

**UNIVERSITY OF TORONTO  
GOVERNING COUNCIL**

Report # 414 of the Academic Appeals Committee  
**June 28, 2021**

To the Academic Board  
University of Toronto

Your Committee reports that it held an electronic hearing, conducted by Zoom on Tuesday, April 27, 2021, at which the following members were present:

**Academic Appeals Committee Members:**

Ms. Vanessa Laufer, Chair  
Professor Mark Lautens, Faculty Governor  
Ms. Susan Froom, Student Governor

**Hearing Secretary:**

Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances

**For the Student Appellant:**

Ms. Cailyn Prins, Law Student, Downtown Legal Services  
Ms. M.V. (the “Student”)

**For the Faculty of Applied Science and Engineering:**

Professor Thomas Coyle, Vice-Dean, Undergraduate Studies, Faculty of Applied Science and Engineering

**I. Overview**

The Student appeals a decision of the Appeals Board of the Faculty of Applied Science and Engineering (the “AB”) of March 16, 2020 (the “Decision”) that upheld the denial of the Student’s petition requesting reinstatement in the Engineering Science program in September 2019.

The Student is seeking that your Committee set aside the Decision of the AB and be reinstated to the Engineering Science (“ES”) program with an opportunity to rewrite her exams in ECE159H1, CSC180H1, and MAT185H1 with accommodation. Alternatively, the Student asks that she be allowed to retake courses ECE159H1, CSC180H1 and MAT185H1 with accommodation. If she is successful in receiving the required average through either of these pathways, the Student asks to be allowed to advance to the second year of the ES program.

The Student appeals on medical and procedural grounds.

## II. Chronology

The Student enrolled in the ES Program at the Faculty of Applied Science and Engineering (the “Faculty”) in the 2018-2019 academic year. ES is an enriched engineering program. Although it shares many elements of the Faculty’s other engineering programs, it is distinct with key differences including the following:

- it is designed and delivered at a level that is more academically demanding;
- it contains more mathematics, science and engineering science, with greater focus on deriving results using a first principles approach;
- it has a distinct “2+2” curriculum structure - a two-year foundation followed by a two-year specialization in a diverse range of fields, many of which are unique to ES;
- it requires that all students complete an independent research-based thesis project.<sup>1</sup>

The Student completed the Fall 2018 semester with an average of 55%<sup>2</sup> (the minimum average for promotion to the Winter term in ES<sup>3</sup>), continued in the ES program and completed the Winter 2019 semester with a sessional average of 50.8%<sup>4</sup> (65% is the minimum average for promotion to second year in ES<sup>5</sup>). She failed five courses during the 2018-2019 academic year: ECE103H1, ECE159H1, ESC190H1, MAT195H1 and MAT185H1, and did not have the required 65% minimum average to pass by the end of first year. A student who fails to meet this minimum will be terminated from ES.<sup>6</sup> The Student was terminated from ES, and in Fall 2019 entered the second year of the Mechanical Engineering program (“ME”).

On May 10, 2019, the Student emailed the Faculty<sup>7</sup> asking to continue in ES, even though she did not meet the minimum requirements. She submitted that she had been experiencing test and exam anxiety and would be seeking guidance over the summer to become better equipped for ES’ demands. No medical evidence was supplied. She also indicated her love of ES and its relevance to her career aspirations in Biomedical Engineering (“BE”).

The Student’s September 2019 petition to be reinstated in ES was denied. She was directed to consult with an Academic Advisor.

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<sup>1</sup> Page 150 – Faculty of Applied Science and Engineering 2018-2019 calendar.

<sup>2</sup> Tab 1 – Appellant’s Statement of Appeal.

<sup>3</sup> Page 95 – Faculty of Applied Science and Engineering 2018-2019 calendar.

<sup>4</sup> Tab B – Reply of the Appellant, Complete Academic History of the Student, December 22, 2020.

<sup>5</sup> Page 150 – Faculty of Applied Science and Engineering 2018-2019 calendar.

<sup>6</sup> Page 96 – Faculty of Applied Science and Engineering 2018-2019 calendar.

