

**THE UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL**

Report #434 of the Academic Appeals Committee  
March 26, 2024

To the Academic Board  
University of Toronto

Your Committee reports that it held a hearing on November 23, 2023, at which the following members were present:

**Academic Appeal Committee Members:**

Professor Hamish Stewart, Senior Chair  
Professor David Zingg, Faculty Governor  
Seyedereza Massoum, Student Governor

**Hearing Secretary:**

Nadia Bruno, Special Projects Officer, Office of Appeals, Discipline and Faculty Grievances

**For the Student Appellant:**

██████ the “Student”)

**For the Rotman School of Management:**

Lily Harmer, Paliare Roland Rosenberg Rothstein LLP  
Joseph Berger, Paliare Roland Rosenberg Rothstein LLP

**Introduction**

The Student appeals from a decision of the Graduate Academic Appeals Board (GAAB), which dismissed an appeal from a decision of Professor Craig Doidge, Vice-Dean of the Rotman School of Management (the “Faculty”), accepting the recommendation of the Faculty’s Graduate Department Academic Appeals Committee (GDAAC) that he dismiss the Student’s appeal from the grade of B+ that the Student received in RSM1160 (the “Course”). A majority of your Committee dismisses the appeal. One member of your Committee would allow the appeal and substitute a notation of CR.

All otherwise unspecified references in this decision are to the Student’s appeal materials.

## Overview

In September 2021, the Student was enrolled in the Course at the Faculty. He received a grade of B+ for the Course. The grade included three components: class participation, a group presentation, and a reaction paper. The grading scheme was as follows:

- Class participation: 10%
- Group presentation: 45%
- Reaction paper: 45%

The Student was assessed as follows (p. 383):

- Class participation: 6/10
- Group presentation: 77% or 34.65/45
- Reaction paper: 36/45

This assessment translated into a final mark of 76.65%, which the instructor rounded up to 77%. This grade is in the B+ range.

The Student sought a review of the grade. The Faculty declined to provide a review of the first two components of the grade. The review process therefore involved a re-reading of the paper by an anonymous second reader. The second reader confirmed the grade for the reaction paper. The Student appealed the Course grade. The GDAAC recommended that his appeal be dismissed. The Vice-Dean accepted that recommendation. The Student's further appeal to the GAAB was dismissed.

The Student now appeals to your Committee. The remedies he seeks are as follows:

- “a change in the grading basis for the Course from the letter grade scale to a pass-fail scale” (p. 33), or
- in the alternative, a grade based solely on the reaction paper, or
- in the further alternative, a substantive re-evaluation of all three components of his grade.

## Procedural matters

The Chair of your Committee alone made decisions on the procedural matters discussed under this heading.

### The Faculty's request to file revised materials

The Student submitted his appeal materials on May 15, 2023. The Faculty's response was submitted on July 17, 2023. In his reply, dated September 5, 2023, the Student, among other matters, pointed out two incomplete case citations in the Faculty's submissions. The Faculty sought to file a revised version of its submissions to correct those errors. In a letter dated October 15, 2023, the Student objected strenuously to the Faculty's request, arguing that if your Chair

were to accept the revised versions of the Faculty's materials, his position would be prejudiced and the hearing of the matter would be delayed by the need for the Faculty to provide a systematic comparison of the two versions of its submissions and by his to need reply to the revised revisions.

The Chair was very surprised by the Student's objection. In the Chair's view, the incomplete citations in the Faculty's original submissions were minor errors. Correcting them would in no way prejudice the Student's ability to put forward his position. There was no need for a comparison of the two versions because there was no reason to think that counsel for the Faculty would have done anything other than correct the two minor errors that the Student had pointed out. If the Student was concerned that there might have been other changes, instead of requesting a detailed comparison of the two versions, the Student could have requested an assurance (in the form of an undertaking, if necessary) from the Faculty's counsel that there were none. There is no doubt that such an assurance would have been given and that it would have been reasonable for the Chair and the Student to accept it. But the Chair was also of the view that the minor errors in the original version made little or no difference to the Faculty's ability to put its position forward. The Chair therefore rejected the Faculty's request to file revised materials.

#### The Student's request to call witnesses

On November 14, 2023, the Student wrote to the Senior Chair, requesting that the Senior Chair issue summonses pursuant to s. 10.1 and 12 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, compelling the following persons to appear at the hearing of his appeal: Professor Richard Powers, who was the course instructor in RSM1160; Professor Liao; and Professor Michael Ryall (a member of the Faculty). On November 15, 2023, counsel for the Faculty provided written submissions opposing the Student's request. The Senior Chair denied the Student's request and subsequently gave reasons for that decision (see Report #429).

