basis of one academic article filed by the Student on the relationship of anxiety to avoidance behaviour and our best understanding of the Student's own conduct around this time.

This Committee finds that the AAB's determination on this issue was entirely reasonable, given the facts before them and in light of the clear obligation on all students to check their utoronto email in a timely manner. Even in light of The Student's clear suffering from anxiety and associated problems, it is reasonable to expect him to find some way to ascertain the contents of his email, particularly when he was aware of the fact that an important decision was due to be released. The Student was capable of corresponding with university administrators in the fall of 2011, having written to Ms. Van in the office of the University College Registrar on 7 November 2012 to ask about the status of his petition. Further, there was good reason to believe that The Student did, in fact, read the decision sometime before 15 November 2012. Dr. Gillis's notes strongly suggest that he had learned of the Committee on Standing's decision at some time before he met with Dr. Gillis on 15 November.

Although it is clear that The Student's anxiety and associated problems would make it more difficult for him to draft an appeal of the CS's decision, it is still reasonable to expect him to send an email asking for an extension of time to file an appeal. This Committee finds that the AAB was fair and reasonable in its determination that the Student failed to provide sufficient evidence that he encountered difficulties within the 90-day period that would have prevented him from filing the petition on time. Accordingly, this appeal is dismissed. However, since this Committee has heard arguments on the merits of the Student's appeal, we choose to consider this argument in our reasons below.

2. Merits of Request to Withdraw

The Student argues that the CS's decision of 12 September 2012 (to reject his request to withdraw from six courses from the fall of 2011 without academic penalty through the WDR process and to reject his request either to re-write his examination in PSY290H1) was unreasonable and that this Committee should now grant his request for late withdrawal from the six courses and should either grant him aegrotat status or allow him to withdraw from PSY290H1 without academic penalty.

In many ways, the appeal on the merits turns on the same issues as the appeal of the timeliness issue of the appeal. That is, we are concerned, once again, with the reasonableness of the Student's delay in withdrawing from the six courses and his delay in seeking a remedy for his failure to complete the examination in PSY290H1.

In this case, the question before the CS was whether the Student met the requirements for late withdrawal without academic penalty under the WRD process. In its reasons of 5 September 2012, the CS stated (with respect to the six fall term courses): "You have not presented appropriate documentation nor compelling reasons why you could not withdraw in a timely manner." This finding is fully borne out by the evidence. If, as The Student

maintains, he never had any intention of enrolling in these courses, then it was open to him to withdraw through ROSI at any time up to 3 November 2011. The fact that he did, in fact, do so for another course (HIS496H1) on 27 September 2011 makes clear that The Student was capable of doing so.

There was a great deal of discussion as to whether The Student was in a position to withdraw through the LWD process near the end of classes in December 2011 and whether the student would need to “come in” to see Ms. Cornack (with whom he had a somewhat strained relationship) in order to initiate that process. In her testimony before this Committee, Ms. Cornack made clear that The Student would not need to be physically present before the end of classes in order to begin the LWD process and that he would have up to two weeks to complete related paperwork once the process had been commenced. In light of the ease with which The Student could have withdrawn from his courses through the regular add/drop process on ROSI, however, this Committee believes that this matter is moot. It was clearly reasonable for the AAB to conclude that the student did not meet the requirements of the WDR process – viz., that the reason for The Student’s withdrawal from a course “has been caused by circumstances beyond The Student’s control, arising after the last date for course cancellation.” Coupled with the further requirement that “[c]hanges to the record will be authorized by petition only in exceptional circumstances...”, it is clear that the AAB’s determination on the merits of the Student’s petition concerning the six fall courses was entirely reasonable.

Finally, with respect to PSY290H1, the considerations are rather different. Here, it was not open to the Student to withdraw from the course through the usual add/drop process, since his problem with the final examination arose long after the add/drop deadline had passed. Further, since his problem arose after the end of classes (during the final examination) the LWD process was not open to him, either. The only process open to the student at that point was the WDR process.

In this case, the CS’s main concern was the lateness of the student’s petition. In its reasons of 5 September 2012, the CS indicated that because the petition was filed past the deadline (of 28/29 February 2012), it would not be considered on its merits. Although the Student was clearly suffering from anxiety and associated problems for much of the time between the examination in PSY290H1 and the deadline for filing a petition on 29 February 2012, it remained reasonable for the CS to expect him to file a petition within the more than six month window the Faculty of Arts and Science policy allows. Moreover, it is reasonable to expect The Student to abide by these rules in light of his considerable prior experience with them. As the CS noted, “As you have had consideration given on two occasions you will not be provided with others as the Faculty rules are clear on appropriate procedures.”

