



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: May 24 for May 31, 2018

AGENDA ITEM: 12b

ITEM IDENTIFICATION: Academic Appeals Committee, Individual Reports, Spring 2018

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] (May 22, 2018)
2. **Academic Board [for information] (May 31, 2018)**

PREVIOUS ACTION TAKEN:

The last semi-annual report came to the Academic Board on November 23, 2017.

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, Spring 2018

UNIVERSITY OF TORONTO
GOVERNING COUNCIL

Report 390 of the Academic Appeals Committee

December 4, 2017

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Tuesday, October 31, 2017, at which the following members were present:

Professor Hamish Stewart, Senior Chair
Professor Avrum Gotlieb, Faculty Governor
Ms. Mama Nii Owoo, Student Governor

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

Appearances:

For the Student Appellant:

Mr. G.B. (the Student)
Professor Donald Wiebe, Representative for the Student

For the Toronto School of Theology:

Mr. Robert A. Centa, Paliare Roland Rosenberg Rothstein LLP

In Attendance:

Professor Elizabeth Smyth, Vice-Dean, Programs, School of Graduate Studies. University of Toronto

Dr. Jaroslav Skira, Director, Graduate Centre for Theological Studies (Toronto School of Theology), Associate Professor of Historical Theology, Regis College

The Appeal

The Student appeals from a decision of the Academic Appeals Committee (AAC) of the Graduate Centre for Theological Studies (GCTS) of the Toronto School of Theology (TST), dismissing his appeal from a decision of the acting Director of the GCTS, removing Professor Donald Wiebe as the chair of the Student's Ph.D. supervisory committee.

Overview of the Facts

The Student is a third-year student in the conjoint Ph.D. program in Theological Studies at TST. Professor Wiebe is a member of the Faculty of Divinity, Trinity College. Initially, Professor

Wiebe served as Chair of the Student's Ph.D. supervisory committee. On October 13, 2016, on behalf of the acting director of GCTS, the GCTS administrator emailed Professor Wiebe a letter appointing him to the GCTS graduate faculty. Within the hour, Professor Wiebe replied that "I do not wish to be a member of the GCTS ...". In a series of email exchanges over the following week, Professor Wiebe affirmed that he did not want to be appointed to the GCTS. In an email of October 19, the acting Director summed up these exchanges as follows (emphasis in the original):

As you know, the Toronto School of Theology's Memorandum of Agreement with the University of Toronto requires that all faculty involved in TST graduate work of any kind must have a GCTS appointment. To date, TST has made no exceptions to this policy. Last week, I, as Acting Director of the GCTS, sent you a letter appointing you to the GCTS for a term of five years. You have refused this appointment both in writing and in my own presence.

Therefore, I am writing to inform you that you now are *without GCTS status*, effective today, 19 October 2016.

As of today, all of your GCTS graduate responsibilities have been terminated. You ... no longer have the status required to be involved in any GCTS graduate supervision, graduate teaching or advising. ... You will be replaced on all doctoral PhD and ThD supervisory committees.

As a result, Professor Wiebe was removed as the chair of the Student's Ph.D. supervisory committee.

The Student appealed the decision removing Professor Wiebe to the AAC of the GCTS. In a decision dated May 3, 2017, the AAC of the GCTS dismissed his appeal. The AAC of the GCTS held that it was clear from the relevant policy documents that "all faculty members engaged in conjoint graduate degree programs must hold appropriate membership in the [GCST] and work within the academic policies established by TST/GCTS." The AAC of the GCTS found that Professor Wiebe was not eligible to supervise the Student and that there were no grounds to overturn the acting Director's decision.

Relevant Policies

Paragraph 32 of the Memorandum of Agreement between the University of Toronto, the TST, and the TST's Member Institutions (in effect as of July 1, 2014) provides:

All faculty members engaged in conjoint graduate degree programs must hold appropriate membership in the TST's Graduate Centre for Theological Studies, equivalent to the U of T's School of Graduate Studies categories of Full, Associate or Associate Restricted and conforming to the standards of the U of T.

In accordance with this term of the MoA, the TST's Guidelines for Graduate Faculty Appointments states (at p. 2):

At TST, members of teaching staff do not automatically have teaching and supervisory privileges in graduate ... programs. To be eligible for graduate faculty members, an individual must hold a faculty appointment ... at one of the TST colleges or its affiliates. Faculty members must also have been approved by the TST Director to teach in the TST consortium in accordance with the Policy on TST Academic Appointments.

(See also the GCTS's Graduate Conjoint Degree Handbook at p. 1.)

These policies are consistent with the policies of the University's School of Graduate Studies (SGS). No-one may serve as a Ph.D. supervisor or as a member of a Ph.D. committee unless they are a member of the graduate faculty. Membership in the graduate faculty must be approved by SGS (on the recommendation of the Chair of the relevant SGS unit) (see <http://www.sgs.utoronto.ca/facultyandstaff/Pages/Graduate-Faculty-Memberships.aspx>).

Decision

On behalf of TST, Mr. Centa submitted that these provisions are clear on their face. Moreover, he submitted that to order TST to depart from them would be effectively to rewrite the MoA, which the AAC has no jurisdiction to do.

On behalf of the Student, Professor Wiebe submitted that the policies, though seemingly clear on their face, should be applied with a measure of discretion, and that this discretion should have been exercised to permit him to continue supervising the Student notwithstanding his explicit refusal to be appointed to the GCTS.

Your Committee agrees with TST that the relevant policies are clear on their face and do not permit persons who are not members of GCTS to serve on doctoral supervisory committees. Thus, the acting Director did not exercise any discretion and there is no need to consider whether any exercise of discretion was reasonable. In short, the acting Director applied the relevant policies correctly.

Nevertheless, your Committee would like to comment on the Student's argument that the acting Director should have exercised a discretion to allow Professor Wiebe to continue supervising the Student. It is conceivable that a policy that on its face permits no discretion might in practice be applied with a measure of discretion. If so, then your Committee might well consider (in accordance with its terms of reference) whether that discretion had been exercised fairly in particular cases. But the evidence available to your Committee established beyond any doubt that neither TST nor SGS exercises any discretion on the kind of decision at issue here. The TST states, and your Committee accepts, that since the conjoint Ph.D. program was established in 2014, there has been no instance where someone who is not a member of GCTS has been permitted to serve on a doctoral supervisory committee. Moreover, Professor Elizabeth Smyth, Vice-Dean of Programs for SGS, states, and your Committee accepts, that she has not and would not approve a person to act as a Ph.D. supervisor if that person was not a member of the University's graduate faculty. Under the SGS policy cited above, there are several ways in which a person, including a faculty member from another university, can be appointed as a member of

the graduate faculty for the purpose of serving on a doctoral supervisory committee, but an appointment to the graduate faculty is essential for this purpose. Professor Smyth has served as Vice-Dean for nine years and during that time has approved more than 8,000 Ph.D. supervisory committees. Professor Smyth is the faculty member to whom the University has entrusted the important responsibility, among others, of carrying out the University's policies concerning the composition of doctoral supervisory committees. To the extent that the practices of SGS serve as a model for those of GCTS, her statement is powerful evidence that there is no discretion in the GCTS's policy on membership in the graduate faculty.

The Student was able to point to only one case where it might be said that the SGS relaxed its policy requiring Ph.D. supervisors and committee members to be members of the graduate policy. It appears from the material filed by the Student that in the academic year 1993/94, a Ph.D. student in the University's Centre for the Study of Religion was permitted to retain on his committee a faculty member who had recently resigned from the Centre and was therefore, according to SGS policy, no longer eligible. Curiously, that faculty member was Professor Wiebe. Your Committee cannot say why or on what basis that decision was made or whether it was correct, reasonable, unreasonable, or simply wrong at the time it was made. But it is inconsistent with SGS practice of the past decade and, more significantly, inconsistent with the TST policies and practices that are applicable here. This anomalous and dated incident does not establish the existence of any discretion in the application of TST's policy regarding eligibility to serve on a doctoral supervisory committee.

Conclusion

The appeal is dismissed. Your Committee notes that, as of the date of the hearing, TST remained willing to offer Professor Wiebe an appointment to GCTS.

THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL
Report # 391 of the Academic Appeals Committee
December 8, 2017

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Monday, November 6, 2017 at 1:00 p.m., at which the following members were present:

Ms. Sara Faherty, Chair
Professor Andrea Sass-Kortsak, Faculty Governor
Ms. Mala Kashyap, Student Governor

Hearing Secretary: Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Mr. Y. A. (the Student)

For the Division, University of Toronto, Mississauga:

Professor Michael Lettieri, Vice Dean, Undergraduate Programs
Ms. Renu Kanga Fonseca, Director, Student Recruitment and Admissions

I. The Appeal

The Student Appellant, Y. A., dropped a year-long course after the relevant add/drop deadline. He dropped the course after the last date to which he would have been entitled to get even a 50% refund. The Student Appellant has asked to have the tuition charge removed from his account. He had since accrued late penalties and fees, and is asking that they be removed as well.

Section 2.1 of the Terms of Reference that govern the Academic Appeals Committee of the Governing Council allows this body 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.” This is an appeal from the decision of the Fee Consideration Committee at the University of Toronto, Mississauga’s Registrar’s Office, which disallowed the fee refund and reversal request of the Student. A decision by a registrarial fee refund committee is not, in your Chair’s view, a decision that applied an *academic* regulation to a student. This appeal may not have come to this body properly. Your Committee declines to review the Fee Consideration Committee’s ruling. This is consistent with and mirrors our understanding of the remedies this Committee can impose. We have an array of academic remedies available to us (*e.g.*,

late withdrawal without academic penalty, reinstatement to a program after academic suspension, to write a deferred exam), but we are not empowered to make financial awards to students.