<sup>7</sup> Tab 2 – Appellant’s Statement of Appeal, email to David Bird from the Student, May 10, 2019.

In November 2019, the Student met with Dr. Edward Kingstone who provided her with a brief note on a prescription pad indicating the Student was suffering from severe performance and social anxiety and could benefit from accommodation and CBT.<sup>8</sup>

In February 2020, the Student contacted Accessibility Services (“AS”) about becoming registered, but she did not complete the process.<sup>9</sup>

On March 11, 2020, the Student appealed the denial of her September 2019 petition<sup>10</sup>, requesting reinstatement in ES on the basis that her poor performance had been due to undiagnosed performance and social anxiety and that she was now improving due to regular meetings with the psychiatrist and medication. She indicated she would be seeking accommodation, CBT and a reduced course load. She included the November 2019 note from Dr. Kingstone.

On March 16, 2020, the Student was notified in an email from the Office of Faculty’s Registrar<sup>11</sup> that the appeal decision indicated no action due to insufficient reasoning, and that because of the COVID-19 campus shutdown, there would be a delay in sending the official decision letter signed by the Chair. The Student was encouraged to contact both her ME Academic Advisor and the ES Academic Advisor to discuss what’s “possible/available” and AS for potential accommodations for future exams<sup>12</sup>. The steps to appeal were also included.

As the University of Toronto suspended in-person classes due to the COVID-19 pandemic, the Student returned home to British Columbia where she continued to take the ME program online.

Dr. Kingstone died at the end of March 2020.

On June 9, 2020, the Student followed-up with the Faculty by email, requesting an update on the status of her official decision letter, noting she intended to appeal upon receipt of the official decision.<sup>13</sup> Due to the COVID-19 pandemic, an official decision letter had not been sent yet, but it was explained in the March 16, 2020 email that it contained the same information as in the AB decision.<sup>14</sup> Two extensions of the deadline to submit the appeal to the Academic Appeals Committee were granted to the Student. The Student submitted her appeal to this Committee on October 5, 2020.<sup>15</sup> The official decision letter was sent in PDF format to the Student by email on October 27, 2020.

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<sup>8</sup> Tab 5 – Appellant’s Statement of Appeal, Medical note of Dr. Edward Kingstone.

<sup>9</sup> Paragraph 19 – Appellant’s Statement of Appeal, pg. 6.

<sup>10</sup> Tab 15 - Appellant’s Statement of Appeal - Email correspondence between the Student and Office of the Registrar.

<sup>11</sup> TAB 4 - Appellant’s Statement of Appeal - Email to the Student dated March 16, 2020 from the Office of the Registrar.

<sup>12</sup> *Ibid.*

<sup>13</sup> TAB 4 - Appellant’s Statement of Appeal - Email to the Student dated June 9, 2020 from the Office of the Registrar.

<sup>14</sup> TAB 4 - Appellant’s Statement of Appeal - Email to the Student dated March 16, 2020 from the Office of the Registrar.

<sup>15</sup> Page 3 - Notice of Appeal to the Academic Appeals Committee of the Governing Council.

During the academic year 2019 – 2020, in the ME program, the Student’s academic performance improved substantially.<sup>16</sup>

In its December 7, 2020 Response to the Student’s Statement of Appeal, the Faculty indicated that it would agree to reinstate the Student into first year of ES if she were “to provide Accessibility Services with sufficient medical documentation that recommendations for academic accommodation were issued”.<sup>17</sup> The Response indicated that the Student had been encouraged multiple times to contact AS; that credit for courses with marks earned of 60% or more would be retained, and all other courses would be repeated.<sup>18</sup> Simply rewriting exams in failed courses would not be sufficient preparation for success in the second year of ES.<sup>19</sup> It noted that a “stronger performance in the Fall term courses (with accommodations as recommended by AS) would better prepare the Student for the Winter term.”<sup>20</sup>