#### The admissibility of the SGS policy on "Re-reading & Retention of Examinations"

The hearing was held on the afternoon of November 23, 2023. Towards the end of the hearing, during the Faculty's oral submissions, reference was made to the SGS Re-Reading Policy, available at <https://facultyandstaff.sgs.utoronto.ca/managing-student-records/retention-examinations/>. The text of this policy was not included in either party's materials. Wondering whether the SGS Re-Reading Policy might have some bearing on the appeal, the Chair asked counsel for the Faculty where it could be found. Counsel promptly provided the link noted above. The Chair was not able to determine in the moment whether the SGS Re-Reading Policy was relevant to the issues in the appeal and so asked the parties to provide submissions on that question. On December 19, 2023, the Student provided written submissions consisting of an introduction, two substantive points, and a conclusion. The Student included the SGS Re-Reading Policy as an exhibit to his submissions and described it as "Ambush Evidence." The Chair read the Student's submissions in early January and found that the Student's first substantive point (concerning procedural fairness) was without merit. On January 10, 2024, he offered the Faculty an opportunity to reply to the Student's second substantive point (concerning relevancy). On January 11, 2024 the Student wrote to the Chair, objecting to the Faculty's having been given the opportunity to make submissions. On January 12, 2024, the Faculty provided its

response to the Student's submissions of December 19, 2023. Your Chair concluded that the policy was of little relevance and that your Committee would not be significantly assisted by considering it. He therefore chose not to add it to the materials to be considered by your Committee during its deliberations. Written reasons for this decision were provided to the parties on February 5, 2024 (see Report #431).

### **The Positions of the Parties**

The Student has characterized the issues to be decided by your Committee as follows (p. 7):

- (A) Were the prior decisions to uphold the Appellant's failing class participation grade and presentation grade without a substantive re-evaluation into the Appellant's performance reasonable?
- (B) Were the prior decisions to uphold the Appellant's reaction paper grade reasonable?
- (C) Were the prior decisions made in a procedurally fair manner?

Under issue (A), the Student makes five submissions:

- (i) The Faculty's policy concerning disputes about grades provides that "participation points or presentations are not subject to a re-read ..." (p. 8). The Student submits that the GAAB's decision to uphold this policy was unreasonable (pp. 8-13). The Faculty defends its policy (Faculty submissions, paras. 37-44).
- (ii) The Student submits that neither (a) the GDAAC nor (b) the GAAB conducted a substantive review of the participation and presentation components of his grade and that their refusal to do so was unreasonable (p. 14). The Faculty does not dispute the fact that the GAAB refused to conduct a substantive review, but submits that it was not required to do so, and indeed should not have done so. (Faculty submissions, paras. 45-47.)
- (iii) The Student submits that the participation grade awarded by the course instructor was unreasonable and unjustified (pp. 15-19) and
- (iv) that the presentation grade awarded by the course instructor was unreasonable (pp. 19-21). With respect to these two points, the Faculty submits that your Committee "has no jurisdiction to consider the merits of the grades assigned with respect to the Participation or Presentation elements of [the Student's] grade" (Faculty submissions, para. 48) and urges your Committee to defer to the GAAB's finding that the Student had not demonstrated any procedural unfairness in the course instructor's procedures for assigning or reviewing those grades (Faculty submissions, paras. 49-54).
- (v) The Student submits that the grading scheme for the course violated the Faculty's policies (pp. 21-22). The Faculty submits that the grading scheme for the Course was consistent with its policies (Faculty submissions, para. 52).

Issue (B) concerns the third component of the Student's grade, the reaction paper. For reasons that will be briefly spelled out below, on a grade appeal neither the GAAB (from whose decision the Student appeals) nor your Committee will consider the substantive academic merits of a

student's work. Issue (B) therefore requires your Committee to review the fairness of the procedures by which the Student's reaction paper was reassessed. The central allegation of unfairness in the Student's written submissions is what he characterizes as a "lack of transparency," namely, the Faculty's refusal to disclose the identity of the second reader. Relatedly, he submits that "the Academic Director failed to provide the [Student] with an opportunity to object to the appointment of the Anonymous Regrader" (p. 28). The Faculty agrees that it failed to disclose the second reader's identity and that it did not consult with the Student before selecting the second reader. The Faculty submits that its process "adhered to the provisions of the Faculty Policy providing for re-read requests" (Faculty's submissions, para. 56).

Issue (C) involves several allegations of procedural unfairness that overlap to some extent with issues (A) and (B).

- (i) The Student submits that he was entitled to a high degree of procedural fairness in the academic appeal process (pp. 26-27). The Faculty's position is that the Student received the degree of procedural fairness to which he was entitled (Faculty submissions, paras. 53, 59).
- (ii) The Student submits the course instructor impermissibly delegated his authority over grading the participation component of the grade to the teaching assistant (pp. 16-17 and 27-28). The Faculty submits that the Student has not shown that the course instructor delegated his authority (Faculty submissions, para. 51).
- (iii) The Student submits that he was not consulted "when the instructor carried out his evaluation of the [Student's] class participation" and when the Academic Director assigned the second reader (p. 28). The Faculty accepts that the Student was not consulted but submits that it acted in accordance with its policies (Faculty submissions, paras. 60-61).
- (iv) The Student submits that the conduct of (a) the course instructor and (b) the GAAB demonstrated reasonable apprehension of bias. The Faculty submits that neither the conduct of the course instructor nor the conduct of the hearing before the GAAB gives rise to a reasonable apprehension of bias (Faculty submissions, paras. 63-67).
- (v) The Student submits that "the instructor's assessment was procedurally unfair because of the inordinate delay in rendering his decision" (p. 32). The Faculty agrees that there was a delay in the Student's receipt of his Course grade but submits that the delay did not create procedural unfairness (the Faculty's submissions, paras. 73-77).

### **Jurisdictional matters**

The matters under this heading were determined by the Chair of your Committee alone.