Your Committee Chair reviewed the Student Appellant's written submission to see whether he raised any substantive challenges to academic regulations over which we have jurisdiction. The Student questions the fairness of add/drop dates. Your Committee listened to the Student's and Division's submissions on this issue, with the understanding that we were reviewing the Registrar's underlying decision to apply the add/drop deadline to the Student in the first place. We are of the view that a review of this academic regulation (the add/drop deadline) might result in a reversal that could trigger a conclusion about financial relief. Even under those circumstances the only action this Committee could properly take would be to recommend a fee reversal.

II. The Facts

The Student Appellant registered for ECO100Y5, *Introduction to Economics*, during the Fall term of 2016. He was hoping to be admitted to the International Affairs program, and this core introductory course is a requirement for that program. He began struggling with the materials early in the term. He met with an academic counselor prior to November 9, 2016, who, according to the Student, recommended that he "stay in the course a little longer." The Student does not recall whether the academic counselor specifically mentioned that the upcoming deadline for dropping a year-long course was November 9, 2016. Students who drop before that deadline receive a 50% refund. He reported to your Committee that he was not aware of the November 9 deadline when it passed. The Student continued to perform poorly in the course, and over the break between the Fall and Winter terms he decided to drop it, giving up his goal of entering the International Affairs program. He dropped the course on January 2, 2017, more than seven weeks after the November 9, 2016 deadline.

A complicating factor in this situation is the billing practices of the University. The University splits the cost of year-long courses into two separate payments: one due early in the Fall term, and the second due early in the Winter term. These two separate payments, due on two separate dates, appeared in the Student's account in the Fall of 2016. This Committee understands this to be a student-friendly practice, because the alternative would be to demand full payment for year-long courses early in the Fall term. However in this case the practice confused the Student. He did not understand that he would still be responsible for the remaining January payment when it fell due, even though he had dropped *Introduction to Economics*. His confusion was fed by the Registrar's language explaining the add/drop deadlines, which refer to "refunds."

The Student did not understand that he was expected to make his second payment for the course until he saw that the charge was still listed on his statement of account in January of 2017.

III. Decision

Jurisdiction of the Student Appeal Committee

As explained above, your Committee has declined to rule on the decision of the Fee Consideration Committee, on the grounds that its decision does not involve the application of an academic regulation.

The Committee is considering the fairness of the practice of imposing add/drop deadlines, because they are, broadly understood, academic regulations.

Consistent Application of the Add/Drop Deadline

The Student has not raised any suggestion that the add/drop deadline was not applied correctly, or consistently. He is aware that he did not drop *Introduction to Economics* until January 2, of 2017. He acknowledges that the last day on which he might have received a 50% refund was November 9, 2016, although he also asserts that he was unaware of the deadline on the day that it passed. Nor does the Student assert that any unforeseen issues arose after the deadline had lapsed. On the contrary, he reports that he was struggling in *Introduction to Economics* from the very beginning of the course, and that he discussed his options with an academic counselor before the November 9 deadline. His argument that he couldn't have dropped the course before the deadline because he was still trying to raise his grade, and he did not yet know whether that effort would be successful is unpersuasive. One of the justifications for an add/drop deadline is to require students to assess their performance and make final decisions about their registration relatively early in a course. It is not unreasonable to assume that students will be in a position to make an informed decision by then. In this case, the Student was aware that his performance was weak in the course, although it was not until a month or so later that he realised that he was likely to fail the course if he stayed in it. The Student misunderstands the goal of the add/drop deadline: it is not the date by which students are expected to be able to predict their final grade. Students are, however, expected to have developed an idea of what the course is about, whether they are able to understand and connect with the instructor, and the amount of time they should be expected to devote to the course. If the add/drop date were tied to students' ability to predict their final grades, course registration would become unstable and there would be no more low grades—students would be routinely dropping courses when they realised their likely final grade was not to their liking. This would undermine the significance of all marks. A policy that allowed students to drop courses without any financial or academic consequences throughout the term of a course would be unmanageable and would undermine the academic integrity of students' transcripts.

Even when a student documents an unforeseen problem that arose after the add/drop deadline had passed, and this Committee permits late withdrawal without academic penalty, the Committee does not have the authority to reverse the associated tuition and fees. A 2005 panel explained,

“The student also asked the Committee that if we found in her favour, she could be refunded the money she spent on the course. The Committee believes that it does not have the jurisdiction in this matter and that it is a matter of policy to be decided by individual divisions. However, we wish to state for the records that in our opinion, students are not entitled to refunds of courses for which they are granted late withdrawal without academic penalty.” (Report # 302)

This panel finds that both of those principles still stand.

Fairness

Rather than challenging the correctness or the consistency of the application of the add/drop deadline, the Student is asserting that such deadlines are unfair. He repeatedly asked, both in his written submissions and his oral submissions, “why [he] should pay for something [he is] not getting.” The Division pointed out that he had received four months of instruction in the course. We

note that the Student had the right to stay in the course and sit for its exam. His decision not to exercise that right was under his control.

The Student asserted that he was confused by UTM's use of the word "refund," arguing that common understanding of the word relates exclusively to money that has already been paid, and does not contemplate future payments. This Committee agrees that it would be clearer to expressly remind students who drop year-long courses that they will still be responsible for any future payments. We encourage the Registrar's Office to add that to their website for the sake of clarity. The Assistant Registrar pointed out that the Student was given a single invoice, and that the invoice showed both the Fall and Winter charges on that document. The Student had that invoice at the time he made his decision to drop the course after the last deadline for any fee reversals. She also read from the UTM website which uses the phrase "refund schedule," but also uses the terms "adjusted" and "reversed" to describe how they treat fees if a course is cancelled before the deadline. We find this phrasing to be better, but still believe a better practice would be to expressly point out that future charges are included in the course fee.

However the Student did not rely on this language when he missed the deadline—he told us that he was unaware of the add/drop deadline and the rules around refunding and reversing fees on November 9th (which would have been the last day to have the unpaid 50% of the fees reversed). He also told your Committee that even if he had been aware that he would be required to make his Winter term payment for *Introduction to Economics* when he dropped the course on January 2, he still would have dropped the course. He explained that he would not have remained in the course "because I would not attain the grade I needed to pass the course."

This panel has concluded that the policy was sufficiently communicated to the Student, and the University's use of the term "refund" did not cause the Student to take an action he otherwise would not have taken.

The Student believes that since he did not attend any classes during the Winter term, he should not have to make the second payment for the year-long course. The University could have set the deadline for dropping yearlong courses at the half-way point, but did not do so. (Nor does it set the add/drop deadlines for either Fall or Winter courses at the half-way point.) The add/drop deadline is not closely tied to the fraction of a course the students have completed, nor is it intended to be. The Vice Dean pointed out that the costs of a year-long course do not accrue evenly across the terms, with precisely one twenty-sixth of the funding for the course being expended each week the course meets. The University carefully calibrates the academic calendar, including the add/drop deadlines, with an eye toward fairness to students, the need to cover fixed and variable costs across three campuses, the need for stability in course registration, the need to maintain academic integrity, and myriad other considerations. While it makes an effort to afford students a generous amount of time to determine whether or not to remain enrolled in courses, there are other reasons, described above, for requiring students to commit to their course loads once the academic year is underway.

IV. Conclusion

There is no basis for disputing the Registrar's application of the add/drop deadline to this Student Appellant.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #392 of the Academic Appeals Committee
December 11, 2017

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Wednesday, November 1, 2017 at which the following members were present:

Mr. John Monahan (Chair)
Professor Jan Mahrt-Smith, Faculty Governor
Mr. Aidan Fishman, Student Governor

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

Appearances:

For the Student Appellant:

Mr. L.R. (“the Student”)
Mr. Robert Sniderman, Law Student, Downtown Legal Services
Ms. Jennifer Fehr, Staff Lawyer, Downtown Legal Services

For the Faculty of Engineering and Applied Science:

Mr. Rob Centa, Counsel, Paliare Roland
Ms. Emily Home, Counsel, Paliare Roland
Professor James Davis, Associate Professor Teaching Stream
Mr. Don MacMillan, Faculty Registrar

I. Appeal

The Student appeals a decision of the Academic Appeals Board (the “AAB”) of the Faculty of Engineering and Applied Sciences dated August 29, 2016. Or, more accurately according to the Student’s Notice and Statement of Appeal, the Student appeals “the aftermath” of that decision.

In its decision of August 29, 2016, the AAB had granted the Student’s appeal of the Committee on Examinations’ (“the CoE”) decision to deny his petition for a re-read of his final examinations in the courses ECE314 and APM384. The re-reads of these two courses that took place in October and November 2016, respectively, are the subject of this appeal.

The Student asserts that the re-reads were performed in an unfair manner because they were not both conducted by external examiners and because neither involved the use of clean copies of his exams. Accordingly, the Student has asked your Committee to allow this appeal and to grant him the remedy of obtaining re-reads of clean copies of both examinations by Faculty professors other than those who originally taught him the courses.