The appeal is dismissed.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #385 of the Academic Appeals Committee
July 26, 2016

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on May 27, 2016 at 1:30 pm, at which the following members were present:

Ms. Sara Faherty, Chair
Mr. Alex Ivovic, Student Member of Academic Board, Governing Council
Professor Jan Mahrt-Smith, Faculty Member of Academic Board, Governing Council

Secretary: Krista Osbourne, Administrative Assistant, Office of Appeals, Discipline and Faculty Grievances
Jenna Glicksman, Office of Appeals, Discipline and Faculty Grievances (Observer)

Appearances:

Ms. V [REDACTED] T [REDACTED], Student-Appellant

For the University of Toronto Faculty of Arts and Science:

Professor Anne-Marie Brousseau, Associate Dean, Undergraduate

I. Appeal

The Student appeals a decision of the Academic Appeals Board of the FAS dated June 22, 2015. In that decision the Academic Appeals Board reviewed a decision of the Committee on Standing, which had refused the Student-Appellant's request for a deferral of three final examinations (in ECO208Y, ECO220Y, and LAT202H) and the completion of two missed term tests for ECO220Y. In its June 22 ruling the Academic Appeals Board found that the Committee on Standing had been correct when it concluded that the Student-Appellant had not submitted a medical note that was appropriate to cover her request. Specifically, the Board noted that "regulations state that students with chronic illnesses must provide medi[c]al documentation for the specified date on which the illness was acute or a letter from Accessibility Services indicating that they were seen at the time of the flare up."

II. Intra-Hearing Motion

Student-Appellant's motion to submit additional evidence. During the hearing the Student-Appellant made a request to submit further documentary evidence. She offered an Article from CBCNews that was posted on March 18, 2016. The article, titled, '*Pet bereavement days*' now

offered by some U.S. companies, listed several examples of employers across North America whose bereavement policies include some flexibility for employees dealing with the death of pets. The Faculty of Arts and Science did not object to the article being entered into evidence. The additional documentary evidence was accepted.

Professor Brousseau explained the Faculty of Arts and Science does, in fact, allow students to defer exams when they submit evidence of the death of a pet. Apparently the request was not made at the time of the exams in question. However the issue is not material, since the Student-Appellant did not write on April 3, or 4, 2014, the days around death of her cat. The Division scheduled a retake of the tests she was scheduled to write on those days. The retake for tests #1 and #2 in ECO220Y were scheduled on April 11, 2014. The Student-Appellant did not appear on that date, either, rendering the issue of whether the Faculty of Arts and Science defers exams for students whose pets have died immaterial in this matter.

III. Facts

The Student-Appellant had multiple problems during the Winter term of 2014. At different points in this process she has offered different explanations for her failure to complete academic work that term, including medical reasons involving joint stiffness, legal issues, dental problems, the death of a pet, depression, and symptoms related to menopause.

The Student-Appellant missed five important exams during April of 2014. On April 3 and April 4 she was scheduled to write two term tests in ECO220Y. Retakes of those two exams were scheduled on April 11, but the Student-Appellant missed that test date, as well. The Student offered evidence that she had a dental issue near that date, but the Verification of Illness Form indicated that the level of her incapacity on April 11 was “negligible” and “unlikely to have an effect on ability to fulfill academic obligations.” The Student-Appellant also missed three final exams that were scheduled in April of 2014: ECO220Y which took place on April 15, 2014; ECO208Y, which took place on April 16, 2014; and LAT102H which took place on April 23, 2014.

The set of reasons to which she devoted most of her remarks at the hearing was the legal problem. The Student-Appellant reported that starting in January of 2014 she became entangled in highly emotional litigation over the estate of her mother in a dispute with her brother. The Student-Appellant found this legal battle distracting and time-consuming. The student also submitted a Verification of Illness Form documenting her “serious” impairment from March 14, 2014 to April 30, 2014. The Student-Appellant suggested that her multiple legal, personal, and health issues were connected. This Committee notes that the Student-Appellant also devoted much of the hearing to describing her efforts to comply with the policies and procedures of the University, the Faculty of Arts and Science, and Accessibility Services. The Student-Appellant attempted to register with Accessibility Services at the end of the term in question, but was unable to garner their support for this petition.

Accessibility Services can be very helpful in assessing the needs of students with on-going issues, like the Student-Appellant, but in this case that has not happened. The Student-Appellant asked for their support for her petition, but that request was declined.

The Student-Appellant recounts having medical and legal difficulties for the entire term, but she did not try to register with Accessibility Services until April 3, 2014—the day she missed her first term test. Upon the Registrar’s recommendation, the Student-Appellant met with a disability accommodation specialist. The Student-Appellant was unable to clarify what happened next. It is possible the Student-Appellant did not distinguish between the Faculty of Arts and Science rules and regulations, and the advice she was getting from her Accessibility Services counsellor. She was unable to effectively clarify this point at the hearing, but it seems the Student-Appellant believed that the only medical professional she could seek documentation from was the one that Accessibility Services had recommended. Whatever the underlying source of confusion was, the end result is that the Student-Appellant does not have the support of Accessibility Services on this petition.

IV. Decision

The central piece of documentation in this file is a single *Verification of Student Illness or Injury* form. The Division declines to rely on the form on the grounds that it requires students seeking deferrals based on medical claims to see their doctor at the time that they are ill, and close to the date of the exam in question. Indeed, the form itself includes the following sentence: “This form is based on examination and applicable documented history at the time of illness or injury, not after the fact.”

The form that the Student-Appellant submitted has three pertinent dates:

1. it is based on a single visit the Student-Appellant made to Dr. James Choi on March 18, 2014; the Student did not acquire any documentation during this initial visit;
2. on December 4, 2014 the Student asked Dr. Choi to fill out the form;
3. it was revised by Dr. Choi, at the Student-Appellant’s request, on August 7, 2015.