#### The primary remedy sought by the Student is outside your Committee's jurisdiction

As noted above, the primary remedy sought by the Student is "a change in the grading basis for the Course from the letter grade scale to the pass-fail scale." Your Chair originally interpreted

this as a request that the Student's grade in RSM1160 should be changed from B+ to CR. Granting such a remedy is likely within the jurisdiction of your Committee. However, it appears from the Student's written submissions (p. 33, para. 151), from his oral submissions at the hearing, from a letter to Professor Liao early in the appeal process (p. 52), and from the GDAAC's recommendation (p. 182) that he is seeking something quite different, namely, that the grade of every student enrolled in RSM1160 in the Fall 2021 term be changed from a letter grade to CR or NCR. That is, every student who received a grade of B- or higher would be reassigned a grade of CR and every student (if any) who received a grade of less than B- would be reassigned a grade of NCR. The Student refers to your Committee's Report #358, in which he says your Committee granted "this exact remedy", demonstrating that your Committee "has full authority to change the grading basis of a course" (para. 152).

If the Student is in fact seeking "a change in the grading basis for the Course from the letter grade scale to the pass-fail scale", it is not only an "inappropriate" remedy, as the GDAAC rightly said (p. 182), but also outside the jurisdiction of your Committee. There are three reasons, each sufficient on its own, why that is so. First, your Committee's primary function is "[t]o 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" (AAC Terms of Reference, Article 2.1). This function does not extend to modifying the grading scheme of a course. Second, changing the method of evaluation for a course may be done only in accordance with Article 1.3 of the University's Assessment and Grading Practices Policy (the AGPP). The procedure described there is no longer available for a course offered in the Fall 2021 term. Third, the other students enrolled in RSM1160 are not parties to this appeal and it would be, to say the least, profoundly unfair for your Committee to purport to make an order that affected their grades.

The Student's reference to Report #358 does not assist him. In that case, your Committee changed the student appellant's grade from B+ to CR but did not purport to change the grading basis of the course in which she was enrolled.

Your Committee proceeded on the assumption that, although it did not have jurisdiction to grant the primary remedy sought by the Student, it did have jurisdiction to change his grade from B+ to CR.

#### Your Committee has no jurisdiction over the grading scheme for the Course

Some of the Student's submissions amount to an attack on the grading scheme for the Course (see in particular paras. 4, 149-151). Your Committee's discussion of two of the Student's specific objections to this scheme may be found below. However, the Chair holds that your Committee has no jurisdiction to allow a student's appeal on the basis of that student's dissatisfaction with the grading scheme for a course. As noted above, your Committee's function is to hear appeals concerning "the application of academic regulations and requirements ...". It is well-established that your Committee has no jurisdiction to modify or invalidate an academic regulation or requirement. For the purposes of a grade appeal, the academic regulation or requirement in question is the grading scheme for the course in which the student was enrolled. Therefore, your Committee cannot consider the validity or wisdom of the scheme but only its

application to the student appellant in the case at hand. So if, for example, your Committee were to agree with the Student that the methods used to evaluate students' work in RSM1160 were "seriously flawed" or "unfair" or "problematic" (p. 33), that would not be a basis for allowing his appeal. It is not for your Committee to tell the Faculty, or any other division of the University, what grading schemes and methods of evaluation it may or may not use in evaluating its students.

Your Committee will therefore not give effect to any of the Student's submissions that the grading scheme for RSM1160 was unfair or unreasonable.

The Student's submission that the grading scheme for RSM1160 was not authorized by the Faculty's own policies (submission A(v)) is another matter. The Chair is tentatively of the view that your Committee has no jurisdiction over this issue. However, the Faculty did not make that argument but instead urged your Committee to accept the GAAB's holding that there was no inconsistency between its policies and the grading scheme for RSM1160 (Faculty submissions, paras. 52-54). Your Committee's decision on this issue may be found below.

The Student's submissions concerning substantive review of his reaction paper are outside the jurisdiction of your Committee

As submission A(ii)(b), the Student submits that the GAAB's decision was unreasonable because it refused to conduct its own substantive review of his reaction paper (para. 107). He also invites your Committee to make its own judgment about the academic merits of his reaction paper (paras. 108-110).

It is well-established that, on a grade appeal, your Committee will not consider the substantive academic merits of a student's work. (See, for example, Report #415.) Instead, your Committee will consider whether the division in question reasonably applied its own policies and procedures concerning grading; if not, your Committee will provide a remedy. (See, for example, Report #413.) The same principles apply to proceedings before the GAAB. It is not your Committee's role to reassess the academic merits of a student's work and your Committee lacks the expertise to do so.

Your Committee will therefore not give effect to any of the Student's submissions to the effect that the original evaluation or the second reader's evaluation of his reaction paper was substantively unreasonable.

It is unnecessary to consider the Student's submissions concerning the conduct of the appeal before the GAAB

The Student makes a number of submissions (C(iv)(b)) concerning the conduct of the appeal by the GAAB: specifically, that the GAAB Chair suffered from reasonable apprehension of bias, or actual bias, because she had previously presided over some of his other appeals (para. 139); that one member of the panel may have been in an undisclosed conflict of interest (para. 139); and that the panel was actually biased against him (para. 142). If your Committee were to accept them, the proper remedy would be a new hearing before a differently constituted panel of the

GAAB. The Student has not sought that remedy. Therefore, the Chair of your Committee finds that it is unnecessary for your Committee to consider these submissions.

The Chair adds that if the Student was concerned that the GAAB Chair might actually be, or reasonably appear to be, biased against him, or that a GAAB panel member was in a conflict of interest, or that the composition of the GAAB panel raised an apprehension of bias, he should have raised those issues with the GAAB Chair at the time of the hearing. It is too late to do so now.