For its part, the Faculty has responded by submitting that the appeal should be dismissed because the Student submitted his appeal outside the timeframe for doing so; that the Faculty acted reasonably and fairly in re-grading the Student's exams in both courses; and the Student has been accorded procedural fairness throughout both his earlier appeals and in the re-grading process.

II. Facts

The Student began his studies in the Electrical & Computer Engineering program in the Faculty of Applied Science and Engineering in 2013.

In the 2015 Fall Semester, the Student took Fundamentals of Electrical Energy Systems ("ECE314H1") and Partial Differential Equations ("APM384"). He wrote final exams in both courses in December 2015. His final mark in the former was 57% (after an exam re-check that raised his mark by 1%), and his final mark in the latter was 52%. In January 2016, the Student was placed on Repeat Probation and required to withdraw from the Faculty until he could re-take the Fall 2015 semester.

During the Winter 2016 semester, although having been forced to withdraw from the program for the semester, the Student filed two petitions with the Faculty. The first, which was granted by the Faculty's Committee on Examinations ("CoE") on or about February 1, 2016, allowed the Student to register as a part-time student while waiting to repeat the Fall 2015 semester.¹ The second, requesting that his probationary status be removed, was refused.²

Meanwhile, the Student consulted Part B, section 2.3.1. of the *University Assessment and Grading Practices Policy*, which provides that "...all divisions should provide, in addition to the customary re-checking of grades, the opportunity for students to petition for the re-reading of their examinations where feasible."³ The Student thereafter petitioned the CoE to request a re-read of his examinations in both courses. On or about June 28, 2016, the CoE advised the Student that his petition was denied based on "insufficient reasoning or invalid reason."⁴

The Student appealed the CoE decision to the Faculty's Academic Appeals Board ("AAB"). In his submission to the AAB, the Student "(requested) the panel to kindly initiate a re-read of the two final exams being sought, preferably by a competent person other than the instructor or member

¹ Respondent's Book of Documents at Tab 10

² Respondent's Book of Documents at Tab 11

³ Appellant's Notice and Statement of Appeal, at Tab F and Respondent's Book of Documents at Tab 6

⁴ Appellant's Notice and Statement of Appeal, at Tab B

who has graded each of the two during Fall 2015.”⁵ In his petition seeking appeal, the Student offered explanations and/or requested additional marks for a number of the answers he had provided.⁶

The AAB granted the Student’s appeal on or about August 29, 2016. In its letter to the Student advising him of that decision, the AAB informed him that it had considered his request that his final exams in ECE314 and APM384 be re-graded “by instructors other than the ones who taught the courses.” “(H)owever,” the AAB continued, “the re-reads will be conducted by the instructors who taught the courses.”⁷ At the bottom of the same letter, beneath the listed names of those receiving copies of the letter, the AAB included the following recommendation:

Please review your rights and responsibilities surrounding academic appeals:
<http://uoft.me/apscappeals>⁸

On or about October 24, 2016, the Student was advised by the Chair of the Faculty’s AAB that the two re-reads would be performed by the original markers with the original exams, with the original markers’ comments included.⁹

During the fall of 2016, the two re-reads were conducted.

Because the original instructor for ECE314 was on sabbatical during that time, the re-read of the Student’s ECE314 examination was performed by another instructor. The Student’s examination was read with the notations that had been made and the marks that had been awarded by the original instructor visible. The instructor who performed the re-read made informal comments while reviewing the Student’s examination that led to his examination mark being increased by several points, and that ultimately resulted in the Student’s final mark in the course being increased to 61% from 57%. This news was communicated to the Student in early December 2016.¹⁰

The original instructor for APM384 re-read the Student’s final examination, and no additional marks were awarded.

In December 2016, the Student was in communication with Michael Nicholson and Helen Slade, both of them Coordinators of Student Progress & Support for the university. One of the topics of communication with the Student was the appropriate avenue for appealing the re-reads of the Student’s examinations. It was ultimately confirmed to the Student by Ms. Slade on or about

⁵ Appellant’s Notice and Statement of Appeal, at Tab H.

⁶ Appellant’s Notice and Statement of Appeal, at Tab H.

⁷ Appellant’s Notice and Statement of Appeal, at Tab A.

⁸ Appellant’s Notice and Statement of Appeal, at Tab A.

⁹ Appellant’s Notice and Statement of Appeal, Submissions at par. 12.

¹⁰ Appellant’s Notice and Statement of Appeal, Submissions at par. 15.

January 19, 2017 that the Faculty had definitely confirmed that the only avenue of appeal left to the Student was to the Academic Appeals Committee of Governing Council.¹¹

Later in January, 2017, the Student contacted Downtown Legal Services (DLS), his current representatives, for the first time. His first in-person meeting with DLS, however, did not take place until February 22, 2017. A number of weeks after that meeting, in mid-March 2017, DLS advised the Student that they could not represent him.

The Student confronted a number of medical challenges in the spring of 2017. According to medical documentation submitted, between mid-April and the end of that month, the Student suffered from sleep deprivation serious enough to interfere with his examination preparedness. Then, the Student was hospitalized from May 5 to 23, 2017, inclusive.

On or about May 9, 2017, the Student was advised by letter from the University of Toronto that a Notice of Trespass under the Trespass to Property Act had been issued against him, with the implication that he could not enter any University property until further notice.

On or about July 20, 2017, the Student returned to DLS to seek assistance again. This time, DLS accepted his case, and the Student submitted his Notice of Appeal of the AAB's decision to your Committee, through the Office of Appeals, Discipline and Faculty Grievances, on or about August 2, 2017.

III. Preliminary Issue: Timeliness

Before turning its mind to the merits of the Student's appeal, your Committee first had to consider the preliminary issue of the timeliness of the appeal.

The Faculty, in its Calendar that is made widely available to students of the Faculty, outlines its policy with respect to both petitions and appeals. That policy includes the provision that a student wishing to appeal a final decision of the Faculty may appeal to the Governing Council, and that such appeals must be filed within ninety (90) days of the date of the notification of the Faculty's final decision. The relevant portion of the Calendar reads as follows:

XII. Petitions and Appeals

...

2. A student wishing to appeal against a final decision of the Faculty may appeal to the Governing Council of the University. In that event, the student should consult the Director, Appeals, Discipline and Faculty Grievances, Office of the Governing Council, about the preparation and submission of the appeal. ***Appeals to the Governing Council must be***

¹¹ Appellant's Notice and Statement of Appeal at Tab P.

made within ninety days of the date of the notification of the final decision of the Faculty. [emphasis added]¹²

This same general information appears on the website of the Faculty under the heading “Appeals.” That term is easily searchable on the Faculty’s website pages for Current Engineering Undergraduates. It can also be found by clicking “Petitions,” which is both one of the major sub-headings on the main landing page for Current Engineering Undergraduates, and one of the links provided on the side of the website interface under the heading “Quick Links.” The relevant section of the website reads:

Appeal: Academic Appeals Committee, Governing Council

If your appeal is denied by the Faculty’s Board, the final level of appeal is the University’s Academic Appeals Committee (AAC), a committee of the Academic Board, which is the academic arm of Governing Council. The AAC meets infrequently and is a much more formal panel chaired by someone with legal expertise. Students are generally advised to seek legal assistance at this level; although it is not mandatory, it does help expedite the process.

Deadline: ***You must file your appeal from the AAB refusal within 90 days of the date on that decision.*** The appeal must be submitted in writing to the Office of the Governing Council, Simcoe Hall. [Emphasis added]¹³

In the event, however, the Student did not file his appeal to the AAB decision until August 2, 2017, almost a full year after the issuance of the AAB decision on August 29, 2016.

The preliminary question before your Committee, therefore, was whether there were compelling reasons for it to exercise its discretion to hear and decide the appeal of the Student on its merits even though the appeal was filed with Governing Council well outside the published timelines for doing so.

IV. Substantive Issue: Was the Relevant Policy Applied Fairly?

The Student and the Faculty both provided arguments regarding the substantive merits of the Student’s appeal.

The Faculty of Applied Sciences and Engineering does not have its own, faculty-specific written policy concerning the re-reading of contested undergraduate examinations that outlines such

¹² Respondent’s Book of Documents at Tab 1.

¹³ See <http://undergrad.engineering.utoronto.ca/petitions/appeals/>

matters as who should perform the re-reads or whether such re-reads should be performed using clean copies. However, the Faculty is subject to the *University Assessment and Grading Practices Policy*, the Overarching Principles of which are the following:

- That assessment and grading practices across the University are consistent and reflect appropriate academic standards;
- That student performance is evaluated in a manner that is fair, accurate, consistent, and objective and in compliance with these academic standards;
- That the academic standing of every student can be accurately assessed even when conducted in different divisions of the University and evaluated according to different grading scales.¹⁴

Regarding the re-reading of examinations, the *University Assessment and Grading Practices Policy* simply provides as follows in Part B, S. 2.3.1:

For undergraduate courses, all divisions should provide, in addition to the customary re-checking of grades, the opportunity for students to petition for the re-reading of their examination where feasible. Divisions/faculties may charge a cost-recovery fee (for re-reading) consistent with the Policy on Ancillary Fees.¹⁵

Both parties agreed that, in the absence of a specific policy governing undergraduate exam re-reads, the faculty has a duty to ensure a fair process is instituted and is applied consistently. Demonstration of a lack of fairness in the process itself or in its application to the Student in question would warrant your Committee granting the present appeal.

