



FOR INFORMATION

PUBLIC

OPEN SESSION

TO: Academic Board

SPONSOR: Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty
CONTACT INFO: Grievances, (416) 946-7663, christopher.lang@utoronto.ca

PRESENTER: See Sponsor
CONTACT INFO:

DATE: May 16, 2024 for May 23, 2024

AGENDA ITEM: 15b

ITEM IDENTIFICATION:

Academic Appeals Committee, Individual Reports, Spring 2024.

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. Academic Board [for information] (May 23, 2024)

PREVIOUS ACTION TAKEN:

The last semi-annual report came to the Academic Board on November 16, 2023.

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 2024

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #428 of the Academic Appeals Committee
November 10, 2023

To the Academic Board
University of Toronto

Senior Chair:

Professor Hamish Stewart

Hearing Secretary:

Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty Grievances

For the Student Appellant:

J.J. (the “Student”)

For the Toronto School of Theology:

Catherine Fan, Paliare Roland Rosenberg Rothstein LLP

Overview

The Student was enrolled in the Master of Theological Studies program at Knox College, a member of the Toronto School of Theology (TST). He appealed a course grade, asking to receive either a notation of LWD (late withdrawal without penalty) or AEG (aegrotat standing) for the course. In Report #427, dated August 8, 2023, a panel of your Committee allowed the Student’s appeal and gave him an election as to the remedy, namely a choice between (i) resubmitting an essay and receiving a grade for the course and (ii) receiving a notation of INC in the course. The Student has yet to make his election. TST applies for directions concerning the implementation of the remedy. The Senior Chair of your Committee holds that the panel intended the Student to make his election within a reasonable time and intended INC to be the default remedy. The Student has stated that he needs certain information from TST before making his election and has agreed to make his election promptly on receiving it. The Senior Chair finds that the Student has received the information he requested. The Student is therefore now in a position to make his election. If the Student does not elect within a reasonable time, the Senior Chair authorizes TST to assign the Student a notation of INC.

Background

As noted, the Student was enrolled in the Master of Theological Studies program at Knox College, a member of TST. In the Fall 2021 term, the Student was enrolled in WYB3743HF, “Paul’s Letter to the Galatians” (*Galatians*). The course instructor was Professor Stephen Chester. The Student was also enrolled in WYB3641HF, “Matthew’s Story of Jesus” (*Matthew*).

Both courses were taught at Wycliffe College, a member of TST. The Student received a grade of FZ (failure) in each of these two courses. He appealed those grades. His appeal in *Matthew* was successful within TST and he was granted the choice between an extension to complete the course work or a notation of INC. Ultimately, the Student received a grade of INC in *Matthew*.

The Student's appeal of the grade in *Galatians* was unsuccessful within TST. The appeal process began with a re-reading of the paper by Professor Chester, who confirmed the failure.¹ The next step was to have the paper read by a second reader. TST's appeal policy stated that the second reader should "read the assignment free of evaluative comments of others". On February 24, 2022, Professor Peter Robinson, who served as Academic Dean of Wycliffe College, sent an email to Professor Catherine Hamilton, asking her to be the second reader. This email is critical to the appeal and so will be referred to as "the critical email."² In the body of the critical email, Professor Robinson stated that "[Professor Chester] gave the student a failing grade. I have attached the paper as well as the guidelines provided for the paper. I have also attached the course syllabus which also details elements of the final assignment. ..."³ He also commented on the Student's approach to scriptural interpretation and stated that while he was "entitled to [those] views, the basic question is whether or not [he] followed the guidelines for the assignment." On the same day, Professor Hamilton answered Professor Robinson, stating that she "agreed entirely" with Professor Chester's mark, that the paper was "incoherent" and "does not do – at all – what the assignment asked." On February 28, 2022, Professor Robinson emailed the Student,⁴ informing him that the second reader "has confirmed a failing grade for the assignment", summarizing the second reader's comments, and stating that "The reviewer was given the essay with no grade, none of Professor Chester's comments, and your name removed from the paper. In addition they were given the course syllabus and the guidelines for the paper." He did not tell the Student that in the body of the critical email he had informed Professor Hamilton of the grade originally assigned by Professor Chester and had commented on the Student's methodology.⁵

The Student appealed to the TST's Academic Appeal Committee (TST-AAC). Wycliffe College did not include the critical email in its materials before the TST-AAC. Among other arguments, the Student alleged that Wycliffe had not followed TST's appeal procedures. He expressed

¹ Professor Chester's comments on his re-reading of the paper appear at p. 98 of TST's appeal materials.