The Student issued a Reply restating her originally requested remedies. She submitted that her performance in ME had sufficiently prepared her for success in the second year of ES, and that she had taken adequate substitute courses in ME (MAT187, MEI222, MIE301, MAT223) for the ES courses the Faculty requested she retake: MAT194, MAT195, CIV102, PHY180, ESC103.<sup>21</sup>

The 2018-2019 Calendar of the Faculty of Applied Science and Engineering<sup>22</sup> indicates that students are subject to all rules, regulations and policies cited in the calendar,<sup>23</sup> and that “each student must become familiar with the policies. The University of Toronto will assume that he or she has done so.”<sup>24</sup> Likewise, under the Academic Regulations, under “Responsibilities of Students”, it indicates that students are responsible for making themselves familiar with the information in the Calendar.<sup>25</sup> It also provides contact information for AS<sup>26</sup> and outlines AS’s role<sup>27</sup> under “Student Services and Resources”. On page four, under “Important Notices”, there’s a hyperlink to the Faculty’s registrar’s office and its quick links to both AS and Mental Health and Wellness resources.<sup>28</sup> Also, under the Calendar’s “Important Notices”, there’s a hyperlink to the Office of the Vice-Provost, Students’ Academic Accommodations. At the same site, under

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<sup>16</sup> Faculty Response to the Student’s Statement of Appeal dated December 7, 2020.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> Reply of the Appellant, April 30, 2021.

<sup>22</sup> Tab 16 - Appellant’s Statement of Appeal.

<sup>23</sup> Page 4 - 2018-2019 Calendar of the Faculty of Applied Science and Engineering.

<sup>24</sup> *Ibid.*

<sup>25</sup> Page 86 - 2018-2019 Calendar of the Faculty of Applied Science and Engineering.

<sup>26</sup> Page 79 - 2018-2019 Calendar of the Faculty of Applied Science and Engineering.

<sup>27</sup> “[AS] provides services and programs for students with a documented disability, be it a physical, sensory, learning disability or mental health disorder. Students with temporary disabilities (i.e. broken arm or leg) also qualify. Services include alternative test and exam arrangements, note-taking services, on-campus transportation, adaptive equipment, assistive devices and skills development.”

<sup>28</sup> <https://undergrad.engineering.utoronto.ca/>.

“Policies & Guidelines”, it indicates: “Students, faculty, and staff should be familiar with the policies, regulations, and guidelines pertaining to students at the University of Toronto.”<sup>29</sup>

At the time of this appeal to the Academic Appeals Committee, the Student had not reached out to AS since February 2020.

### **III. Decision**

#### **a) Medical Grounds**

The Student submits that her academic performance in the 2018-2019 academic year was negatively impacted by her undiagnosed anxiety and asks that your Committee consider these medical grounds in deciding this appeal.

The Student further submits that her poor performance on exams and tests was a direct result of her undiagnosed anxiety and that it was unreasonable for her performance with an undiagnosed condition to lead to her termination from the ES program.

The Faculty submitted that there was no medical documentation covering the 2018-2019 academic year while the Student was in ES. The record shows that AS works directly with students on their accommodation at the University of Toronto and that:

- the Faculty advised the Student to go to AS on multiple occasions;
- the Faculty Calendar provided details about AS and its contact information;
- the Faculty Calendar provided links to its Faculty Registrar’s website and the Vice-Provost, Students’ website, where further information on AS was available;
- the Calendar and the referenced sites made it clear that students are responsible for making themselves familiar with the information in the Calendar and are assumed to be familiar with the policies, regulations, and guidelines pertaining to students at the University of Toronto.

Based on this, your Committee is persuaded by the evidence that the Student was advised that the proper avenue for this process was to work with AS regarding possible accommodations.

Furthermore, in February 2020, the Student was told by a University of Toronto AS representative that she would need a referral from her family doctor to be considered, and that there were additional forms which would need to be completed by Dr. Kingstone, in order for her to register.<sup>30</sup> The Student, although advised, did not finish this process with AS.

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<sup>29</sup> <https://www.vicereprovoststudents.utoronto.ca/policies-guidelines/>.

<sup>30</sup> Paragraph 19 - Appellant’s Statement of Appeal, p.6.