For his part, the Student argued that “While there is no specific process for how re-reads are conducted at the Undergraduate level, the process cannot be fair or objective without clean copies of the examination or external reviewers.”¹⁶ The Student further argued that, because of the undue influence that an initial marker’s comments and the grade assigned could have on the re-reader’s own effort to assess a contested examination, “without a clean copy of the exam, the external review cannot be impartial or objective.”¹⁷

The Student noted that the practices concerning re-reads for graduate students enrolled in the Faculty were significantly different than those for undergraduates. In the case of the former, they were governed by the School of Graduate Studies’ policy on *Re-Reading and Retention of Examinations*, which requires both the use of clean copies and the use of external examiners for re-reads of examinations. The Student opined that because there is “no substantial difference between an undergraduate’s work and a graduate’s work such that the procedures for examination re-reads

¹⁴ Appellant’s Notice and Statement of Appeal at Tab F

¹⁵ Appellant’s Notice and Statement of Appeal at Tab F

¹⁶ Appellant’s Notice and Statement of Appeal, Submissions at par. 18.

¹⁷ Appellant’s Notice and Statement of Appeal, Submissions at par. 19.

ought to differ”, and because the Faculty does not have any specific written policy concerning the re-reads of undergraduates’ examinations, the Faculty should apply the re-read standards of the SGS policy to all engineering students.¹⁸

By contrast, the Faculty took the position that fairness does not require that the Faculty assign someone to conduct the re-read other than the original instructor. In fact, the Faculty asserts that it is “entirely fair to allow re-grading to occur by the original grader and/or to occur with copies of the original grading comments...(because this) promotes consistency of grading between all students in the class.”¹⁹ The Faculty further notes that “There are infinite ways to get a wrong answer, but students tend to make many of the same mistakes on their exams. It is fair that these students receive the same marks for these attempts.”²⁰

The Faculty also argues that in highly technical courses such as ECE314 and APM 384, “(f)inding mistakes is not generally an issue of judgment.”²¹ Therefore, the grading of answers in such courses’ final examinations is relatively devoid of subjectivity and independent of the grader.

With respect to the use of a student’s original marked exam by a re-reader, the Faculty asserts that there is no reason to assume that “another grading of a clean examination by a different person would produce a more ‘accurate’ grade than did the original grading.”²²

V. Decision

i. Preliminary Issue

At essence, the role of this Committee is to evaluate the decisions of the bodies it reviews. In this case, however, before turning to the August 29, 2016 decision of the Faculty’s AAB - and/or its “aftermath,” as submitted by the Student - we first have to consider the essential preliminary issue of whether the Student initiated the appeals process with Governing Council within the timeframe of the relevant policy. If not, we are required to decide whether your Committee should exercise its discretion to overlook any lateness.

Much discussion ensued as to when the metaphorical “clock’ had begun on the 90-day time limit for the Student to submit an appeal application to Governing Council. However, while we are well-aware of the longstanding legal principle that “ignorance of the law is no excuse,” in an administrative context within a university your Committee believes it is reasonable to begin with a consideration of whether or not the Student in question was aware of the University’s policy imposing a 90-day time limit to appeal final Faculty decisions.

¹⁸ Appellant’s Notice and Statement of Appeal, Submissions at par. 24.

¹⁹ Respondent’s Submissions at par. 73.

²⁰ Respondent’s Submissions at par. 76.

²¹ Respondent’s Submissions at par. 74.

²² Respondent’s Submissions at par. 86.

On that point, we are persuaded that the Student knew or ought to have known of the 90-day time limit on or about August 29, 2016. That was when he received the letter from the Faculty advising him that, while his two examinations would be re-read as he had asked for in his appeal, they would be re-read by the course's original instructors. At the bottom of that same letter was the following line:

Please review your rights and responsibilities surrounding academic appeals:
<http://uoft.me/apscappeals>.²³

However, even if the Student was aware of that 90-day time limit, your Committee heard from the Student that it would not be reasonable for the clock to begin running until after the Student fully understood the way in which those re-reads would be carried out. Your Committee found that argument to be persuasive.

Your Committee is therefore of the opinion that, in this instance, the clock did not automatically begin to run on August 29, 2016, when the Student was first notified of the decision of the AAB. Rather, your Committee finds that the clock did not begin to run for the Student's appeal deadline to Governing Council until he was aware both that the exams would be re-marked by the same instructors who had marked them in the first place, and that clean copies of the exams would not be used.

The Faculty contends that the letter of August 29, 2016 makes clear that "the re-reads (for the Student's ECE314 and APM384 exams) will be conducted by the instructors who taught the courses." The Student, by contrast, submits that he thought that the exams would be re-marked by *other* instructors who had previously taught the same courses. Although the Student's interpretation might have an element of wishful thinking attached to it, your Committee is prepared to believe that he did not fully understand that the very same instructors who had taught him the two courses would be asked to re-mark his exam papers.

Moreover, the letter of August 29, 2016 did not specify that the exams would be re-marked without benefit of clean copies. The Student submitted a copy of an e-mail he had written to the Chair of the AAB dated October 24, 2016 that suggests he only realized on or around that date that his exams would be re-read without first blacking out the markers' comments on his original exams.²⁴

By his own admission, the Student was made aware on or around October 24, 2016 by the Chair of the AAB, Professor Jason Foster, that his two examinations were to be re-read by the original markers using the original exams and with the original markers' comments included. Further, as noted above, if by that time he had not already noted the information regarding the deadline for filing appeals in his Faculty's Calendar or by visiting the URL suggested to him in the AAB's letter of

²³ Respondent's Book of Documents at Tab 15

²⁴ Appellant's Notice and Statement of Appeal at Tab I

August 29, 2016, he told your Committee that he had visited the Faculty's website page regarding appeals "in October."

Therefore, your Committee takes the position that the 90-day clock for the Student to file his appeal with Governing Council from *both* the August 29, 2016 decision of the AAB *and* its relevant aftermath began to run on or about October 24, 2016. Were it to run continuously from that date, therefore, the final deadline for submitting an application to appeal the decision of the AAB would have fallen on or around the end of January 2017.

In the event, however, the Student was advised by a university staff member, Mr. Michael Nicholson, a Coordinator of Student Progress & Support, on or about December 13, 2016 to "hit the pause button" on pursuing an appeal until such a time as he and the Student could meet in person.²⁵ Given the Student's reasonable perception that a staff representative responsible for Student Progress & Support was speaking for the university's administration, your Committee is prepared to find that Mr. Nicholson's message had the effect of pausing the 90-day clock at approximately the half-way mark of 45 days, even though a subsequent e-mail from Mr. Nicholson to the Student that same afternoon of December 13 specifically referenced Governing Council as the "next level" for any appeal.²⁶ Fairness dictates that the Student be given the benefit of any doubt in this instance.

Notably, the agents for the Student expressed to your Committee that the 90-day appeals clock should only begin to run on January 19, 2017. That was the date on which Helen Slade, a colleague of Mr. Nicholson who together with him had met with the Student the previous week, wrote to the Student to confirm what he had already been told previously by Faculty representatives:

The Faculty has clarified that if you do choose to appeal, your next appeal will be to Academic Appeals at the level of Governing Council.

<http://www.adfgutoronto.ca/processes/acappeals.htm>.²⁷

For the reasons outlined above, your Committee believes that the clock had already been running for more than six weeks when it was paused on December 13, but it does take the view that the clock began to run *again* as of January 19, 2017.

With the clock running again, the Student contacted DLS in late January – when asked, neither the Student nor his agents could provide a more specific date - and, due to what the agents for the Student described to your Committee as some "glitches" concerning case assignment, the Student did not actually meet with a representative of DLS until February 22. By that time, the 90-day clock had been running for more than 75 days.

Notably, in his second e-mail message to the Student on December 13, Mr. Nicholson had specifically mentioned DLS to the Student, describing it as a "free service available to UofT

²⁵ Appellant's Notice and Statement of Appeal at Tab O.

²⁶ Appellant's Notice and Statement of Appeal at Tab O

²⁷ Appellant's Notice and Statement of Appeal at Tab P.

students,” and advising that if he were going to be pursuing an appeal, “they may be willing to work with you on the case.” Within less than two minutes, the Student had replied to Mr. Nicholson to thank him for the suggestion, and to say, “I *may* look into it after my exams [emphasis added].”²⁸

When asked by your Committee about his delay in reaching out to DLS when he was already aware that the 90-day clock was running, the Student advised your Committee that he wanted to keep open the option of retaining alternate legal representation.

As it turned out, in mid-March 2017, DLS wrote to the Student to advise him that they would not be able to represent him after all due to resource constraints. To take a very generous interpretation of events, the Student may have thought that his representation by DLS was a foregone conclusion. For that reason, your Committee is prepared to consider the 90-day clock paused for the period of time between the Student’s first meeting with DLS on February 22 and their communication with him of mid-March to advise they could not represent him.

However, there was no evidence submitted to show or suggest that the Student even then made any effort to retain alternative legal representation. In fact, roughly another month (or 30 days) passed between mid-March and April 17, the first date for which medical documentation indicates that the Student’s capacity to address his academic appeal concerns was reduced due to health-related issues²⁹. In other words, as of April 17, the clock on his appeal deadline was already showing 105 days since he had been made fully aware of the process and practices that had been applied to the re-reads of his two impugned final examinations; had been advised that an appeal to Governing Council was his only remaining appeal route; and was fully aware of the 90-day deadline for filing his notice of appeal.