## **Majority Decision**

(A) Were the prior decisions to uphold the Appellant's failing class participation grade and presentation grade without a substantive re-evaluation into the Appellant's performance reasonable?

(A)(i)

The Faculty refused to provide a reassessment, or "re-read" of the class participation and group presentation components of his grade. The basis for the refusal was that the Faculty's policy concerning disputes about grades provides that "participation points or presentations are not subject to a reread ..." (p. 8).

As noted above, your Committee has no jurisdiction to modify or invalidate the policies of a division of the University. The Faculty's refusal was in accordance with its policy. Normally, that would be sufficient to dismiss this argument. However, the Student argues that the policy in question is invalid, not because it is unreasonable or inherently flawed (though he also submits that it is), but because, in his submission, it is inconsistent with SGS policies, which provide that "Graduate students may appeal substantive or procedural academic matters ..." (SGS Regulations, s. 10.1) and which take precedence over departmental policies. The Faculty submits that the SGS Regulations are consistent with the AGPP (Faculty submissions, para. 40).

The Chair of your Committee is unsure whether an academic appeal is a suitable vehicle for a challenge to the validity of a divisional or departmental policy on the ground that it is inconsistent with another University policy. That is because, as noted above, your Committee does not have jurisdiction to modify or invalidate a divisional policy. However, the Faculty did not make this jurisdictional argument. Instead, the parties framed their arguments in terms of whether the Faculty's policy was compliant with SGS policy, and your Committee dealt with this issue on that basis.

Assuming for the sake of argument that your Committee could invalidate a policy on the ground that it was inconsistent with a policy that was higher in the hierarchy of University norms, a student would have to show that the impugned policy was, in light of the higher policy, unreasonable. That is because the standard of review on an academic appeal is reasonableness (Policy on Academic Appeals Within Divisions [PAAWD], article 2.ii). Your Committee also notes the preference for local decision-making in the PAAWD, which provides in article 3.i that



“Divisions should decide how best to implement this policy ...”, suggesting that even if your Committee does have the power to invalidate a divisional policy for inconsistency with other University policies, that power would have to be exercised with great deference towards a division’s choices as to how to structure its own academic appeal processes.

Article 2 of AGPP requires divisions to ensure that students have access to their written examinations and states that 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 ...” Article 5 of AGPP requires every division to establish a procedure for the appeal of final grades. PAAWD provides general guidance to divisions concerning academic appeal processes. But AGPP and PAAWD do not require divisions to have any specific procedures for reviewing final grades, and they do not require divisions to have any particular procedures, or any procedures at all, for substantive review of individual components of course work such as grades assigned for class participation, group work, lab reports, reaction papers, in-class quizzes, etc. Consistent with AGPP and PAAWD, SGS provides for appeals of “substantive or procedural academic matters”, which includes final grades (SGS Regulations, s. 10.1). In light of AGPP, this policy should likely be read as requiring every division to establish a procedure for the re-reading of examinations “where feasible.” It does not, however, specifically require re-reads or other forms of reassessment or any other form of evaluation. The Faculty’s appeal policy provides for re-reads of all written work (not just examinations). But it specifically states that “participation points or presentations are not subject to a re-read.” This exclusion is consistent with AGPP, PAAWD, and the SGS regulations. Substantive review of a grade does not necessarily require independent reassessment of every component of the grade. Your Committee notes that even the AGPP’s requirement that every division permit petitions for re-reading of examinations is qualified by the phrase “where feasible.” Even if your Committee were to read the relevant policies as implicitly requiring the reassessment of every component of a final grade (and we do not), that requirement would by analogy also be subject to feasibility. It is in general not feasible to reassess class participation and group presentations. The Faculty’s choice to exclude class participation and presentations from rereading on appeal is reasonable. Thus, even if the Faculty’s grade review procedures are subject to review by your Committee, your Committee would not modify them as urged by the Student.

#### A(ii)

As noted above, your Committee will not hear the Student’s submission that the GAAB failed to provide a substantive reconsideration of the Student’s participation and group presentation marks. Since the Faculty’s grade review and appeal policy does not require substantive reconsideration of class participation and group presentations, the GDAAC also made no error in declining to conduct a substantive review of those elements of the Student’s grade.

If it had chosen to do so, the GDAAC could have conducted its own substantive review of the Student’s reaction paper to supplement the substantive review conducted by the second reader (as occurred in Report #415). It was the appropriate body with the expertise to do so. But it was not unreasonable for the GDAAC to rely on the second reader’s detailed assessment of the

reaction paper, read in light of the course instructor's original explanation for the grade. There is no merit in this ground of appeal.

A(iii)

The Student submits that the participation grade awarded by the course instructor was unreasonable (pp. 15-19). To the extent that this submission seeks substantive review of that grade, for the reasons given above, your Committee will not consider it. The Student's argument that the process of arriving at the grade was procedurally unfair is within your Committee's jurisdiction and is discussed below.

A(iv)

The Student submits that the presentation grade awarded by the course instructor was unreasonable (pp. 19-21). To the extent that this submission seeks substantive review of that grade, for the reasons given above, your Committee will not consider it.