The student approached her doctor three times relative to this petition: on March 18, 2014; December 4, 2014; and August 7, 2015. But only the first visit, on March 18th, involved a medical examination and assessment. The December 4th exchange was necessary because it was then that Dr. Choi filled out the *Verification of Student Illness or Injury* form based on the March visit that had occurred nine months earlier; and the August 7, 2015 visit, another eight months after the second contact, was when Dr. Choi filled in specific dates in the “additional comments” section.

Two more important notes on dates:

4. Dr. Choi lists the Student-Appellant’s incapacity as starting on March 14, 2014 and he lists the anticipated end date as April 30, 2014; and

5. In August of 2015, one year and five months after his single visit with the Student-Appellant, Dr. Choi wrote in the section some “additional comments”: “April 3, 4, 15, 16, 23, 2014 as well.”

Simply put, the Division has taken the position that a visit on March 18, 2014, was not close enough in time” to the missed exams (April 3, 4, 11, 15, 16, and 23, 2014) to reliably document the Student-Appellant’s condition on those test dates. Since the April 11 date was a re-take date for the exams missed on April 3rd and 4th, the Division reasons that the Student-Appellant may not rely on a medical visit that took place 23 days, or more than three weeks, before the first relevant missed exam date in question.

The Faculty of Arts and Science Calendar sets forth its policies on deferred exams and medical documentation in great detail. A governing premise is that “Students who are too ill and/or incapacitated *at the time of the examinations* should petition to defer the examination they are unable to attend due to their medical condition.” [Emphasis added.] A related but distinct rule is “the physician’s report must establish that the patient was examined and diagnosed *at the time of illness*, not after the fact. The Faculty will not accept a statement that merely confirms a later report of illness made by the student to a physician.” [Emphasis added.] Finally, there are provisions directed specifically at students with disabilities and long term health issues.

The timeline set forth above invokes both of these principles. In this case the Academic Appeals Board determined that the 23 day gap between the Student-Appellant’s doctor’s appointment and the exam date violated these principles. The Student-Appellant may have been ill on March 18, 2014, the day she saw the doctor, but that did not establish that she was ill on the mid- and late-April days she could have written the deferred exams. The fact that the doctor wrote in an end date several months later, and added specific exam dates another year later did not cure this fundamental deficiency in the timeline. Since the student asserts that she was ill on the days of the exams, she needed a note verifying her illness on those dates.

The University has an alternative system for students with chronic health problems. “Students with chronic illnesses must provide medical documentation for the specific date on which the illness was acute, or a letter from Accessibility Services for those registered for such a disability (indicating they were seen at the time of flare up, etc.).” As this last provision suggests, there is a separate set of processes for students with disabilities who have registered with Accessibility Services. Pursuant to the first rule regarding seeing the doctor at the time of illness, the dates added to the form more than a year later cannot document that the Student-Appellant actually suffered from flare-ups on those dates.

When asked why the Division did not offer more specific guidance to students regarding when a doctor’s visit was considered to be sufficiently close in time to the relevant exam date, Professor Brousseau explained that in order to be appropriately flexible and tailored to specific circumstances, the FAS did not give a specific timeframe, but rather chose to treat each petition individually based on the circumstances of the request. This allows students in unique circumstances to explain the gap between their doctor’s visit and the exam. This Committee appreciates the Faculty’s emphasis on individual, flexible analysis, and understands its reluctance to give setting forth a rigid set of time frames in its calendar. However in the interest

of fairness and transparency, a specific comment on the individual facts of a case might be inserted into Appeal Board Decisions, so students can better understand how rules were applied in their case. At this hearing Professor Brousseau asserted that three weeks was too long in this case, and that if the Student-Appellant wished to miss exams based on her medical condition she should have seen a doctor on or near the days of her exams, or at least offered an explanation as to why that was not possible. The Student may not have completely understood this point. At some points she said that her *Verification of Student Illness or Injury* form had been rejected because it was submitted retroactively. The Division emphatically rejected that analysis, pointing out that its policies expressly allow for the retroactive submission of forms. The Division stressed that the reason it refused to rely on the *Verification of Student Illness or Injury* form was because the gap in time between the date of the doctor's visit and the dates of the missed exams.

The Student-Appellant appears to have responded to this argument, first raised by the Committee on Standing, by asking her doctor to fill in the specific dates of her missed exams on the form, which he did do, seventeen months after the date of the only medical appointment he had with the Student-Appellant. This Committee is convinced that both the Student-Appellant and her doctor acted in good faith. Because the doctor had filled out a six week period of serious incapacitation, he undoubtedly concluded that the Student-Appellant was affected on those exam dates, all of which fell within the six week period of impairment. It is obvious that the Student-Appellant provided him with those exam dates (forgetting the April 11 retake date). However there is no suggestion that the Student-Appellant was acting unethically: she apparently believed that this additional detail would help the FAS assess her petition. This amendment was honest, but, unfortunately, not helpful. The Student-Appellant did not appear to understand the Division's objection to the gap in time between the visit and the exam dates. She describes herself as having a chronic condition with flare-ups, but does not seem to understand that it is the growing gap in time between her actual illness and the doctor's visit as well as the growing gap in time between the exam dates and the doctor's visit to which the Division objects.