The Student submitted that “complications of the pandemic ... made it difficult for her to continue the accommodation process with [AS].”<sup>31</sup> However, she provided no evidence to support this statement. The record shows that during the pandemic, in its December 7, 2020 response to the Student’s Statement of Appeal, the Faculty offered to allow the Student’s reinstatement into first year of ES “if she were to provide [AS] with sufficient medical documentation that recommendations for academic accommodation were issued.”<sup>32</sup> If the Student had provided such documentation to AS at that time, it’s quite possible that this appeal could have been avoided. Instead, she declined the offer and restated her originally requested remedies.<sup>33</sup>

The record shows that the Student did not take further steps to register with AS and still had not done so as of the date of this hearing.

Your Committee is sympathetic to the Student’s submissions on her mental health. However, no evidence was submitted to indicate that the Student was suffering from a mental health condition that led to her poor performance at the time she was enrolled in the ES program. The evidence that was provided was submitted from November 2019, well after the Student had completed the 2018-2019 academic year. In light of this and the reasons outlined above, it was reasonable for the Faculty to deny the Student’s appeal on this ground.

The Student submitted that the University of Toronto has a duty pursuant to the Ontario *Human Rights Code*, R.S.O. 1990, c.H.9 (Code) to accommodate students with disabilities.<sup>34</sup> Your Committee carefully considered the Student’s submissions on this. Your Committee accepts that the University of Toronto has a duty to accommodate under the Code. However, as noted above, your Committee finds that the Student was advised on multiple occasions regarding the appropriate process with AS and to avail herself of its services. Even when advised by AS what still needed to be completed, the Student did not do so.

As such, your Committee is not in a position to grant the remedy of accommodation to the Student.

#### **b) Procedural Grounds**

The Student argued that the reasons outlined in the decision of the AB were insufficient, that she received only an email and did not receive the official decision letter until after she submitted the appeal, thus denying her the opportunity to fully know the case against her. Your Committee finds that the reasons contained in the email were the same as the official letter. Your Committee acknowledges that the reasons are terse, and that simply stating “no action due to insufficient reasoning” does not provide enough information.

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<sup>31</sup> Paragraph 20 - Appellant’s Statement of Appeal, p.6.

<sup>32</sup> Faculty Response to the Student’s Statement of Appeal dated December 7, 2020.

<sup>33</sup> Reply of the Appellant, December 22, 2020.

<sup>34</sup> Paragraph 34 - Appellant’s Statement of Appeal, p.8.

Nonetheless, the information in the official decision letter was the same as that provided by email to the Student, which she had when she filed her Notice of Appeal. Also, and more significantly, the Student proceeded to this Committee, where her case has been heard. She had every opportunity to fully present her case to your Committee, and she did so with legal representation.

As such, no relief upon this ground is warranted.

The Student submitted that her assignments and lab assessments demonstrated her basic understanding of the course material<sup>35</sup>, that her performance in ME had sufficiently prepared her for success in the second year of ES<sup>36</sup>, and that she has taken adequate substitute courses in ME for the ES courses<sup>37</sup>.

However, the Faculty submitted that courses in ME do not sufficiently prepare the Student to be successful in second year of ES nor are they adequate substitutes for ES courses as ES is more academically demanding than ME, and the other core programs. ES is distinct and more rigorous, containing more mathematics, science and engineering science.<sup>38</sup> The Faculty indicated that it is for these reasons that they have appropriate promotion thresholds. The Student had not met the thresholds for promotion in ES as per the Promotion Regulations in the Faculty Calendar.<sup>39</sup> The Faculty also submitted that it is not their practice to allow students to substitute courses with similar content in another program. Your Committee finds these arguments to be persuasive.

The Student will soon be entering into her fourth year of ME. The Faculty submitted that retaking a final exam years after taking a course was unlikely to be successful, and that repetition of the course is a better way to demonstrate knowledge and move forward.

