

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

REPORT NUMBER 243 OF THE ACADEMIC APPEALS COMMITTEE

March 24, 2000

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Friday, March 24, 2000, at which the following were present:

Professor Kent Roach, Acting Chair
Ms. Aisling Burke
Professor Ian McDonald
Professor Ronald Venter
Ms. Judith Wilson

Ms Susan Girard, Acting Secretary, Academic Appeals Committee

In Attendance:

Ms N.B., the Appellant
Professor Judith Globerman, Status of Woman Officer
J.Z., friend of the Appellant
Professor Gordon J. Anderson, University of Toronto at Mississauga

The student appeals a decision of the Academic Appeals Board of Erindale College made on September 16, 1999 but dated December 17, 1999. The student originally requested a closed hearing but opted for an open hearing that was attended by a friend and by Professor Judith Globerman.

The appeal is from a decision of the Academic Appeals Board of Erindale College refusing the student's petition for late withdrawal from BIO 151Y on the basis that the Board will not grant a request retroactively to cancel a failed course from a student's permanent record. The student had requested and received a deferred examination in that course because of medical and personal reasons. She wrote the examination in the summer of 1998 and received a final mark in the course of E 41%. The student subsequently requested late withdrawal. This request was denied by the Committee on Standing on March 3, 1999 and subsequently by the Academic Appeals Board of Erindale College.

In all but the most extraordinary cases, late withdrawals after a failure has been recorded should not be granted. Nevertheless in this case, the Committee concluded that the appeal should be allowed and the student's request granted because of a combination of extraordinary and unfortunate circumstances in the student's life and serious procedural irregularities in the way the appeal procedure was conducted.

Starting shortly before the 1997-98 academic year, the student was diagnosed, treated and received two surgeries for endometriosis, a serious medical condition. Medication taken for the

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condition produced severe migraine headaches. She was referred to a neurologist in April, 1998. Medication for the migraine headaches produced excessive tiredness.

In addition to this medical condition, the student was the victim of a serious criminal offence -- criminal harassment or "stalking" contrary to s.264 (2)(a) of the Criminal Code. This offence which started in November, 1996 and culminated in a conviction in November, 1998 caused the student severe and understandable anxiety. It also meant that she missed classes because of a number of subpoenas issued that required her attendance in court, as well as meetings with police and prosecutors. The effect of the crime on the student is best described in her own words: "I was being stalked by a male. I was followed day in and day out. At one period, he parked outside of my house for an entire night. For months, both friends and family had to follow me or accompany me everywhere I needed to go. The harassment continued at home, in terms of repeated phone calls, and of letters left under my garage door or that of my friends. And even a particularly sinister letter was left for me suggesting that harm would come to my father. All of these events were documented by the Peel Regional Police of Mississauga."

Given the above circumstances, it is not surprising that the student performed poorly during the 1997-98 academic year both in absolute terms and in terms of her prior and subsequent academic performance. During that year, she was referred to academic skills counseling but her difficulties in school were related to the difficult circumstances she faced, not poor academic skills. Unfortunately, the student neither sought nor received counseling that was directed towards the circumstances she faced or its impact on her academic performance. Concerns were expressed to us by Professor Globerman, the Status of Women officer, that this case was symptomatic of a failure by the University to deal in a proactive and co-ordinated fashion with concerns of students, particularly students who are, as the Appellant is, a woman and a member of a cultural minority. The Committee is not in a position to decide the validity of these concerns, but they are noted. It is also significant that Professor Anderson, who appeared on behalf of Erindale College and was the Chair of the Academic Appeals Board, expressed serious reservations about the merits of the Board's decision and in particular the weight that the Board placed on the stalking incident.

The circumstances faced by the student were most difficult. They were, however, considerably aggravated by the process employed at Erindale College to decide her appeal. Her first appeal to the Academic Appeals Board of Erindale College was scheduled on July 15, 1999. The student was left with the impression that her attendance was not needed at that hearing and she did not attend. The Board's decision was as follows: "Given your circumstances, members expressed reluctance to deny your appeal. However, in your absence, they voted to uphold the decision of the Committee on Standing.... Should you fail to attend an Academic Appeals Board meeting before January 1, 2000, the Board's ruling to refuse your appeal will be noted on your permanent record." Although made with the good intention of allowing the student an opportunity to be heard, this procedure was unsatisfactory because it left the student with the reasonable impression when a subsequent hearing was heard before a similarly but not identically constituted Board on September 16, 1999, that the Board had pre-judged the matter by making a provisional ruling on the merits. Students should be clearly told that they have a right to attend Academic Appeals Board hearings. If they do not attend, Boards should, depending on the circumstances including matters such as fair notice and the reason for non-attendance, either decide the matter or adjourn the hearing without considering the merits. Even more disturbing is the fact that the student's instructor in BIO 151Y sat and rendered a decision at both the July 15 and September 16 hearings. The Committee understands that in a small college, members of the Academic Appeals Board may well know the student or have taught the student making the appeal. Like all members, they will have to make a conscientious effort to decide the case only on the basis of the evidence presented at the hearing. Where an instructor from the course that is the subject matter of the appeal is a member of the Board, however, there is a reasonable

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perception of bias and conflict of interest. In those instances, the instructor should take no part in the Board's deliberations. Should this present a frequent problem in terms of reaching quorum, then the composition of the Board, including the number of members required for quorum, should be re-evaluated.

Finally, it should be noted that although the student was told at the hearing of September 16 that her appeal was denied, it was not until December 17, 1999 that she was issued a letter informing her that "the Board did not consider that you presented a compelling case for an exemption from a Faculty regulation that applies to all students. The Board will not grant a request to retroactively cancel a failed course from a student's record". The Committee is aware of resource difficulties and the considerable caseload that the Academic Appeals Board faces, but must note that in normal circumstances students should receive fuller written reasons more promptly.

Given the above combination of seriously adverse personal circumstances faced by the student and procedural irregularities in the handling of her appeal, this is one of the rarest of cases in which a retroactive withdrawal from a failed course is justified.

The appeal is allowed.

Susan Girard
Acting Secretary
Academic Appeals Committee

Professor Kent Roach
Acting Chairman

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