Your Committee is prepared to exercise its discretion to find that the clock remained paused until one week after the Student’s release from hospital on or around May 23. Even so, approximately 50 more days would pass before the Student would return to DLS on or about July 20, 2017 to once again ask for assistance with this appeal. By that time, the clock stood at roughly 155 days and counting. By the time his notice of appeal was actually submitted to Governing Council on August 2, 2017, some 165 days – closing in on twice the 90-day limit - had transpired since the appeals clock had first begun to run.

Having arrived at even this approximate count, it is clear that the Student submitted his notice of appeal long after the published and understood deadline for doing so. However, both the Student and the Faculty acknowledged that your Committee can exercise its discretion to allow a late appeal to proceed.

The Student submitted that the decision to grant an extension to file an appeal in an administrative context is “a discretionary one that should be made with regard to all of the evidence.³⁰” He then proceeded to outline a multi-part test as presented by Madam Justice Snider in *Canada (Minister of Human Resources Development) v. Gattellaro* [2005] F.C.J. No. 1106 F.C. A decision to grant an

²⁸ Appellant’s Notice and Statement of Appeal at Tab O.

²⁹ Appellant’s Notice and Statement of Appeal at Tab Q

³⁰ Appellant’s Notice and Statement of Appeal, Submissions at par. 35.

extension or not should be the result of a consideration and a weighing of the following four criteria:

- i. A continuing intention to pursue the application or appeal.
- ii. There is a reasonable explanation for the delay.
- iii. The matter discloses an arguable case; and
- iv. There is no prejudice to the other party in allowing the extension.

Looking at these four criteria in reverse order, your Committee was not persuaded that there would be prejudice to the Faculty if the requested extension were allowed. The granting of such an extension would undoubtedly cause some frustration and inconvenience – the Faculty told your Committee of the importance of finalizing and submitting course marks within a reasonable, finite period of time for the benefit not only of other students who are anxious to know their results but also that of Faculty administrators for both reporting and planning purposes – but the Faculty’s argument that to allow this Student’s appeal to proceed would “open the floodgates to other student (sic) petitioning for re-reads of their exams semesters after the fact”³¹ was not substantiated by any supportive data. Your Committee does not see that the granting of an extension in this particular instance would lead to hordes of other past or present students submitting motions for your Committee to accept their appeals outside of the prescribed time limits. Certainly there would still be a strong motivation for students to finalize their marks and resolve their standing in the Faculty with as much expedition as possible. Moreover, no single decision of the Academic Appeals Committee has precedential value on all future decisions, and each case must be considered on its own merits given all of the relevant facts and circumstances.

Looking at the third of the four criteria, your Committee believes that whether or not the Student in this instance was treated fairly in his dealings with the Faculty with respect to the re-reads of his examinations for ECE314 and APM384 is indeed an arguable case. Just given the widely divergent practices concerning re-reads among UofT faculties as adduced by the materials presented to your Committee, there would at very least appear to be value in examining whether the Student in this instance was treated fairly by his Faculty. Your Committee also notes that the implications of this case have such serious implications for the Student’s academic future that, again, any benefit of the doubt should accrue to the Student.

Were the only criteria to be weighed and considered when determining whether or not to grant an extension be the above two criteria, therefore, your Committee would be inclined to exercise its discretion to grant the requested extension. However, that is not the case, and it is upon the first two criteria in the cited case that the Student’s argument falters.

First, the Committee is of the unanimous opinion that the Student failed to demonstrate a continuing intention to pursue the appeal. Your Committee was not presented with any clear evidence to indicate that the student took any immediate, concrete steps to pursue his appeal

³¹ Respondent’s Submissions at par. 63 (d)

options after October 24, 2016 when he first became aware of how the re-reads of his two examinations were being conducted. Fully one month later, on November 24, 2016, the Student continued to exchange communications with the office of the Faculty's Registrar concerning the final outcomes of his re-reads³², but there was still no clear indication of an intention to appeal to Governing Council. In fact, it was only in the correspondence between Mr. Nicholson and the Student on or about mid-December that the topic of securing legal representation for a possible appeal appears to have been raised. The "pause" between that point in time and the Student being advised by Ms. Slade on January 19, 2017 that the Faculty had confirmed to her that the only remaining appeal route was to Governing Council has already been explained and accounted for.

However, even if your Committee were to ignore its own conclusions and instead accept the Student's argument that the 90-day appeals clock only began to run on or about January 19, we would still be faced with a lack of evidence that the Student had a continuing intention to pursue an appeal to Governing Council. We note, in particular, a lack of evidence to show that the Student had:

- taken any steps to preserve his appeal right prior to his meeting with DLS on February 22;
- taken any steps to pursue his appeal after the DLS advised him it could not represent him in mid-March and prior to his medical issues arising in mid-April; or
- taken any steps to pursue his appeal between his release from hospital at the end of May and his communication with DLS to request their reconsideration of his need for legal representation on or about July 20.

Similarly, your Committee was not presented with a compelling or reasonable explanation for the Student's delay in pursuing his appeal. Certainly your Committee is very sympathetic regarding the Student's sleep-related troubles and his subsequent hospitalization and medical examination. However, that accounts for only the six-week period between mid-April 2017 and the end of May 2017. It does not account for the delay in either filing an appeal himself or retaining any alternate legal representation after DLS advised him in mid-March they could not represent him and before his sleep disorder arose. It also fails to account for the more than seven-week delay between the end of his hospitalization and his request to DLS to reconsider his case in late July.

Your Committee imagines that the fact that the Student was subject to a Trespass Notice barring him from university property after May 9, 2017 might have temporarily impeded his ability to meet with representatives of DLS, who are based at the University; however, no evidence was led to suggest that was the case. Moreover, the Trespass Notice remained in effect and appeared to pose no obstacle when the Student did eventually reach out to DLS to pursue the present appeal in the latter half of July.³³

For all these reasons, having weighed the evidence before it and having considered the four-part test laid out by Madam Justice Snider in *Canada (Minister of Human Resources Development) v. Gattellaro*, your Committee has determined that it would not be appropriate to exercise its

³² Appellant's Notice and Statement of Appeal at Tab K

³³ Appellant's Notice and Statement of Appeal, Submissions at par. 44.

discretion to extend the deadline for the filing of the Student's appeal in this case. Instead, your Committee finds that the Student was late in bringing his appeal, and his appeal is therefore dismissed for lack of timeliness.

ii. The Merits of the Appeal

In case your Committee is wrong in finding that the Student's appeal was out of time, your Committee has also considered the substance of the Student's appeal and the responding position from the Faculty on their respective merits.

In doing so, our consideration has been not the correctness of the AAB's decision or its "aftermath", to adopt the language used by the Student; rather, we have asked ourselves whether the relevant policy of the Faculty has been applied fairly in this instance.

As noted above, the relevant policy is the *University Assessment and Grading Practices Policy*. The Faculty – unlike some other faculties or academic units, including the Faculty of Arts and Science or the School of Graduate Studies, does not have its own, faculty-specific policy regarding re-reads.

As also noted above, it is Part B, section 2.3.1 of the Policy that has the most direct bearing on the current fact situation:

For undergraduate courses, all divisions should provide, in addition to the customary re-checking of grades, the opportunity for students to petition for the re-reading of their examinations where feasible. Divisions/faculties may charge a cost-recovery fee (for re-reading) consistent with the *Policy on Ancillary Fees*.

The written Policy itself is silent as to the matter of who should perform re-reads and whether or not they should be given clean copies to review, but your Committee is interested not only in the Policy as written, but also the Policy as applied within the Faculty. Is it applied in a fair, consistent and objective manner with respect to all students, including the Student appellant?

In this instance, your Committee neither heard nor saw any evidence to suggest that the policy and the related processes acknowledged by both parties to be binding on the Faculty were applied inconsistently, unfairly or with partiality. Representatives of the Faculty could not recall any instances where re-reads were specifically directed to be performed by external examiners or where clean copies of the exams were used, and that the Student in this instance was treated the same as other students in his situation would be treated. For his part, the Student did not adduce any evidence to the contrary, nor did he demonstrate that the Faculty had shown a lack of objectivity or impartiality towards him specifically by declining to assign external examiners to re-read his impugned exams (except where made necessary by the unavailability of the original instructor in ECE314). Similarly, the Student did not allege or demonstrate that other undergraduate students of the Faculty had been given the benefit of having their exams re-read using clean copies.

It is true that the approach taken by the Faculty appears to differ significantly from the practice of some other academic divisions, such as the School of Graduate Studies, whose policy on *Re-reading and Retention of Examinations* specifically requires a clean copy and an external examiners for re-reads.³⁴ The Student asserts that because the Faculty does not have a specific policy regarding re-reads beyond the provisions laid out in the *University Assessment and Grading Practices Policy* it should automatically be required to apply the provisions of the School of Graduate Studies to undergraduate students in the same way as they are applied to graduate students of the Faculty. However, the argument could also be made that, if any third-party policy should be applied to undergraduate engineering students in the absence of a Faculty-specific policy, it should be that of the Faculty of Arts and Science in order to ensure a consistent approach to re-reads is adopted for as many undergraduates across the University as possible.

In the end, neither argument is persuasive. No evidence was submitted to your Committee to indicate that the Faculty of Applied Science and Engineering is required to have its own, faculty-specific policy regarding re-reads, so to project another faculty's policy onto the Faculty is to attempt to fill a gap that technically does not exist.