However, the Student also has procedural objections to the grade. First, the Student submits that "the Instructor's reasons [for awarding the grade] were not justifiable, intelligible, or transparent" (p. 19). Your Committee rejects this submission. The instructor's reasons are clear and touch upon all aspects of the grading criteria for the group presentation (p. 37). Second, the Student submits that "the Instructor failed to consider [that] the [Student's] group was at a serious disadvantage" because his group consisted of four rather than, as most other groups did, five or six persons. Your Committee rejects this submission. The Student has not offered anything beyond generalities to explain how the smaller group size would have disadvantaged him in particular. Nor is there any evidence that he, or the other members of the group, asked the course instructor to take this factor into consideration when evaluating the group presentation.

Your Committee dismisses this ground of appeal.

A(v)

The Student submits that the grading scheme for the Course violated the Faculty's policies (pp. 21-22). He argues that "the Faculty policies dictate that the total weight of group work must not exceed 40% of the overall evaluation for any course" (p. 21). This submission depends entirely on a one-page internal Faculty document, titled "Course Syllabus Checklist" (p. 403).

The Checklist is a guide for instructors as to how to prepare their course syllabus and upload it to Quercus. The Checklist begins by stating that "The course syllabus (or outline) is a contract between you and the students. As with all contracts, language matters and should be consistent to avoid misunderstandings and appeals." The Chair of your Committee does not believe that a course syllabus is a "contract" in the common law sense. But your Committee nevertheless agrees with the spirit of the introduction to the Checklist: a course syllabus should clearly outline the course requirements, the evaluation scheme, and the instructor's expectations of students, so that from the outset of the course students will have a good idea of what is expected of them. It is not suggested that the syllabus for RSM1160 failed to do that. Rather, the Student argues that the

grading scheme was invalid because it was inconsistent with the Checklist. One of the 15 points on the checklist reads in part as follows: “**Couse Grade Components.** *No deliverables more than 80%; group work maximum 40%; class participation maximum 20% ...*” The Student submits that this point on the checklist is a strictly enforced policy of the Faculty and that the grading scheme for RSM1160 was invalid because it did not comply with this point (pp. 21-22). He supports this submission with email correspondence between himself and Caroline Pye, Assistant Director of Academic Services at the Faculty. Ms. Pye told him, “group work may comprise no more than 40% of a course grade. That is the process and I likely might have communicated this to [a] new instructor. Unfortunately, I cannot find a record of it. A deviation to exceed 40% requires Vide-Dean approval” (p. 405). Your Committee has been provided with no other material indicating that the 40% limit stated in the Checklist is a Faculty policy.

By the Student’s reckoning, group work for the Course was weighted at 55%, counting both the group presentation and class participation (para, 92). Your Committee rejects the Student’s contention that individual class participation marks are “group work.” Participation points are assigned to individual students. Your Committee therefore finds that the weight for group work was 45%, as stated above. This weighting would still exceed what the Student says is the 40% limit. The Faculty submits that the grading scheme for the Course was consistent with its policies.

This submission is an attack on the reasonableness of the grading scheme for the Course, which, as noted above, your Committee will not entertain; moreover, the Chair is unsure whether an academic appeal is a suitable vehicle for a challenge to the validity of a grading scheme.

In any event, your Committee is satisfied that the grading scheme for the Course did not violate the Faculty’s policies. On the material before it, your Committee is not satisfied that the Faculty even has a policy limiting group work to 40% of a course grade. If the 40% limit stated in the Checklist does originate from a Faculty policy document, your Committee has not been provided with that document. It does not appear in the Faculty’s ehandbook for instructors (pp. 166-179). On the material before your Committee, if there is such a policy, it is best interpreted not as a strict limit but as a guideline for instructors. Your Committee accepts Professor Liao’s statement that the Checklist provides merely a “suggestion regarding maximum groupwork allocations” and that the MBA program “does not generally intervene if a faculty member uses their discretion to deviate from these guidelines, so long as the deviation is not significant” (p. 102).

B. Were the prior decisions to uphold the Appellant's reaction paper grade reasonable?

As part of the appeal process within the Faculty, the Student met with the course instructor on Zoom to discuss his reaction paper. Two weeks later, on February 7, 2022, the instructor emailed the Student some comments on the paper, concluding with the remark that “it was an A- paper” (p. 42). Your Committee finds that the instructor’s comments clearly identified the strengths and weaknesses of the paper. The instructor stated that the paper was “long on the story but not as in-depth a discussion around the models and methods used in determining ethical v unethical behaviour”; he noted certain assertions that the Student made that were not well-supported; and he identified certain respects in which the A papers in the class were superior to the Student’s.

Your Committee finds that this feedback was more than sufficient to inform the Student of the instructor's reasons for assigning the paper a grade of 36/45.

The Student sought a re-read of his reaction paper. In a letter to Professor Liao, he disputed the instructor's feedback (pp. 48-52). He repeats some of these points in his submissions to your Committee (pp. 24-25). This material has to do with the substantive academic merits of the Student's paper and accordingly your Committee has not considered it.

Professor Liao then sent the Student's paper to another faculty member with expertise in business ethics, together with the Student's statement and material from the course instructor concerning the evaluation of the reaction paper. On April 18, 2022, the Academic Director wrote to the Student, summarizing the second reader's assessment of the paper and informing the Student that his grade would stand. The second reader found that the course instructor's "assessment was, if anything, generous" and provided a detailed discussion of the strengths and weaknesses of the reaction paper (pp. 143-144). Your Committee finds that this discussion was more than sufficient to inform the Student of the second reader's reasons for upholding the grade.