The fact that the time period listed on the form, from March 14, 2014 to April 30, 2014 covers more than six weeks is not sufficiently specific to the Student-Appellant's condition, argues the division, because "students with chronic illnesses must provide medi[c]al documentation for the specific date on which the illness was acute, or a letter...indicating they were seen at the time of the flare up." The *Verification of Student Illness or Injury* form does not indicate whether the six week time period it describes involved a chronic illness with intermittent periods of incapacitation, or whether the Student-Appellant was seriously impaired in her ability to do academic work for that entire period. However in her petition the Student-Appellant adopts the language of a "chronic illness" with "flare ups," and indicates that she continued to attend classes throughout the period. Her argument is that she has established those flare ups by submitting a revised *Verification of Student Illness or Injury* form that includes the dates of her exams as dates of flare ups. This argument is difficult to credit, since the gap in time between the actual condition and the documentation of those flare ups is more than a year.

There are other problems inherent in the template provided by the *Verification of Student Illness or Injury* form. The original form identified the start date of the Student-Appellant's incapacitation as being March 14, 2014, and the "anticipated" end date as being April 30, 2014.

Note, however, that this form was not actually completed by Dr. Choi until more than eight months after the single visit upon which it is based. It is impossible to determine how the medical professional interpreted the word “anticipated” when it is written months after the end of the period he was describing. Was April 30, 2014 the date he actually predicted would be the end of this episode when he saw the Student-Appellant on March 18, 2014? Or, when she requested the form in December, nine months after that visit, is that a date that she reported to him as marking the end of her medical difficulties? Again, this Committee notes that there is no evidence that either the Student-Appellant or the doctor acted in bad faith, but nonetheless the form does not answer the questions raised in this appeal. When he added in the exam dates in August of 2015, seventeen months after the March 14, 2014 visit, he was accurately reporting that those dates fall within the time frame he’d listed, but surely he was aware that the Division could make that calculation on its own. Did he think he was actually verifying the Student-Appellant’s condition on those specific dates, well over a year after his sole medical examination of the Student-Appellant? That seems unlikely. This Committee cannot determine why the doctor added the language and listed the dates that he did. It may have been that he was frustrated or baffled by the *Verification of Student Illness or Injury* form when he hand wrote in a note verifying that April 3, 4, 15, 16, and 23 of 2014 fell in between the dates of March 14, 2014 and April 30, 2014. Alternatively, he may simply have been trying to support his patient. This Committee does not question the integrity of the people involved in this process, but can only determine that the papers submitted do not support the circumstances the Student-Appellant needed to establish to defer her exams.

It is clear that the Student-Appellant has been and may remain confused about much of what has transpired during the petition and appeal process. She has not raised arguments or submitted documentation in a timely manner throughout this process. At an earlier stage of the process she attempted to rely on a *Verification of Student Illness or Injury* form that concluded her impairment was “negligible,” which suggests that her understanding was that having a form in hand, regardless of what it said, was all that was required of her. Her three visits to the doctor to collect a form that she thought included the data the FAS wanted to see were made in good faith, but were not based on a clear understanding of the issues. The Division’s rule that a medical visit must be close in time to the exam deferred is reasonable. A doctor’s note may be furnished retroactively, but the gap in time between the visit to the doctor and the date of the exam cannot be remedied retroactively. As time passes each doctor’s visit is further and further in time from the time of the illness.

The student clearly had difficulty navigating the petition process and the support offered at Accessibility Services. The Faculty of Arts and Science and the University have promulgated guidelines, regulations, and Frequently Asked Questions features to better explain their policies to students. This Student-Appellant was not served well by the complexity of the accommodations services and policies. This Committee is aware that as the rules and policies around accommodations become more nuanced and specific, the burden on students increases. Nevertheless the Student-Appellant’s failure to provide reliable evidence, coupled with the fact that Accessibility Services is not supporting her petition, make it difficult for this Committee to accept her arguments.

The Student-Appellant acknowledges that her legal problems began at the beginning of the Winter, 2014 term, and that many of the other issues she identified were also present throughout the term. She reports that she considered withdrawing before the last day to withdraw without penalty. The Registrar of her Division advised her to do so. However the Student-Appellant explains that she did not want to allow her legal adversary to force her to abandon her studies nor could she afford to retake the course. It is unfortunate that the Student-Appellant had such a difficult term, but she cannot argue that her difficulties around exam time were unforeseen or were not present before the deadline for withdrawal. The decision to stay in school was unfortunate, especially since she the Student-Appellant did not follow up by taking the steps necessary to put accommodations in place. At this date it is impossible to tell whether any accommodations would have been warranted, but it is clear that the necessary documentation was not offered at the time, and cannot be reconstructed now.

IV. Conclusion

The role of the Academic Appeals Committee is to evaluate the decisions of the bodies it reviews. In this case the decision of the Academic Appeals Board of the FAS dated June 22, 2015 reasonably concluded that the Student-Appellant's medical documentation did not conform to the Faculty of Arts and Science's policy of asking that medical visits supporting petitions for exam deferral take place close in time to the date of the exam(s) in question. The Academic Appeals Board applied a tailored approach to this case, as it does for all cases according to its rules and regulations. However, this Committee recommends that the FAS make clear to students the criteria that are taken into consideration in determining whether a medical visit is sufficiently close in time to the relevant exam date in different cases. The Faculty has made the reasonable decision not to publish rigid time frames, however this Committee recommends that it give a more detailed analysis in its decisions so students can see how the rules were applied in their individual cases. In this case, although the Student-Appellant's discussion of multiple reasons for missing five exams during the month of April, 2014 were helpful in providing context to the Committee, they ultimately did not speak to the problem with her medical documentation, or the Division's reasonable objection to accepting that documentation. Therefore, the Academic Appeals Board's decision is upheld.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #386 of the Academic Appeals Committee
May 25, 2016, June 16, 2016