Moreover, your Committee does not believe it is inherently unfair for the original instructor of a course to conduct a re-read for one of that instructor's students. Rather, your Committee concurs with the Faculty that it is not unreasonable for the original instructor of a course to re-mark an examination if required, because such a practice promotes consistency of grading among all the students in the class. Without having other students from the same class as comparators, the act of marking a single student's examination in a way that is consistent with the others in his or her class becomes more challenging.

Similarly, we are not persuaded that fairness requires that examinations be re-read using only clean copies. Rather, the system described and practised by the Faculty that involves the re-reader having the opportunity to reference not only the original comments made and marks awarded by the original marker, but also the specific concerns and objections raised by the Student to those comments and marks, appears to us to be a fair one. The combination of the original comments and marks with the Student's replies and explanations goes a long way to providing any re-reader with helpful context and background for consideration. Were only the original reader's comments and marks provided to the re-reader without the corresponding responses from the Student, or *vice versa*, the process would arguably be less fair. However, that is not the case here. The fact that the re-read of ECE314 resulted in a significant increase to the Student's grade also helps to bolster the argument that the process employed by the Faculty was a fair one.

That said, it bears mentioning that your Committee is of the opinion that the Faculty would be helping both itself and its students were it to draft, adopt and disseminate a written, comprehensive Faculty-specific policy regarding examination re-reads that includes, but is not necessarily limited to, clear information regarding how re-reads are to be conducted, by whom, and so forth. However, it extends far beyond the purview of your Committee to opine that the absence of such a policy

³⁴ Appellant's Notice and Statement of Appeal, at Tab M.

represents in and of itself a denial of natural justice or procedural fairness to this Student or any other.

The appeal is therefore dismissed on its merits.

UNIVERSITY OF TORONTO
GOVERNING COUNCIL

Report # 393 of the Academic Appeals Committee
December 14, 2017

To the Academic Board
University of Toronto.

Your Committee reports that it held a hearing on Thursday, November 9, 2017, at which the following members were present:

Professor Malcolm Thorburn (Chair)
Professor Paul Kingston, Faculty Governor
Ms. Amanda Harvey-Sanchez, Student Governor

Hearing Secretary:
Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty
Grievances

Appearances:

For the Student Appellant:

Mr. R.S. (“the Student”)

For the Faculty of Kinesiology and Physical Education:

Professor Gretchen Kerr, Vice-Dean of Academic Affairs
Mr. Timothy Linden, Assistant Registrar, Office of the Registrar

The Appeal

This appeal relates to a decision of the Dean of the Faculty of Kinesiology and Physical Education dated 8 February, 2017 concerning the Student’s results in KPE 440 in the fall of 2016. The Dean’s decision rejected two of the student’s claims and provided a remedy for the third of his claims that the Student now deems to be inadequate.

The Facts

In the fall of 2016, the Student was in his fifth year of a KPE/Education concurrent education program. He had already completed all of his degree requirements for his bachelor’s degree in kinesiology. All of his courses in the 2016-2017 academic year were part of the education component of the concurrent education program. KPE 440, although

it is offered by the faculty of Kinesiology and Physical Education, is a prerequisite for successful completion of the B.Ed. degree.

1. The Video

One of the requirements of KPE 440 was to create a video and to upload it to YouTube. This assignment was worth 10% of the final grade in the course. The deadline for uploading the video was 27 September, 2016. The Student and his partner experienced difficulties uploading the video to YouTube, so they approached their instructor, Ms. Karlene Headley-Cooper, about their concern in class on the day it was due. They showed her a laptop on which the video was playing and asked her how they might hand it in. She indicated that arrangements could be made but because it was the beginning of class, it was not an appropriate time to do so.

The Student and his partner did not upload the video to YouTube. The Student's partner emailed Ms. Headley-Cooper at 4:00pm with a link to a video on "wevideo." Unfortunately, this was not a format that could be viewed by the instructor. It was only two weeks later, on October 12, 2016, that the Student contacted Ms. Headley-Cooper about the video. He wrote,

I just realised that I never ended up submitting XXX and I's 3-minute video from KPE440. I've tried to attach it to an e-mail a couple times but it appears that for some formatting reason, that is not possible. Is there a g-mail address with which I can give you access to it? (It is on my google drive). It is a video of the original playing online since we weren't able to upload it to youtube.

It was not for another two weeks (on October 26, 2016)¹ that the Student actually sent a link to the video to Ms. Headley-Cooper.

2. The Conference

Another requirement of KPE400 was participation in the mounting of an academic conference on a topic related to the course. This part of the course was worth 30% of the Student's final grade. 10% was concerned with participation (5% for an online form; 5% for a self-assigned reflection); 10% instructor marks (4% pre-conference; 6% day-of-conference); 5% for a pre-conference form; and 5% for a class mark.

The Student did especially poorly in the instructor marks part of this assignment: he received a pre-conference mark of 1/4 and a day-of-conference mark of 1/6. (By his own admission, he lost all 10 participation marks by failing to submit the online form or the self-assigned reflection.) In an email to the Student dated December 1, 2016, Ms. Headley-Cooper gave the following comments as justification for these marks:

¹ In her correspondence of October 28, 2016, however, Ms. Headley-Cooper suggests that she received the "submission that could be fully viewed" on October 17, 2016. In oral submissions, the Student indicated that the video was sent by his classmate on that date.

Pre-conference instructor mark: 1/4 –low engagement, minimal contributions and limited observations of participation during in-class work time for conference; important facilities scheduling conflict was not communicated to fellow classmates

[...]

Day-of-conference instructor mark: 1/6 – representation of observations made during the Conference regarding student contribution to Conference atmosphere/environment, advertising/social media, attendance, scheduling, flow, professionalism, teamwork, presentation, and attendance to sessions.

The Student insists that both of these instructor-assigned marks are much lower than he deserved. The Student acknowledges that he did not do very much in preparation for the conference, but this was true of many others, as well. In his January 27, 2017 email to Dean Jacobs, he wrote, “the KPE440 conference was put on by 30 students when it realistically could have been completed by as little as 5; there simply was not enough work to go around.”

Concerning the day-of-conference mark, the Student argues that Ms. Headley-Cooper mistakenly believed that he was not at the conference because he was not in a picture taken at the end of the evening. He argues that he was very engaged in the conference. In his January 27, 2017 email to Dean Jacobs he wrote: “I assisted many students with their ‘day-of’ duties. [...] I networked with conference presenters and attempted to ask critical questions after keynote presentations.” Further, the Student alleges that Ms. Headley-Cooper “did acknowledge some of [the ways he participated in the conference] when I spoke to her after class one day, and told me my mark would be adjusted, but it has not been changed since the meeting.”

3. Professionalism

The Student’s final concern is his professionalism mark in KPE440. As of November 29, 2016, he had received a mark of 9.5/16. At first, the Student’s main concern on this topic was that he lost marks for being absent from a number of classes that conflicted with a “teaching in Catholic school” class that is a prerequisite to being able to work in catholic schools in Ontario. But once Ms. Headley-Cooper was given the relevant documentation, she adjusted his mark accordingly (on October 13, 2016).

The Student’s remaining concerns are some challenges to the appropriateness of specific grades he was assigned on specific days and a grade of 0/2 he was assigned for the class of November 29, 2016.

4. Instructor Bias

The Student made clear in his oral presentation to this committee that he thought all of these concerns should be understood in light of a worry about the instructor's unprofessional conduct toward the Student.

In the fall of 2016, the Student had a leadership position in the Kinesiology and Physical Education Undergraduate Association (KPEUA). In that capacity, it was his task to allocate use of the Benson Student Lounge (BSL). He was asked to book the BSL for the KPE440 conference. He agreed to look into it. As it turned out, he booked another event for the same time, so the conference had to be moved to another location. Ms. Headley-Cooper indicated to the Student that he had not communicated the room conflict to his classmates "in a timely manner."

In his email to Dean Jacobs dated January 27, 2016, the Student alleges that Ms. Headley-Cooper informed "a staff member, Ron Castro, that she had assigned [the Student] a '0' grade on the 3-minute video assignment, and alleg[ed] that [the Student] had changed the booking of the BSL as a retaliatory measure." The Student added: "Not only did this compromise my academic confidentiality but it also slandered my personal reputation with KPE staff..."

On January 13, 2017, Ms. Headley-Cooper wrote the Student a letter apologizing for having breached his student confidentiality.

Decisions Below

After having spoken to Ms. Headley-Cooper about the matters listed above without success, the Student approached Professor Catherine Amara, Director of Undergraduate Studies, for a grade appeal. In an email dated December 19, 2016, Professor Amara indicated that she was responding only to a concern about the grade on the video. She wrote:

It's up to the student to take the responsibility of handing in work on-time and/or communicating issues with the instructor in a timely fashion or to accept the consequences for failing to do so. It is unfortunate, that this did not happen in your case. [...] Your mark for this particular assignment will stand as zero.

On January 27, 2017, the Student wrote to the Dean of the Faculty of Kinesiology and Physical Education, Ira Jacobs, to raise all four of the concerns above. In an email dated February 8, 2017, the Dean delivered his decision on these matters. Concerning the first three matters, he wrote:

After reviewing the collective documentation and considering my conversations with those involved, I do not question the validity of the assessment vehicles employed by the course instructor, nor the grades that were assigned by her. I think that the timelines associated with the various assessment vehicles were

clearly communicated to students as were the consequences of not meeting those timelines. Therefore, I will not be initiating any further actions about items two and three in your email [i.e., the grades for the conference and professionalism].”