To the extent that the Student's submissions on the second reader's report might be characterized as issues of procedural fairness, rather than matters of substantive academic merit, your Committee rejects them. The Student says, for example, that the second reader's reasons "did not justify his assessment with reference to the grading outline that the instructor had provided in advance" (para. 112). Those criteria characterize A- papers as making "a good case for their opinion" and using "the facts [properly] to support their opinion"; an A- paper should be "convincing regardless of the position taken" (para. 112). But the second reader's opinion refers to those very criteria. It finds that the grade of A- "was, if anything generous" exactly because the paper does not meet the criterion of making "a good case" for the Student's opinion; instead, in the second reader's view, it "simply makes a series of unsupported assertions" and provides no demonstration of the assertion that it begins with (p. 143).

The Student submits that the process of choosing the second reader was unfair in that he was not informed of the identity of the second reader. As noted above, the second reading was conducted on a double-blind basis; that is, neither the Student nor the second reader were informed of the other's identity. The Faculty continues to maintain the anonymity of the second reader's identity; it has refused to disclose the name of the second reader to the Student (p. 23) and has not identified that person in its submissions your Committee. The Student believes that the second reader is Professor Michael Ryall (para. 103), and he argues that the Faculty is motivated to conceal his identity as the second reader because "Professor Ryall's conception of business ethics and approach to teaching [RSM1160] is so irreconcilably different from the [course instructor's] that it would be impossible for the Faculty to justify its choice of Professor Ryall" (para. 104, and see para. 105). He also maintains that procedural fairness required him to be consulted as to the choice of second reader (p. 28).

This submission is so inextricably intertwined with the Student's submissions on the substantive academic merits of his paper that it cannot succeed. It is not contested that the second reader, whoever that person was, had expertise in business ethics. To that extent, the second reader was qualified to serve as a second reader. Whether that person's approach to business ethics was or was

not “irreconcilably different” from the course instructors is a substantive question of academic merit that was appropriately considered by the GDAAC and by Professor Liao. It is a question of academic merit that your Committee will not consider. There is no merit in the Student’s submission that the choice of second reader was substantively unreasonable.

The Student’s submissions concerning the procedure for choosing the second reader are considered below.

(C) Were the prior decisions made in a procedurally fair manner?

C(i)

The Student submits that he was entitled to a high degree of procedural fairness in the academic appeal process (paras. 116-117). The Faculty does not contest that the Student is entitled to procedural fairness and submits that the entire process was procedurally fair.

The Student also submitted that he, in particular, was entitled to a high degree of procedural fairness in this appeal process because of the consequences of the B+ grade for him. The Student argued that the B+ grade in RSM1160 was “a shocking blemish on what would otherwise be an exemplary straight-A academic record”. He argued further that because of this “blemish”, “[h]e will likely be called to appear before a Character and Fitness Committee to explain his inferior performance in [RSM1160], and may need to take extra steps to demonstrate his ethics” (para. 118). This submission is utterly without merit and does not assist the Student. B+ is not a “blemish” but a good grade. There is no prospect that any licensing authority would have the slightest concern about the character or fitness of a candidate for the bar who had received a good grade in business ethics.

To the extent that Student’s argument is that the “blemish” arises from a contrast between the B+ in RSM1160 and the rest of the Student’s academic record, and that the Student is therefore entitled to a high degree of procedural fairness, your Committee rejects it.<sup>1</sup> The Student’s invocation of his academic record does not assist him. The degree of procedural fairness owed to a student in the appeal process does not depend on the student’s academic record or academic standing. The relevant degree of procedural fairness is the same regardless of whether the student is a “straight A- student” or a student with a weak academic record.

C(ii)

The Student submits the course instructor impermissibly delegated his authority over grading the participation component of the grade to the teaching assistant (pp. 16-47 and 27-28). The Faculty

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<sup>1</sup> Your Committee is not wholly persuaded by the Student’s description of himself as a “straight-A student.” Apart from the B+ in RSM1160, his grades in the Faculty of Management include A+, A, H (honours), and CR, while his grades in the Faculty of Law include HH (high honours), H, P (pass with merit), and CR. Your Committee was not provided with the Student’s undergraduate transcripts, which would have been irrelevant to the issues on appeal. But, for the reasons explained in the text, the quality of his transcript is in any event irrelevant.

notes that the GAAB rejected the allegation of impermissible delegation and submits that your Committee should defer to that conclusion (Faculty submissions, paras. 50-53). Its position is, as Professor Doidge put it in his submissions to the GAAB, that in assessing class participation “[t]he Instructor complemented the TA’s records with his own qualitative assessment” (p. 324).

Class participation accounted for 10% of the Course grade. The Student’s participation was assessed at 6/10. The record indicates that participation grades in the section of the Course in which the Student enrolled, the highest participation grade was 7/10 and that over both sections the range of grades for participation was between 5/10 and 9/10 (p. 387). The process for determining the participation grade was as follows. A teaching assistant (referred to in the materials as a “pilot” or “co-pilot”) kept track of the number of times each student made a comment in class. The teaching assistant’s discretion was limited to determining whether a student’s intervention amounted to a “comment” for the purposes of the Course (p. 27).<sup>2</sup> The course instructor assigned the participation grade on the basis of the teaching assistant’s records and his own qualitative impressions. In an email to the Student, the course instructor stated that “Based on records kept by the TA, and my own comments, you had a total of 4 comments, none of which I had highlighted as insightful or added significantly to the topic and/or discussion”; on this basis, he assigned a grade of 6/10, which he said “was the average for the class” (p. 38).