² The critical email is reproduced as an Appendix to this Report.

³ The Student's paper appears twice in TST's appeal materials: with Professor Chester's comments at pp. 10-15, and with Professor Hamilton's comments at pp. 186-197. The Senior Chair received a copy of the paper, without comments, from TST via ADFG on October 6, 2023. The assignment guidelines and the syllabus for *Galatians* appear respectively at pp. 81-82 and pp. 70-78 of TST's appeal materials.

⁴ At p. 004 of his appeal materials, the Student states that Professor Robinson "deliberately deleted the Second Reader's comment when forwarding me the Second Reader's response, omitting a significant portion of the text." This statement is not entirely correct. Professor Robinson did not forward Professor Hamilton's email; rather, he paraphrased her assessment of the Student's paper. He did omit one aspect of Professor Hamilton's email, namely, that she had expressed doubts about the Student's "ability to do a degree." This omission is understandable, as expressing these doubts went beyond Professor Hamilton's role as second reader.

⁵ This email is at p. 025 of the Student's appeal materials. At p. 004 of his appeal materials, the Student states that in the email of February 28, "Dr. Robinson stated that the Second Reader assigned me a zero mark." This statement is incorrect.

“doubt whether a second reader existed at all” and argued that “[i]f there was a second reader . . . , then that person must have been allowed to see the instructor’s original comments” (TST appeal materials, pp. 107-108). Professor Robinson made an oral statement to the TST-AAC concerning the procedure followed. The TST-AAC rejected the Student’s allegations, finding that there was indeed a second reader and that the appeal policy had been followed. With respect to Professor Robinson’s oral statement, it said (TST appeal materials, p. 108):

During oral questioning at the hearing, Wycliffe’s representative, Prof. Robinson, stated that he himself was the one who had put the Student Appellant’s final research paper into the hands of the anonymous second reader and that he had ensured that the second reader received nothing except the paper (without marks or comments), the assignment instructions, and the syllabus. . . . Your Committee found no reason to doubt Prof. Robinson’s straightforward account of what had happened, and it was unpersuaded by the Student Appellant’s arguments that Wycliffe was incorrect, unfair, or dishonest in its implementation of the BD Handbook’s procedures for having a second reader assess coursework.

The Student appealed to your Committee. The critical email was included in the TST’s appeal materials (p. 103), with Professor Hamilton’s name redacted. The Chair of the panel that heard his appeal was Professor Lisa Austin of the Faculty of Law. In Report #427, the panel allowed the appeal. Your Committee found that Wycliffe College had not followed TST’s appeal procedure. Your Committee interpreted the relevant policy as follows (p. 4):

On a plain reading of section 11.8.1 of the BD Handbook [*i.e.*, the TST Basic Conjoint Degree Policy Handbook], the second reader review process was not properly followed in this case. The BD Handbook clearly states that the second reader should “read the assignment free of evaluative comments of others”. Here, the second reader was told the grade and provided information that suggested that the Student had not followed the assignment guidelines due to his views of scriptural interpretation. The second reader was even offered further evaluative comments of the course instructor (although these were not in fact passed along).

Your Committee found that this policy had been violated because the critical email included “evaluative comments,” namely, “the grade and . . . information that suggested that the Student had not followed the assignment guidelines . . .” (p. 4). Your Committee did not specifically comment on the oral statement that Professor Robinson had made to the TST-AAC; your Committee did, however, explicitly reject TST’s arguments that “‘evaluative comments’ do not include providing the instructor’s grade” and that it was necessary to provide Professor Hamilton with commentary on the assignment guidelines (p. 4).

Your Committee also found that despite some differences between the Student’s situation in *Matthew* and in *Galatians*, there was no principled basis for distinguishing his appeals in the two courses, and accordingly the Student should be put in the same position in relation to *Galatians* as he had been in relation to *Matthew*. As noted, in the event that his appeal was allowed, the Student had requested that either LWD or AEG be noted on his transcript. Your Committee instead granted the following remedy: that the Student be permitted to choose between receiving a notation of INC or resubmitting the final paper for the course. This choice of remedies put him

in the same position in *Galatians* that he had been in *Matthew*. Your Committee also noted that there is no functional difference between the notations of INC and LWD, in that both indicate that a student was enrolled in but neither passed nor failed the course in question. (In contrast, AEG is a notation indicating that a student, though not receiving a grade, has received credit for the course in question.) Your Committee stated the remedy granted as follows:

... your Committee ... grant a remedy of either incomplete (“INC”) or, should the Student elect, an extension for re-submission of his final research paper. (p. 1)

Your Committee stated the remedy in slightly different terms on p. 8 of its report.