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Wednesday, May 25, 2016 and Thursday, June 16, 2016 at which the following members were present:

Emily Orchard (Chair)
Professor Paul Kingston, Faculty Governor
Ms. Susan Froom, Student Governor

Secretaries:

Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances (May 25, 2016)
Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Mr. V.S. ("the Student") (via Skype)
Ms. Ejona Xega, Law Student, Downtown Legal Services
Ms. Rabiya Mansoor, Observer, Downtown Legal Services (June 16, 2016)

For the School of Graduate Studies:

Mr. Rob Centa, Counsel
Professor Jay Malcolm Graduate Coordinator, Faculty of Forestry (May 25, 2016)
Professor Mohini Sain, Dean, Faculty of Forestry, (May 25, 2016 – in person; June 16, 2016 - via Skype)
Professor Sanjay Nayak, Director-General, CIPET (June 16, 2016 – via teleconference)
Ms. Deborah Paes Graduate Administrator, Faculty of Forestry (May 25, 2016)
Ms. Emma Thacker, Associate Director, Graduate Affairs, School of Graduate Studies ("SGS") (May 25, 2016)
Professor Luc de Nil, Vice-Dean, Students, SGS (May 25, 2016)
Ms. Josie Lalonde, Associate Director, Student Services – Student Systems and Records, SGS (June 16, 2016)

I. Appeal

The Student appeals a decision of the Graduate Academic Appeals Board (the "GAAB") dated July 7, 2015. In that decision the GAAB reviewed a decision of the Graduate Department Academic Appeal

Committee (the “GDAAC”) dated December 16, 2014, in which the GDAAC recommended that the student’s registration in the Ph.D. program be terminated. The Student has asked Your Committee to grant his appeal and reinstate him in the SGS, Faculty of Forestry’s Ph.D. program.

II. Abandoned Pre-Hearing Motion

This Committee initially convened on May 25, 2016 to hear the appeal (the “Adjourned Hearing”). On that day, the Committee heard a motion by the Student to admit new documentary evidence. The Respondent objected to the admission of new evidence on the basis that:

1. the evidence had not been presented to the Division while the Student was registered in the program, was not considered by the GDAAC or the GAAB, and was being proffered for admissions for the first time during the Student’s final right of appeal; and
2. the February 3, 2014 doctor’s note appended to the Student’s Reply, which the Student submits is a better copy of the doctor’s note found at Tab I of the Student’s appeal materials, is not in fact the same document.

The Respondent argued that authenticity is a prerequisite to submission of any evidence and, that the document should be excluded, if not for the first reason above, then because it could not be authenticated.

The Student’s representative acknowledged the discrepancy between the copy of the Doctor’s note appended to the Student’s Reply and that included at Tab 1 of his appeal materials. She argued that the discrepancies should not determine, however, the Committee’s determination regarding whether the document was in fact authentic and noted that the Student could provide an explanation for the differences between the two versions of the note. Unfortunately, the Student was unable to provide the Committee with his explanation because of a poor Skype connection that made it very difficult to hear him. As such, a decision was made to adjourn the hearing to a date to be set in June at which the Committee would ensure a proper connection was in place.

The parties reconvened on the afternoon of June 16, 2016, at which point the connection with the Student was adequate enough to hear his evidence on this issue. However, the Student’s representative advised the parties that the Student had made the decision to abandon his motion to admit the doctor’s note dated February 3, 2014. Accordingly, it is unnecessary for this Committee to decide whether to permit the admission of this new evidence.

III. Facts

The Student commenced his studies in the Ph.D. in Forestry program with the SGS in the Fall of 2012. His Ph.D. supervisors were Professors Mohini Sain and Professor Sanjay Nayak. The four-year Forestry Ph.D. program has five (5) general requirements and students must:

1. complete at least three half courses (1.5 FCEs);
2. obtain credit in FOR1001H;
3. complete a qualifying appraisal examination;

4. prepare and defend a thesis that is an original and independent research work which adds significance to the existing body of knowledge; and
5. make a full-time commitment for a minimum of the first two years in the program.

During Fall 2012, the Student successfully completed three half courses [Environmental Pollution Prevention (CHE2504H), Design and Manufacturing of Biomaterials (FOR1288H), and Economics of Forest Ecosystems (FOR3003H)], and obtained credit in Research Methods in Forestry (FOR 1001H).

In February 2013, the Student went to the Central Institute of Plastics Engineering and Technology (CIPET) in Chennai, India to conduct research for his Ph.D. The criteria specified in Professor Nayak's research funding dictated that a significant portion of the research be conducted at this location. Although this was his first time working at CIPET as a doctoral student, the Committee heard that the Student was not new to the facility, having worked there as a research student for many years before commencing his studies at the University.