On the matter of the late video, Dean Jacobs notified the student that there was a remedy available to him. He wrote:

[T]he course instructor, upon reflection about the background you provided, has decided to create a replacement course requirement, worth 10% of the course grade. Ms Headley-Cooper will communicate with you very shortly with details and deadlines in that regard.

The Student initially accepted this proposal. In an email reply dated 13 February 2017, the Student wrote “I will complete the make-up assignment diligently and hopefully achieve some success in the course as a result...” The Student did not complete the make-up assignment, however. In part, he says (in his statement of appeal), this is because of “pre-existing and acquired mental health issues... extreme anxiety and depression.” And in part, this is because the new assignment “was much more daunting and rigorous than the original assignment (making the two unworthy of equal weighting for their proportion of the course grade).”

Concerning the matter of bias, Dean Jacobs wrote, “from reading her letter to you about the disclosure of your grade to a staff member, I know that she was and remains sincerely regretful and apologetic about that disclosure.” He did not deem any further action required on this matter.

The Student now appeals the Dean’s decision to the AAC, seeking the following remedies:

1. The marking of the video and other small assignments from KPE440H;
2. The opportunity to produce another video submission;
3. Aegrotat standing in KPE440H;
4. Removal of KPE440H as a degree requirement for the Bachelor of Education degree;
5. The option to take a course other than one instructed by Ms. Headley-Cooper to fulfil the specified degree requirement.

Decision

The central focus on the Student’s appeal is his mark on the video assignment. Indeed, although he made submissions to Dean Jacobs on other matters, his written submissions to the AAC and the faculty’s written reply are concerned exclusively with this matter.

On this matter, Dean Jacobs's decision was clearly a reasonable, even generous one. There was no reason why the Dean had to provide any remedy for the Student who had clearly run afoul of the course lateness policy. The course policy reads (on p. 3): "Late assignments will have marks deducted at the rate of 1 mark per day late up to a maximum of 7 after which (7 days) the assignment will not be marked and you will receive a mark of 0 for that assignment."

The Student suggests that assignments should be treated as though they had been submitted as long as they have been date-stamped in some reliable way. The actual submitting of the assignment to the professor in the prescribed way, the Student suggests, is a formality that we should be able to see past. But that is not so. There are many reasons why students must not only *complete* but also *submit* their assignments on time. Instructors should be able to grade assignments together to ensure that they are all subject to the same standard. Instructors cannot be expected to ascertain whether each assignment was actually completed by the deadline if it was not in their possession at that point. And students need to be in the habit of actually providing deliverables to others at the time when they are expected. For these reasons and more, universities and other educational institutions regularly impose clear lateness policies and regularly enforce them. A fifth-year student has had ample notice of these policies and should be expected to follow them.

The committee notes that Ms. Headley-Cooper took additional steps to assist students with the deadline, writing an email to them on the due date (September 27, 2016) indicating that "if you are having difficulties with this process [of uploading the video to YouTube], I ask that you please be patient and keep calm – I am happy to help make sure that your video gets submitted on time." That is, she made clear that she would provide whatever assistance was required should students have trouble with the process. Had the student reached out to Ms. Headley-Cooper on this matter beyond his initial encounter in class on September 27, 2016, things might have turned out quite differently. But he did not.

Nevertheless, in light of the Student's petition to the Dean, Ms. Headley-Cooper was willing to allow the student another chance to save his grade in the course by submitting a replacement assignment. It is beyond the scope of this committee to decide whether the new assignment was an appropriate substitute for the first. But we note that the Student expressed in the clearest possible terms his willingness to complete it. This committee will not look past the expressed views of the instructor, the Dean and even the Student that this was an appropriate remedy. If the Student chose not to complete the replacement assignment – already an extraordinary measure – then he must bear the consequences.

Finally, on this matter, the Student mentions in his appeal to this committee that one of the reasons why he did not complete the make-up assignment was that he was suffering from mental health problems. The only evidence submitted to support the Student's claim of mental health problems were three email confirmations for appointments at the university health service. Since these emails did not indicate what the appointments were

for, much less what diagnosis or course of treatment was determined, they do not substantiate his claim. This was not supported by any evidence either in the Student's written materials or in his oral presentation.

The Student's second concern is his instructor-assigned mark for the conference. Here, we find that there is simply not enough credible evidence to support the Student's claims. First, it is unclear precisely how much his mark should change if he could establish that he was, indeed, at the conference on the day. Second, he provided nothing more than his own say-so to support his claim that he was there on the day. Third, the fact that the Student was neither in the end-of-day picture nor did he submit the forms that were given out at the end of the conference lend support to the instructor's claim that he was not present for at least some parts of the conference. In the absence of significant evidence otherwise, we have no reason to alter the instructor's evaluation of the Student's performance at the conference.

The Student's third concern is his mark for professionalism. Once again, this is a matter on which the instructor is entitled to considerable deference. Ms. Headley-Cooper provided a rubric for evaluation and broke down marks for the student class by class. She showed real willingness to adjust marks once the Student provided documentation to explain his absences from class. We see no reason to disturb those judgments.

The Student's fourth and final concern is his allegation of bias on the part of the instructor against him. It is indeed alarming when an instructor breaches student confidentiality as happened in this case. And it is also alarming when an instructor alleges that the Student has deliberately sabotaged the class's conference. But the instructor here has written a full and sincere apology to the Student already for this conduct. There is no evidence to suggest that any of the other matters were coloured by this one incident. Indeed, her willingness to change grades and to provide make-up assignments to the Student demonstrate quite the opposite.

For the above reasons, the appeal is dismissed. The student's final grade will remain as it is. As a result, the Student's request for remedies 1-4 is denied.

The Student's fifth remedy, however, is more easily provided. He sought assurance that he could take a course other than one instructed by Ms. Headley-Cooper to fulfil the specified degree requirement. On this matter, Professor Kerr made clear in her presentation before this committee that this student was an exemplary member of the faculty of kinesiology and physical education community, serving in a number of capacities and working diligently to improve student life at the faculty in many ways. She went on to say that the faculty would do whatever they could to make sure that the Student would be able to graduate from the program. In particular, Professor Kerr mentioned that she would be happy to write a letter to Victoria College requesting that the student be admitted to their comparable course on conflict resolution so that he could use that course as a substitute for KPE440. We expect the faculty to make good on that promise and also to do its utmost to convince OISE to accept the Victoria College course as a substitute for KPE440.

Additional Remarks

There are two matters that arose in this appeal on which this committee would like to express its view.

First, it was clear from the Student's written and oral submissions at the AAC and from the quality of his submissions to the decision-makers below that he could have benefitted significantly from more assistance from the Faculty in preparing his appeals. We recommend that the Faculty of Kinesiology and Physical Education put in place more robust measures to instruct and assist students with the academic appeals process, including providing more information about expectations around materials and appearing before any panels.

Second, although we see no reason to disturb the Dean's rulings in this matter, this committee is concerned with the lack of reasons provided by the Dean for his decision. The Dean's reasons were as follows:

After reviewing the collective documentation and considering my conversations with those involved, I do not question the validity of the assessment vehicles employed by the course instructor, nor the grades that were assigned by her. I think that the timelines associated with the various assessment vehicles were clearly communicated to students as were the consequences of not meeting those timelines. Therefore, I will not be initiating any further actions about items two and three in your email [i.e., the grades for the conference and professionalism].

As concerns the late submission of the video, these reasons make clear why the Dean has denied the Student's appeal. But as concerns the other matters in the appeal – his grade on the conference and for professionalism – the Dean's email provides no meaningful guidance to the Student or to others why his appeal has been dismissed. On these two matters, his reasons simply state his conclusion rather than provide reasons for it. We strongly recommend, as have many other AAC panels in the past, that decision-makers at the faculty level take care to provide meaningful reasons for their decisions. It is a duty incumbent upon all public decision-makers to justify their decisions in a way that provides meaningful guidance to those who are subject to those decisions.

UNIVERSITY OF TORONTO

GOVERNING COUNCIL

Report # 394 of the Academic Appeals Committee
February 12, 2018

To the Academic Board
University of Toronto.

Your Committee reports that it held a hearing on Monday, January 15, 2018, at which the following members were present:

Professor Andrew Green (Chair)
Professor Nicholas Terpstra, Faculty Governor
Mr. Twesh Upadhyaya, Student Governor

Hearing Secretary:
Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Mr. Y.L. (the “Student”)

For The Leslie Dan Faculty of Pharmacy:

Mr. Robert A. Centa, Counsel, Paliare Roland Rosenbert Rothstein LLP
Ms. Emily Home, Counsel, Paliare Roland Rosenbert Rothstein LLP
Ms. Brenda Thrush, Registrar, The Leslie Dan Faculty of Pharmacy
Professor Jamie Kellar, The Leslie Dan Faculty of Pharmacy

The Appeal

The Student appeals a decision of the Committee of Appeals of the Leslie Dan Faculty of Pharmacy (the “Committee of Appeals”) dated September 26, 2017 (the “Decision”). In the Decision, the Committee of Appeals dismissed an appeal by the Student from a decision to deny his petition to write a make-up supplemental examination in PHM206H1 Medication Therapy Management 3 (the “Course”). The Student had based his appeal to the Committee of Appeals on the grounds that his exam had not been assessed fairly and that he had had health issues. He did not pursue the health grounds in his appeal to this Committee.