On August 27, 2023, the Student asked TST to change the FZ notation on his transcript, pending his election between the remedies. On August 30, Professor Darren Dias, who serves as Executive Director of TST, wrote to the Student, indicating that TST would substitute a notation of SDF (“standing deferred”). SDF is not a permanent notation. Professor Dias also asked the Student to make his election “as soon as possible.” On September 3, the Student wrote to Professor Dias, stating that before he could make his election, he needed to receive the critical email, which he described as “the specific email that [Professor Robinson] sent to the Second Reader [Professor Catherine Hamilton], describing the attachments involved.” He stated that this email was “an indispensable part of my decision-making process between opting for resubmission or an ‘Incomplete’ grade.”

On September 20, counsel for TST wrote to the Office of Appeals, Discipline and Faculty Grievances (ADFG), noting that the Student had not yet made his election and requesting directions concerning the implementation of the remedy ordered in Report #427. The critical email, including Professor Hamilton’s name, was included in TST’s motion materials (p. 7). TST asked your Senior Chair to “confirm that [the Student] be deemed to have elected to receive an INC in [*Galatians*] if he does not make an election within a reasonable time frame.”

The Student replied promptly to TST’s request for directions. The Student characterized the TST’s request for directions as a request for reconsideration of Report #427 and in particular as a request that your Committee impose a “deadline” on his election. He noted that your Committee may reconsider its own decisions only in extremely limited circumstances (Report #418). He restated the need for “a specific document from TST to inform my decision between resubmitting the assignment or opting for an incomplete grade”, that is, the critical email, including all attachments.

Having read the parties’ materials, the Senior Chair did not fully understand what remained at issue between the parties. He therefore asked the parties to meet with him (on Zoom) so that they could briefly state their positions. On September 27, in advance of the meeting, the Student wrote to ADFG asking them to “inform the Senior Chair that I am specifically, and only, seeking the email from Peter Robinson to the Second Reader, which contains the attachments. Once I receive that email, I will promptly make a decision.” The meeting occurred on October 3. Counsel for TST and the Student attended. The main issue discussed at the meeting was whether or not the Student had in fact received the critical email. At the end of the meeting, the Senior Chair advised the parties that he would rule on TST’s request for directions.

On October 6, counsel for TST wrote to the Student, providing another copy of the critical email, and stating:

Please advise Mr. Dias of your election by October 13th at the latest. If the TST does not hear from you by then, I have instructions to write to the Academic Appeal Committee to advise that the TST has provided the original email that you had insisted on being produced and that you have continued to refuse to make your election.

The Student interpreted this message as an attempt to impose on him a deadline of October 13 to make his election. Counsel for TST, in correspondence with ADFG, characterized it as a request “that the Student make his election upon being provided with a copy of the email he requested in its original format”. Regardless of the proper characterization of this message, the Senior Chair observes that the position of both parties had been made clear from the meeting on October 3: TST’s position was that it had already provided the critical email and the Student’s position was that he had not received it.

On October 10, the Student wrote to ADFG stating: “I respectfully suggest that we pause on this issue until the conclusion of my appeal with Knox College”, referring to another procedure that is not currently before your Committee. The Senior Chair did not ask TST for its position on this request, as he had all the information he needed to determine TST’s motion and saw no reason to prolong the proceedings.

Procedural and Jurisdictional Issues

In the normal course, the appropriate person to deal with TST’s request for directions would be the chair of the panel that heard the Student’s appeal. However, Professor Austin is on leave for the academic year 2023/24. The appropriate person to respond is therefore the Senior Chair of your Committee.

TST characterizes the proceedings before the Senior Chair as a motion for directions concerning the implementation of the remedy granted in Report #427. The Student characterizes the proceedings as a request for reconsideration of Report #427. He notes that your Committee has previously held that, except in narrow circumstances which are not relevant here, it has no jurisdiction to reconsider its own decisions (Report #418).

Your Senior Chair agrees with the TST’s characterization of the proceedings. It is a motion for directions concerning the implementation of the remedy granted in Report #427. TST has not asked the Chair to reconsider the outcome of the appeal or the remedy or to vary the reasoning in Report #427.