The Student has three procedural objections to this process. First, he says that because the teaching assistant “was free to decide whether a contribution amounted to a comment ...” the course instructor “clearly contravened faculty policies” by permitting the teaching assistant to exercise judgment. The policy in question is found in the Faculty’s ehandbook for instructors, which states (p. 176):

Instructors must assume responsibility for all components of the final grades even when markers or teaching assistants have done some of the marking. This implies that markers and/or teaching assistants should only mark those questions where the marking requires no judgment by the marker.

The Student says the grading procedures for the Course violated this policy. As he puts it, “It was procedurally unfair for the instructor to have the [teaching assistant] exercise any judgment at all” (para. 125).

Your Committee rejects this submission. The “no judgment” limit in the policy explicitly applies to the assessment of written work, not to the assessment of class participation; it is therefore questionable whether it is applicable here. But, more fundamentally, there can be no decision-making without judgment. As the course instructor put it, the teaching assistant was required to determine whether an intervention by a student “amounted to a comment” for the purpose of the Course; if so, the teaching assistant would record it; if not, the teaching assistant would not record it. The teaching assistant therefore had to exercise this very basic level of judgment. As counsel for the Faculty put it in her oral submissions, if a student intervened to point out that the instructor or another student was on “mute,” or that the conversation was being disrupted by background noise, that intervention would not qualify as a “comment” for the purposes of the

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<sup>2</sup> The source for this statement is said to be an “internal email.” That email does not appear in the documents filed in support of the Student’s submissions; however, the Faculty did not take issue with its existence.

course, and the teaching assistant would be correct not to record it as such. Asking the teaching assistant to determine whether an intervention by a student “amounted to a comment” was unavoidable, reasonable, and fair.

The Student’s second objection falls under issue A(iii) but is best considered here. The Student asks your Committee to infer (as he asked the GAAB and the GDAAC to infer) that the course instructor did not actually provide his own assessment of class participation but relied “exclusively on the qualitative metrics recorded by the [teaching assistant].” He asserts that there is “no evidence” that the course instructor made a qualitative assessment of class participation (para. 64). He notes that in responding to his freedom of information request, the Faculty produced no records of any notes or comments made by the instructor and asks your Committee to infer that no such records ever existed (para. 63). In the Student’s submission, this delegation of authority to the teaching assistant was procedurally unfair.

Your Committee rejects this submission. Contrary to the Student’s assertion, there is evidence that the course instructor performed a qualitative evaluation. This evidence is the course instructor’s explanation of how he assigned the participation grades: in addition to the records kept by the teaching assistant, he relied on the Zoom chat log, which he looked at after each class, and on his recollection, which was fresh at the time, of how the class had progressed (p. 27). If the course instructor made any written notes on class participation, which is not clear from the record, your Committee infers that they were made for the use of the course instructor at the time and were not, and were not intended to be, permanently retained. With respect to the Student in particular, the course instructor told him that “you had a total of 4 comments, none of which I had highlighted as insightful or adding significantly to the topic and/or discussion” (p. 38). That judgment combines the teaching assistant’s metrics with a qualitative assessment. The record supports the Faculty’s position that class participation marks in RSM1160 were assigned in accordance with its policies.

The Student’s third objection was raised under issue C(iii) but is more conveniently considered here. He submits that he was not consulted “when the instructor carried out his evaluation of [his] class participation” (p. 28). The Student notes that in some courses at the Faculty, students are permitted to submit “participation logs” to assist course instructors in assessing participation grades (see p. 416 for an example). Your Committee finds this submission to be utterly without merit.

To the extent that this submission concerns the grading scheme for the Course (as para. 131 suggests), your Committee will not consider it because, as indicated above, an academic appeal is not a suitable vehicle for challenging the grading scheme for a course. Course instructors may, if they choose, consider some form of self-evaluation, such as the participation logs referred to by the Student, in evaluating students’ work, but no University or Faculty policy requires that they do so.

To the extent that this submission is a complaint that the course instructor did not give the Student an opportunity to make submissions concerning the evaluation of his class participation mark (as para. 133 suggests), your Committee rejects it. Students have no right to be consulted about or to participate in the evaluation process; in a course evaluated by written work, for

example, students have no right to make submissions as to what their grade should be or to participate in the course instructor's reading and evaluation of the written work. If an individual student were to offer such submissions, a course instructor should not consider them because considering such submissions would be contrary to the instructor's duty to evaluate work only on its academic merits and would be procedurally unfair to other students enrolled in the course.

To the extent that the Student's claim is that in January 2022, he offered his own records of class participation to the course instructor and that the course instructor refused to consider them (as para. 131 suggests), your Committee declines to consider it because it is a new issue. The Student did not raise this argument with the Academic Director, with the GDAAC, or with the GAAB (compare pp. 41-42, 46, 71-72, 196-99). The Student has never previously asserted that at the meeting of January 2022, he offered to provide his own records to the course instructor and that the course instructor refused to consider them. These facts do not appear in either the Student's detailed description of the meeting (pp. 41-42) or in the course instructor's brief recollection of the meeting (p. 388).

To the extent that the Student's point is that his grade was unfair because there is a conflict between his own recollection of his performance and the instructor's (as para. 132 and his submission to the GAAB at p. 199 suggest), that is a question of substantive academic merit that your Committee will not consider.