However, the Student submitted “that she will be successful in these examinations despite the length of time that has passed since taking the courses”, because “she has continued her studies in a relatively adjacent field of study.”<sup>40</sup>

Not only has the Student not met the Faculty policy thresholds for ES promotion, but your Committee should defer to the expertise of the Faculty in determining what is required to sufficiently prepare a student for success in its programs. Your Committee should only interfere with the decision if that decision was unreasonable, in other words, if the decision was demonstrably unfair in its interpretation and/or application of the relevant policies, processes and procedures that were relied upon or invoked in its making. Your Committee accepts the submissions of the Faculty in the above paragraph and the evidence of its policies in its Calendar. We find their application of said policy to be fair and reasonable.

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<sup>35</sup> Paragraph 33 - Appellant’s Statement of Appeal, p.8.

<sup>36</sup> Paragraph 4 – Reply of the Appellant, December 22, 2020.

<sup>37</sup> *Ibid.*

<sup>38</sup> Page 150 - Faculty of Applied Science and Engineering 2018-2019 calendar.

<sup>39</sup> Pages 92-97 - Faculty of Applied Science and Engineering 2018-2019 calendar.

<sup>40</sup> Paragraph 6 - Reply of the Appellant, April 30, 2021.

Your Committee finds that it is unreasonable to believe that the Student is better suited to assess her understanding of course material and better able to judge the appropriateness of course equivalency than the Faculty, who is well-suited to determine what is best for its own community; its faculty members are expert assessors of its academic programs, and your Committee should not interfere with their assessments.

The Student claimed the examinations that she had completed without accommodation were not a fair reflection of her knowledge or ability<sup>41</sup>, that her poor performance on exams and tests were a direct result of her undiagnosed anxiety<sup>42</sup>, and that it is unreasonable that her performance with an undiagnosed condition led to her ultimate termination from the Engineering Science program<sup>43</sup>. No compelling evidence was supplied by the Student. Your Committee finds the Faculty's submissions compelling and defers to its expertise.

The Student also indicated her passion for Biomedical Engineering ("BE") and suggested that the ES program with a major in BE "is the best, highest use of [the Student]'s intellect, skills, experiences and professional aspirations."<sup>44</sup> However, the Faculty submitted, and its Calendar showed, other avenues for pursuing an interest in BE, including various courses and even a Minor program. The Student herself indicated in the hearing that she was already engaging in some of these opportunities.

Your Committee is persuaded by the Faculty's Calendar and submissions that there are other ways than ES for the Student to prepare for a career in BE.

The Student submitted that since she has been diagnosed, she is doing better writing exams and tests remotely from home - not in an exam room surrounded by other exam-takers - in support of her case for accommodation.<sup>45</sup> Your Committee notes that no clear, convincing, or cogent evidence was provided to support this submission. As such, there is no way of knowing how the Student would have done had she had accommodation in 2018-2019.

In the hearing, the Faculty submitted that the Student's tests and exams at home were not proctored and that it's possible that the Student's performance has improved because ME was the more appropriate fit for her, rather than her being in the more demanding and rigorous ES program.

The Faculty submitted that the interests of the Student would be best served by continuing in her current academic program, ME,<sup>46</sup> stating at the hearing that this opinion was supported by both the ES and ME academic advisors. Your Committee finds the Faculty's submissions persuasive

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<sup>41</sup> Paragraph 33 - Appellant's Statement of Appeal, p.8.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Paragraph 37 - Appellant's Statement of Appeal, p.8.

<sup>45</sup> Paragraph 39 - Appellant's Statement of Appeal, p.9.

<sup>46</sup> Response to the Student's Statement of Appeal dated December 7, 2020.



and defers to the Faculty's position that the Student should remain in ME and not be reinstated into the ES.

At the hearing, the Student indicated she planned to finish the process with AS, and your Committee encourages her to do so.

#### **IV. Conclusion**

Your Committee reviewed all materials, submissions, and information very carefully and turned its mind to all the issues raised. For the reasons outlined above, we dismiss the appeal.

For procedural fairness purposes, a student needs to understand why their appeal was dismissed. Your Committee recommends that the AB include enough information in its reasons so students can make an informed decision regarding whether to appeal to the Academic Appeals Committee.