Neither party explicitly addressed the question whether your Committee, or a Chair of your Committee, has jurisdiction to make directions concerning the implementation of a remedy. This question was previously raised in Report #421, where a student argued that TST had not properly

implemented the remedy that your Committee had granted in Report #413 and requested that your Committee require it to do so. But in that case, your Senior Chair found that it was not necessary to determine the jurisdictional question because TST had already implemented the remedy ordered.

Your Senior Chair holds that a Chair of your committee has jurisdiction to make directions concerning the implementation of a remedy. This jurisdiction arises from your committee's power to make final decisions concerning "appeals made by students against decisions of faculty, college or school councils (or committees thereof) in the application of academic regulations" (Terms of Reference, s. 2.1). If there is disagreement about the implementation of a remedy, the decision is not final. Moreover, if a Chair of your Committee did not have this jurisdiction, in case of a dispute about a division's implementation of a remedy, a student would have to begin the appeal process again at the department or divisional level and, if unsuccessful within their division, would be required to launch a fresh appeal to AAC on the narrow issue of whether a remedy already granted had been properly implemented. Such a procedure would be cumbersome, time-consuming, and disadvantageous to students.

Normally, the Chair hearing such a motion for directions would be the Chair of the panel that granted the remedy, but where that Chair is not available, the Senior Chair or another Chair designated by the Senior Chair may hear it. A Chair hearing such a motion has no jurisdiction to depart from the factual findings or interpretations of university policies made by the panel that decided the appeal or to modify or vary the remedy granted by the panel, as such a departure would amount to reconsideration of the decision rather than implementation of the remedy. Any directions concerning the implementation of a remedy must be consistent with the findings and the reasoning in the Report that granted the remedy.

Decision

TST asks your Senior Chair to find that it is implicit in Report #427 that the choice provided to the Student was to be made within a reasonable time. The Student points out that Report #427 did not impose a "deadline" on his choice and argues that your Senior Chair has no jurisdiction to impose such a deadline as that would in effect be a reconsideration of Report #427 (Student's Reply, pp. 5-7). The Student also submits that it would be unreasonable to require him to make his election in the absence of the information necessary to make an informed choice between the two remedies and states that he has not received that information. TST notes that Report #427 did not make the Student's election contingent on the production of any additional information and submits that it has in any event provided him with the information he has requested. As noted, in an email of September 27 and again at the meeting on October 3, the Student clarified that the only information he still requires to make his election is the critical email and stated that on receipt of the critical email he would be able to make his election "promptly."

Your Senior Chair agrees with TST that it was implicit in Report #427 that the Student's choice was to be made within a reasonable time. Your Committee cannot have intended that the Student delay his choice indefinitely. The practical consequence of indefinite delay would be that the temporary notation of SDF would remain on the Student's transcript indefinitely. Your

Committee did not grant that remedy and could not have contemplated it. Your Senior Chair also agrees with the Student that your Committee did not, and did not intend to, impose a specific deadline on his election. Since your Committee neither imposed a specific deadline for the election nor contemplated the election being delayed indefinitely, your Committee must have intended the Student to make his election within a reasonable time. The Senior Chair infers that your Committee intended to make a notation of INC the default. As your Committee noted in Report #427, a notation of INC is functionally very similar to the notation of LWD originally sought by the Student.

There is considerable merit in TST's submission that Report #427 does not entitle the Student to additional information before making his election; yet there is also some merit in the Student's argument that he should have a proper basis for making his election. But if the Student has indeed received the critical email, it is not necessary to decide these points because the Student has stated that he will make his election promptly on receiving the critical email. It is therefore helpful to determine whether the Student has received the critical email, unaltered and with all attachments. To repeat, the critical email is a message dated February 24, 2022, from Professor Robinson, the course instructor, to Professor Hamilton, the second reader. This email, as most recently received by the Student and ADFG on October 6, 2023, had three attachments: (i) a copy of Student's essay for *Galatians*; (ii) the guidelines for the paper that Professor Robinson had provided to student in *Galatians*; and (iii) the syllabus for *Galatians*. In the body of the email, Professor Robinson described these attachments as follows: "I have attached the paper as well as the guidelines provided for the paper. I have also attached the course syllabus which also details elements of the final assignment." TST has forwarded this email, with its attachments, to the Student on several different occasions, most recently on October 6.