The Student's work at CIPET was supervised remotely by Professor Sain and on-site by Professor Nayak, Director-General of CIPET. The Student and the Division are in agreement that Professor Nayak communicated with the Student every week when the former was onsite at CIPET, and every two weeks when he was not. Indeed, Professor Nayak and the Student often worked in the same research facility (though according to Professor Nayak, the two only met when *he* requested a meeting with the Student). The Student also engaged regularly with Professor Sain, typically via email and/or Skype on a bi-weekly basis. In addition, Professor Sain travelled to India every 2-3 months in order to meet with the Student. The majority of Professor Sain's discussions with the Student focussed on his coursework and research, and how to develop a strong thesis proposal, including identifying a novel problem set. Professor Sain also engaged Professor Nayak in these discussions given that it was the latter who was onsite and thus in the best position to oversee the Student's work.

According to the Student, Professor Sain provided him with guidance and instructions regarding the type of research he was to conduct and how to do so. Professor Sain elaborated on the nature of these communications, noting that when he and the Student met in person, he would provide him with very specific advice on how to improve his research and how to draft his report in such a way as to help the Supervisory Committee understand what progress he was making. Professor Sain also told the Committee that he encourages all of his students to keep a record of their research which records become the basis of his advice to them and the framework for their meetings.

Professor Nayak also described his relationship with the Student as one in which he gave the Student the necessary advice and guidance requested by the Student and contemplated by the Guidelines for Graduate Supervision. By the Student's own admission, he understood that he was expected to conduct his research independently, engaging with his supervisors as needed to advance his work, and was required to submit bi-weekly reports on his research via email. When asked at the hearing, the Student acknowledged that he received weekly feedback from Professor Sain on his research. Despite his regular contact with the Student and regular provision of feedback on the Student's work, Professor Sain told the Committee that the Student's reporting was irregular

and, that from time-to-time, he would have to email the Student to remind him to submit his reports. The Student never provided Professors Sain or Nayak with an explanation for his late submissions.

Although in this appeal the Student alleges that his research progress was inhibited by, among other things, the lack of sufficient feedback from his supervisors, it is important to note that the first time that he objected to the quality of that supervision was when he commenced the appeal to the GDAAC. This failure is, in this Committee's determination, telling and part of a much larger failure on the Student's part to communicate with his supervisors about his illness, his struggles in the program, and his need for more support. As described in further detail below, it became clear to this Committee that although invested in his success, Professors Sain and Nayak were, at an early point, concerned with the Student's research progress. Their communications with the Student following their regular meetings often attest to this fact. Notwithstanding their early concerns about the Student's progress, and as described further below, they were stalwart in their attempts to support and guide him.

First Supervisory Committee Meeting and First Attempt at Qualifying Exam

On July 18, 2013, the Student had his first meeting with his Supervisory Committee, which consisted of Professors Sain, Nayak, Tjong, and Farnood. Following this meeting, the Committee permitted the Student to proceed with his studies.

On July 19, 2013, the Student made a first attempt at his comprehensive qualifying appraisal exam. It was found to be unsatisfactory and the decision was deferred. He retook the exam on October 24, 2013 and achieved his Ph.D. candidacy.

The Student Becomes Ill

In September 2013, the Student developed dengue fever and malaria and experienced a fever, vomiting and dizziness as a result thereof. On September 10, 2013, the Student was admitted to the Intensive Care Unit of a local hospital for treatment. Following his discharge, the Student claims that he continued to feel unwell. The Student obtained a note from Dr. Seetharaman, dated September 26, 2013, that provides that he would be able to resume his studies as of September 27, 2013. Both Professors Sain and Nayak were aware of the Student's illness. At the hearing, the Student acknowledged that when he did disclose his illness to his supervisors in September 2013, they encouraged him to get well and, once he felt better, to focus on his research.

The Student's viral fever recurred in October 2013, at which point he returned to Dr. Seetharaman and retroactively obtained a note dated October 21, 2013 which confirms his need for a one-week medical leave from October 15, 2013 to October 21, 2013. It bears noting that this note is the only documentation that the Student provided to his supervisors to support his claim that he continued to experience symptoms in October, and was the last communication of any sort that he had with them in which he alerted them to his ongoing illness.

According to the Student, he continued to feel unwell after October 21, 2013. He vomited frequently, and felt faint, dizzy, nauseated and was easily exhausted. However, by the Student's

own admission he neither told his supervisors or anyone else at the University that he continued to be unwell nor submitted any documentation to support this claim. This, as will be further described below, is in this Committee's opinion fatal to the Student's suggestion that his illness ought to have been accommodated by the Division and, ultimately, to the first ground of his appeal.

The Student's Illness in February 2014

According to the Student, on February 3, 2014, he again sought medical attention for his ongoing symptoms. He obtained a medical note of the same date from a Dr. Ghanasekaran, whose note, the Student submits, confirms the prognosis and provides that his recovery would take a couple of months. It is important to note that this medical note was neither submitted to the Student's supervisors, nor put before the GDAAC or the GAAB for consideration on those appeals. Further, as noted above, at the start of the hearing before this Committee, the Student abandoned his motion to admit the February 3, 2014 note, which would – had it been admitted – have been the only evidence to support his submission that his research, and therefore progress in his Ph.D., was impeded by his ongoing illness.

The Student's appeal submissions also provide that he continued to feel unwell after the February 16th meeting of his Supervisory Committee, and that he was hospitalized five times between February and September 2014. There is no evidence to support the fact that these hospital visits took place and the Student told this Committee that he never told his supervisors or anyone at the Faculty that he continued to be ill or that he was hospitalized as a result.