#### C(iii)

The Student submits that he was denied procedural fairness because, when the Academic Director assigned the second reader, he was not consulted (p. 28). The Student points to a previous instance in which he was asked "whether he had any objections to the selection of a re-reader" (para. 135). This submission is connected with the Student's submission that he should have been informed of the identity of the second reader (para. 134). These facts are not in dispute. The Faculty accepts that the Student was not consulted but submits it acted in accordance with its policies.

The Faculty's appeal policies do not specify whether a student is or is not to be consulted about the identity of the second reader and is silent as to whether the re-reading process should be anonymized. The PAAWD is silent on this matter. The question, therefore, is whether, in applying its appeal policy, it was reasonable for the Faculty to select the second reader without consulting with the Student and to employ a double-blind process. Your Committee finds that it was. It is not contested that the second reader had expertise in the field of business ethics. The Student provided a vigorous response to the second reader's report (pp. 74-75). Consultation and knowledge would have added nothing to the Student's ability to respond. The Student's knowledge of the second reader's identity would, however, have created the possibility of irrelevant *ad hominem* attacks on the second reader's qualifications and character, one of the types of mischief that a double-blind process is intended to avoid. Your Committee is hesitant to infer that a student would engage in such attacks, but notes that the Student is explicit in his intention to challenge the second reader's credentials (para. 134) and that the Student has mounted an irrelevant attack on the character of the course instructor (para. 138), suggesting that the danger of this mischief was real in this case.



C(iv)

The Student submits that the conduct of (a) the course instructor and (b) the GAAB demonstrated reasonable apprehension of bias.

C(iv)(a)

The topic chosen by the Student's group for their presentation related to the "WE Charity scandal" involving the Liberal government led by Prime Minister Justin Trudeau. The Student submits that the course instructor was a "well-documented supporter of the Liberal Party... [who] has a demonstrated history of commenting publicly in favour of the Liberal Party [and who] in 2009, ... passionately defended the Liberal government's handling of a spending controversy" (para. 137). The Student submits that the course instructor should have alerted the Student's group to his "political leanings" at the time they proposed their topic (para. 138) and suggests that the course instructor may have been biased in his evaluation of the group work (para. 137).

It is not clear what remedy the Student thinks these allegations, if established, would support. In any event, your Committee rejects the allegation of reasonable apprehension of bias. The test for reasonable apprehension is well-established. The question is: "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude"?<sup>3</sup> The reasonable person would interpret the material filed by the Student as showing the course instructor's support for certain policy initiatives of the Liberal government. The reasonable person would not read it as "lavish[] praise" or "passion[ate] defence" of the government. None of it speaks to the WE Charity matter and so sheds no light on the course instructor's attitude towards that incident.

The supplementary material filed by the Student in his reply weakens rather than strengthens his claim of reasonable apprehension of bias. Accepting for the sake of argument that it is true (a point on which your Committee makes no finding), it suggests that the course instructor is acquainted with politicians affiliated with both the Liberal and Progressive Conservative parties and with the principal of a consulting firm that does work for public figures of any political persuasion. It is therefore of no assistance in establishing reasonable apprehension of bias based on the course instructor's supposed partisanship.

There is no merit in this submission.

C(iv)(b)

For the reasons given above, your Committee will not consider this submission.

C(v)

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<sup>3</sup> *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369, *per* DeGrandpré J. dissenting on other grounds.

The Student submits that “the instructor’s assessment was procedurally unfair because of the inordinate delay in rendering his decision” (p. 32). The Faculty does not challenge the Student’s assertion that he received his grade after some time, but submits that the delay did not create procedural unfairness (Faculty submissions, para. 73).

It is unfortunate that there was delay in the Student’s receipt of his Course grade. But your Committee agrees with the GAAB that there is no reason to think that in this respect the Student “was particularly disadvantaged in any way vis-a-vis other students” (p. 353). The Student submits that the delay compromised his ability to appeal his grade. The voluminous record and expensive submissions filed by the Student with respect to every aspect of his grade belie this submission.

### **Dissenting decision**

As noted above, one member of your Committee would allow the appeal and substitute a notation of CR for the grade of B+. In this member’s view, the application of the grading scheme to the Student, and indeed to all the students in RSM1160, was unreasonable. This member finds that the cumulative effect of several problems in the administration of the grading scheme for the Course resulted in unfairness to the Student.

The member is particularly concerned with the Student’s grade for class participation. Given the size of the class (140 students) and the short duration of the Course (8 hours), there was not enough time for sufficient participation by each student to enable a fair assessment of the quality and quantity of their participation. Moreover, the highest class participation grade in the Student’s section was 7/10, which is an inappropriate grade distribution given that 70% is the requirement to pass the Course and reflects the impossibility of fairly assessing class participation given the size of the class and the short duration of the Course.

The member, while recognizing that your Committee has no jurisdiction over the grading practices of University divisions, makes the following two recommendations for the Faculty’s consideration.

I. It is recommended that the Faculty adopt an upper limit on the percentage of a course grade that can come from group work where each member of the group receives the same grade. This should be limited by regulation, not guideline, and the limit should be well below 40%. For example, in the Faculty of Applied Science and Engineering the limit is 25% (<https://engineering.calendar.utoronto.ca/academic-regulations#eleven>).

II. For courses such as the present one, i.e. courses whose number of contact hours and weight are below a suitable threshold for assigning a grade, it is recommended that the Faculty adopt a pass/fail approach with no grade assigned.

### **Conclusion**

The appeal is dismissed.