As the Student required an expedited response in order to re-take PHM206 if he lost this appeal, we issued a decision shortly following the hearing stating that the appeal was dismissed with reasons to follow. This decision provides those reasons.

The Facts

In Winter 2017, the Student was in his second year of the Doctor of Pharmacy program (the “Program”) and was enrolled in the Course. Second year students are required to pass PHM206, among other courses, in order to proceed to third year. PHM206 is part of a series of courses designed to provide students with the skills necessary to deal with real-life situations encountered by pharmacists. PHM206 involves labs in which students are faced with a “standardized patient” (an “SP”) who portrays someone with a particular set of concerns and symptoms. The SPs are provided generalized training as patients as well as training prior to their roles in particular labs. The Course involved labs during the term as well as four labs on the final exam.

The Student failed the Course along with two other courses in Winter 2017. Students must obtain an annual grade point average of at least 1.70 (C-) and at least 60% in each course in order to advance to the next year. However, if a student receives a grade of D or F but has an annual grade point average of at least 1.70, they are offered the opportunity to write a supplemental exam for that course on a pass/fail basis. The student must pass the supplemental exam to proceed to the next year. The Student had the requisite grade point average and therefore was offered the opportunity to write supplemental exams for all three courses.

The Student wrote the three supplemental exams in the summer of 2017. He passed two of the supplemental exams (Pharmacotherapy 4 and Medication Therapy Management 2) but failed the supplemental exam for the Course. To pass the supplemental exam for the Course, the Student had to pass three of four lab stations. He passed two stations but failed two stations: the best possible medical history documentation and a diabetic foot infection patient encounter. For the patient encounter, which forms the basis for the Student’s appeal, the Student needed 61 points out of 100 to pass. The points come from two equally weighted assessments of the encounter. The Student obtained 3 out of 5 on the Global Assessment (or 30 out of 50) but only 13 out of 24 on the Clinical Checklist (or 27 out of 50). The notes of the assessor for the Clinical Checklist indicates that the Student, among other things, failed to gather recent hospital medical history and the prescription and non-prescription medical history, to confirm the duration of the antibiotic therapy the patient received in hospital, to review the home medications and to consult on non-pharmaceutical interventions. As a result, the Student failed the supplemental exam as he obtained only 57 points out of 100.

The Faculty informed the Student in August 2017 that as a result of the failure of the supplemental exam in the Course, he was required to repeat PHM206H in Winter 2018 before he could proceed to the third year of the Program. The Student petitioned the failure to the sub-committee of the Committee on Academic Standing and requested the opportunity to write a make-up supplemental exam. When that petition was denied, the Student appealed the denial to the Committee of Appeals.

As mentioned, the Student had two grounds before the Committee of Appeals— one medical that he subsequently dropped and one on supplemental exam process/evaluation. The Student argued

that the supplemental exam process was unfair for two reasons. First, the SP did not provide the Student with the prescription at the start of the patient encounter. The Student argued the SP should have provided the prescription at the outset of the encounters and that SPs had done so routinely in all previous labs and exams in the Course. Second, the Student asserted that the assessor unfairly deducted points for missing a particular set of questions even though the Student states he clearly verbalized these questions. He argued that the process was unfair because the evaluation was unrecorded and therefore there was no way for him to prove such a mistake occurred.

The Faculty in its written response to these concerns prior to the Decision argued that the SP made the opening statement: “Hi, I just came from the hospital and I have to get this antibiotic filled as soon as possible.” The Faculty argued that “Based on what students were taught throughout the course, Mr. Lee should have known to ask the SP for the prescription if she did not offer it to him at the start of the counselling session.” Further, the Faculty argued that while these patient encounter exams are not recorded, “the Clinical Instructors who were responsible for assessing students’ performance on the supplemental exam were made aware this was a “high stakes” examination and were instructed to ensure that they accurately documented the counselling sessions.”

Following a hearing, the Committee of Appeals issued the Decision dismissing the Student’s appeal. It noted “We carefully reviewed and considered the information you provided and we are sympathetic to your circumstances; however, we strongly believe that it is important for you to build a stronger base in this foundational Year 2 course before proceeding to Year 3 of the program.” The Committee of Appeals therefore informed the Student that he would not be permitted to proceed to his third year until he had successfully completed PHM206.

The Student appeals this Decision to your Committee.

Decision

The Committee’s task is to decide whether the Decision denying the Student’s petition to write a make-up supplemental examination is reasonable.

The Student argued that these patient encounters always follow the same pattern. The student introduces himself or herself and then the SP makes an opening statement and provides the prescription if there is one. The Student argued that the failure by the SP to provide him with a prescription at the beginning of the exam led the Student to be confused and therefore to fail the exam. He was not asking for a re-grade of the exam as that would only relate to errors in adding up the total score. Instead, because of the SP’s error, he was seeking a make-up supplemental exam. It should be noted at the outset that both sides agree that the SP did not provide the prescription immediately to the Student at the beginning of the supplemental exam and that the Student did not ask for the prescription at the beginning of the exam. Instead the Student only asked for the name of the medication in the opening encounter and when he did ask for the prescription later in the exam, the SP immediately handed it over. The point in dispute is whether the SP erred in not handing over the prescription immediately at the start of the encounter, thereby making the exam process and result unfair.

Your Committee finds that the Decision denying the Student's petition for a make-up supplemental exam was reasonable. According to the course description and the Faculty, the Course was designed to teach students how to deal with real-life situations through "simulated practice-based interactions to enhance their patient-care skills". To this end, SPs are given explicit instructions for some parts of the interaction (such as their opening line) but for the rest of the interaction are to react to the situation as it develops. In this case, the SP's background material for the supplemental exam contained considerable information about the patient the SP was to portray including the opening line "Hi, I just came from the hospital and I have to get this antibiotic filled as soon as possible." The background material did not provide the SP with any instructions about handing over the prescription, either to hand it over immediately or to hold it back. The SP could react to whatever happened in the interaction and the Student needed to assess the situation and react to the SP.

Further, assessors for such exams are instructed to note if the SP fails to do something that she is supposed to do during the exam. In the case of the Student's exam, for example, the assessor noted that the SP failed to mention blood sugar levels as she was supposed to do according to the background material. The assessor made no comment on the SP not providing the prescription immediately, although she did note that the Student "asked what is the name of the antibiotics instead of asking for Rx." Given the SP's instructions and the notes of the assessor, it seems reasonable to conclude that the SP was not directly instructed to provide the Student with the prescription nor was it out of the ordinary for the SP not to hand it over immediately without being asked.

In addition, following the supplemental exam, the Student emailed Professor Jamie Kellar, who had taught the Course. The Student asked whether the SP had been instructed not to provide the prescription at the beginning of the lab. Professor Kellar replied that the supplemental exam was a "clinical simulation" which "will play out differently with each student based on the questions posed and comments made. The SP's will interact with the student in a way consistent with how the student asks the questions. The SPs do work off of a script that outlines the key information. In this case, the SPs were not instructed to withhold the prescription, nor were they instructed to give it voluntarily – they react based on the interview itself i.e. the questions asked by the student." This email response is consistent with the other evidence relating to the SP provided by the Faculty.

To support his argument that the SP should have provided the prescription as soon as she made her opening statement, the Student provided an email exchange relating to this issue. The Student emailed Professor Marie Rocchi at the Faculty asking if an SP makes an opening statement about needing to get "this antibiotic filled as soon as possible" but fails to voluntarily provide a prescription to a student in the beginning of the interaction until asked but does so for other students" would it be an error by the SP. Professor Rocchi replied she would "consider this an error IF the SP was asked to provide the Rx." She copied Greg Morris who manages the SP service for the University, who replied stating "I agree with Marie. In cases where the SP enters with a prescription, they immediately hand it to the pharmacist when they say their opening line. I am not aware of an example where the SP would not immediately hand over the Rx (however,

that's not to say such a case doesn't exist). If the written case instructs the SP to not immediately hand over the Rx, the SP would follow these instructions." This email exchange is at best equivocal but seems more in support of the Faculty's position.

Further in his reply submissions for this appeal, the Student provided an anonymous note on plain paper stating that given the SP referred to "this antibiotic" in her opening statement, he or she would "assume that they would then hand me a prescription, a prescription bottle or a piece of paper with the name of the antibiotic written on it. Otherwise the wording of the opening line doesn't make sense. In my two years of being an assessor, I have not seen an example where the SP did not immediately hand over the prescription to the student." The note was signed "Pharmacist mock OSCE assessor for PharmAchieve". The Student stated at the hearing that the note was not from someone connected with the Course but from someone who had been involved in assessing Pharmacy licensing exams. As the note is anonymous and in any event by someone not connected to the Course, the Committee gave this note no weight.

In terms of the recording of the supplemental exam, the Faculty does not record these patient encounter exams. Instead they have trained assessors who provide a written assessment of the interactions including any anomalies. Your Committee finds that there was no unfairness to the Student in how this policy choice was applied in his circumstances.

As a result, your Committee finds that the Decision was reasonable in the circumstances. As noted by counsel, the Committee of Appeals' reasons could have been more fulsome. However, there is ample evidence in the record that the Student would have known the arguments on which the Decision was based.

The appeal is dismissed.