This Committee has not made a determination as to whether the Student continued to be sick between October 2013 and September 2014 and does not consider such a determination necessary for the purpose of rendering its decision on this appeal. The Student repeatedly confirmed that he did not alert his supervisors or anyone at the Faculty to his illness after October 21, 2013.

According to him, he chose to withhold this information because he assumed that his supervisors would believe that he was using his illness as an excuse. We are not in a position to cast judgment on that decision, but do note that his failure to disclose his illness absolved the Faculty of the duty to accommodate it. Put another way, in the face of this unequivocal admission by the Student that the Faculty didn't know he was sick, there is no need for this Committee to consider whether the Faculty would have had a duty to accommodate the Student in the circumstances. There is no evidence that the Faculty knew, or ought to have known, that the Student was sick and the Faculty could not have accommodated an illness of which it was unaware.

The Student's Failure to meet Supervisory Committee's Expectations

The Student's Supervisory Committee met three times in 2014: on February 16th, August 6th, and August 7th. The Report of the Supervisory Committee dated February 16th, 2013 notes that the Student had "lost two months due to health" in the Fall of 2013, and concludes that he had "no specific project objectives yet" and "originality [was] missing" from his proposal. Despite its concerns in this regard, they elected to give him another chance to "demonstrate [his] ability to work at a Ph.D. level." Email correspondence from late April 2014 also indicates that Professors

Sain and Nayak were not satisfied with the Student's understanding of the concepts discussed in the February meeting.

The Supervisory Committee met with the Student again on August 6, 2014. As before, they found that his progress towards his thesis topic was insufficient. During this meeting, the Supervisory Committee noted that the Student had failed to engage in a sufficient review of the relevant papers in the field and highlighted his inability to provide satisfactory answers to questions relating to his field of study.

The Student's Alleged Illness from Chemicals

Paragraph 15 of the Student's appeal provides that in February 2014, the Student began to find that the chemicals with which he was required to work during his research triggered vomiting and nausea whenever he carried out his experiments. The appeal further provides that toward the end of February 2014, the Student informed Professor Sain that he was having adverse reactions to the chemicals and asked to change his thesis topic as a result.

Your Committee finds the Student's evidence on this topic to be inconsistent and untrustworthy. At the hearing of this appeal, Professor Nayak told this Committee that the Student's research was conducted entirely in a mechanical lab (the machinery in which was operated by a technician), and that the Student was never required to handle chemicals or work in a chemical lab. This Committee also heard from the Student that, contrary to his written submissions, he did not tell Professors Sain or Nayak that he was being made ill by the chemicals with which he may or may not have actually had to work.

This Committee needn't make a determination as to whether the Student was actually required to work with chemicals in order to conduct his research because for the purposes of this appeal, it is only necessary that the decision of the GAAB be found reasonable. There was no evidence before the GAAB that the Student ever mentioned his difficulties working with chemicals to Professor Sain, Professor Nayak, or any other member of his Supervisory Committee. On that basis, and others, the GAAB determined that it was unable to accept the Student's assertion that he continue to be ill during 2014. Before this Committee, the Student admitted to never telling his supervisors that he was being made ill by the chemicals with which he claims to have had to work. For that reason alone, this Committee must accept the decision of the GAAB as reasonable on this front.

The Supervisory Committee provides the Student with Options

Regulation 8.5.2 of the SGS Calendar provides that if a student's supervisory committee reports that the student's progress is unsatisfactory in two consecutive meetings, the Supervisory Committee has the right to recommend that the student's registration in the Ph.D. program be terminated. Instead of doing so in this case, after finding the Student's progress to be unsatisfactory in two committee meetings, it provided the Student with two options: (1) write a "science based report of the data of swelling to evaluate his ability to explain, interpret and conclude science based knowledge from theory and experimental results based on his thesis work" within ten (10) days of the meeting; or (2) transfer into the Masters program. The Student chose the first option and submitted his report on August 22, 2014. In early September, the Supervisory Committee informed

the Student that his report was unsatisfactory and articulated reasons for their finding. As noted above, he did not tell any members of the Supervisory Committee that he was sick and he did not ask for additional time to submit the report or seek an accommodation for his alleged illness, despite having had to twice alert his supervisors of his illness previously and knowing exactly how to do so.

IV. Decision

The role of this Committee is to evaluate the decisions of the bodies it reviews. In this case, we are tasked with deciding whether the GAAB decision upholding the Student's termination from his Ph.D. program is reasonable.

The Student's appeal focussed on two submissions before GAAB, which were described as follows:

“At the GAAB, the Student made essentially two submissions. First, he ... asserted that the chemicals used in his experiments made him ill. Second, he submitted that the supervision was discouraging and unhelpful.

Before this Committee, the Student submitted that his appeal ought to be granted and his registration in his Ph.D. program reinstated on this basis that: (1) that his performance had been adversely affected by his illness (either medical or as a result of allergies), resulting in a delay in his research progress; (2) the supervision he received from Professors Sain and Nayak was discouraging and unhelpful; and/or (3) his registration in the program was terminated prematurely. Each of these points will be discussed in turn below.

The Student's Illness

The GAAB, like this Committee and the GDAAC before it, closely examined the materials submitted by the Student and the Respondent.

The GAAB decision provides as follows:

“At the GAAB, the Student made essentially two submissions. First, he once again asserted that the chemicals used in his experiments made him ill. Second, he submitted that the supervision was discouraging and unhelpful. As he put it in his written submission to the GAAB, “all the mails [from Professor Sain] show the poor performance, and if [I] send the report he always discouraged me, and that time my health was not good I agree Professors gave me [a] lot of changes, but the technical input is not given to me...”

Like the GDAAC, the GAAB accepts that the Student was ill in September and October, 2012, but is unable to accept the Student's assertion that he continued to be ill during 2014. There is no evidence that the Student ever mentioned his difficulties with chemicals to Professor Sain, Professor Nayak, or the other members of his supervisory committee or that he sought any accommodation for them. At no point

in the proceedings before the GDAAC or the GAAB did the Student provide any documentary evidence to support his assertion.”

The GAAB accepted that the Student was ill in September and October 2013, but concluded that it could not accept the Student’s assertion that he continued to be ill during 2014. The GAAB noted that there was no evidence to support the assertion that anyone at the Division knew of the Student’s ongoing illness. Likewise, there was no additional documentary evidence before this Committee to support such an assertion. However, although the Student relied on the same evidentiary record as was before the GAAB, this Committee had the benefit of hearing definitively from the Student that he never informed anyone at the Division of his ongoing illness or alleged allergies to the chemicals with which he claims he had to work (an admission which undermines his written submissions at paragraphs 32 and 33 of the Student’s appeal, and paragraphs 14 to 16 of the Student’s Affidavit dated February 10, 2016).

It is this Committee’s opinion that the Respondent could not be expected to accommodate an illness of which it was unaware. By his own admission, the Student failed to advise anyone at the Division that his illness persisted after October 2013, whether such illness was borne of the dengue and malaria which he contracted or as a result of the allergies he claims to have had. The Student cannot now rely upon the Faculty’s failure to accommodate the very facts that he kept private as a ground on which to appeal his termination from the program. In the Committee’s opinion, the Student’s failure to disclose his allegedly ongoing illness ultimately deprives him of the right to then say that the Faculty ought to have recognized that his performance was impeded by an illness that it knew nothing about.

For that reason, this Committee accepts the GAAB’s decision with respect to whether the Student’s illness ought to have been accommodated and denies the Student’s appeal on this ground.

The Supervision provided was Inadequate

The GAAB also refused to accept the Student’s claim that the supervision provided by Professors Sain and Nayak was inadequate. In its decision, the GAAB held as follows:

“It is true that Professor Sain’s emails to the Student frankly describe some shortcomings in his work, but that may well have been appropriate in light of the Student’s progress. As for the quality of the supervision, the evidence before the GAAB was that the Student met regularly in Chennai with Professor Nayak and communicated with Professor Sain by email. Perhaps most important, after both attempts at the comprehensive examination and after all the supervisory committee meetings, the Student was given very specific directions as to how to move forward with his research. The Faculty’s conclusion that he was not making adequate progress was taken in accordance with SGS policy and was not unreasonable.”

Student should have been Afforded more time to Catch Up

As noted above, the Student did not alert the Supervisory Committee to his ongoing illness and its alleged role in his failure to make adequate progress in his research and the development of a thesis topic. The Student's representative argued that regardless of whether the GAAB accepted that the Student's illness persisted after October 2013, the Supervisory Committee ought to have accounted for impact of the loss of two months of work in the Fall of 2013.

In considering the Student's progress in his program, the GAAB found that "the evaluation process documented in committee meetings was fair and consistent with University policies on evaluation of Ph.D. student progress." The GAAB further held that the Faculty's conclusion in this regard "was taken in accordance with SGS policy and was not unreasonable." The Supervisory Committee's decision that the Student was not making adequate progress toward his Ph.D. and its resulting recommendation that his registration in the program be terminated, is one that this Committee is unwilling to interfere with. It has long been established that the question of the correctness of the Faculty's overall evaluation of the Student's performance, and the evaluations made regularly throughout the program are issues into which your Committee will not enter¹. The Student did not adduce any new evidence before this Committee which might warrant this Committee overturning the decision of the GAAB, particularly on this issue. All of the evidence that the Student raised at the hearing had either been addressed in the GAAB's decision, or was irrelevant to the question of the reasonableness of the GAAB decision. Indeed, to the extent that any light was shed on the exiting evidence, it was harmful to the Student's case.

Other grounds of Appeal

The Student raised three other considerations in support of granting his appeal, namely:

- That his academic performance indicates his knowledge of the relevant concepts and his capacity for success in the program;
- The financial hardship he will face if he is not reinstated in the program and, therefore, required to repay his program fees; and
- The adverse effect on his career prospects.

The Committee sympathizes with the incredible disappointment the Student must feel in having his registration in the program terminated and understands the resulting impact such termination may have on him. However, while members of the University community may feel compassion towards one adversely affected by its decisions, the University does not act upon, nor modify its decisions on this ground – and nor can this Committee.²

Given the lack of new evidence and in the face of the Student's admission that he never disclosed his ongoing illness or alleged allergies to his supervisors, the members of his Supervisory Committee, or to anyone at the Faculty of Forestry, this Committee is unable to find that the GAAB erred in its decision or that a different result should occur.

¹ AAC Report #323, at page 3.

² *Ibid* at page 5.

We therefore agree with the GAAB that the Respondent and SGS acted fairly and reasonably in deciding that the Student's registration in the Ph.D. program in the Faculty of Forestry should be terminated.

The appeal is unanimously dismissed.