In his appeal materials, the Student suggested that with the critical email Professor Robinson might have sent Professor Hamilton the version of his paper with comments by Professor Chester rather than an unannotated version (Student's appeal materials, pp. 003-004). If so, that would also be a violation of TST's policy. But, in Report #427, your Committee did not explicitly make this finding. In any event, if Professor Robinson had sent the version with comments (and your Senior Chair does not find that he did), the Student also has that version of the paper (TST appeal materials, pp. 86-97) and has already received a remedy for TST's violation of its own appeal policy. Finally, your Senior Chair notes that in Report #427, your Committee explicitly found that Professor Robinson did not provide Professor Hamilton with the "further evaluative comments of the course instructor," *i.e.*, Professor Chester's comments on re-reading the paper (TST appeal materials, p. 98). This finding is binding on the Senior Chair in this motion ruling.

At the meeting on October 3, the Student alleged that there might have been another attachment to the critical email. This allegation does not appear in the Student's submissions to your Committee concerning the critical email (pp. 003-004), but is implicit in an email he sent to Professor Dias on September 3 (Student's reply to TST's motion, p. 14). At the meeting on October 3, the Student stated that if TST would provide him with "the actual email," he would be able to determine whether there was such an additional attachment. If there had been such an additional attachment, the body of the email would likely have been altered as well, as it refers only to three attachments. The Student stated that there was "a good possibility" that the email

had been altered. He did not, however, explain what procedure, apart from forwarding, could be used to provide him with the email.

It is possible to edit an email before forwarding it. But the allegation that Professor Robinson altered the critical email before providing it to counsel for TST, thence to your Committee, and the Student, and now to the Senior Chair, is a very serious one, and the Senior Chair would expect it to be supported by evidence. There is none. The suggestion that the critical email has been altered is entirely speculative. The Student alluded to emails from a former executive director of TST which, he said, “raised alarming concerns about the accuracy and reliability of information provided by TST” (Student’s reply to TST’s motion, p. 7). However, he did not place these emails before the Senior Chair, and even if he had, they would not be a proper basis for finding that the critical email had been altered. Any inference about Professor Robinson’s conduct based on the Student’s concerns about a different person’s conduct would be entirely speculative. The Student suggested at pp. 004-005 of his appeal materials that Professor Robinson was motivated to conceal from your Committee the fact that he had provided evaluative comments to the second reader. If Professor Robinson did intend to conceal this fact (and your Senior Chair does not find that he did), he manifestly failed to do so, as evaluative comments were included in the body of the email as reproduced in TST’s appeal materials. Moreover, there is nothing in Professor Hamilton’s report to suggest that she had access to or relied upon anything other than the three attachments that Professor Robinson (properly) provided and the evaluative comments that Professor Robinson (improperly) included in the body of the email. (The Student has not alleged that Professor Hamilton’s email was altered in any way.) The Senior Chair notes, once again, that the Student has already received a remedy for the inclusion of evaluative comments in the critical email. Your Senior Chair finds as a fact that the Student has received the critical email that Professor Robinson sent to Professor Hamilton, unaltered and with all three of its attachments.

The Student is therefore in a position to elect promptly between the two options provided to him in Report #427. The Senior Chair trusts that he will do so.

Concluding Observation

The Senior Chair was puzzled by Wycliffe’s failure to include the critical email in the materials it filed before the TST-AAC. He notes that if the TST-AAC had had this information, it would have been in a much better position to assess the merits of the Student’s appeal, and the Student’s further appeal to your Committee might have been unnecessary.

Appendix – The Critical Email

Dear Catherine,

I am wondering if you would be willing to help out with reviewing a paper as part of a student's appeal process. A student who took Galatians with Stephen Chester last term has appealed his grade. As part of that appeal we need to have another faculty member review the paper to see whether or not the initial grade was justified. Stephen gave the student a failing grade. I have attached the student's paper as well as the guidelines provided for the paper. I have also attached the course syllabus which also details elements of the final assignment.

As part of this process Stephen himself has reviewed the paper and offered a further response. I can let you see that as well if that would be helpful.

I should note as well that the student has expressed the following "This entire point of the paper and the reason why I took the course was to debunk what was to defend Paul from the misrepresentation of him found in the ecumenical council and scholarly work since the 19th century." It seems as though the student is working with an understanding of the Noahide Laws and how that should inform our interpretation of scripture. While the student is entitled to their views the basic question is whether or not the student followed the guidelines for the assignment.

Would you be able to do this? In this process we cannot give you the student's name nor will the student be given your name. Please let me know.

Peter

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #429 of the Academic Appeals Committee
November 21, 2023

To the Academic Board
University of Toronto

Senior Chair:

Professor Hamish Stewart

For the Student Appellant:

J.Z. (the “Student”)

For the Rotman School of Management:

Lily Harmer, Paliare Roland Rosenberg Rothstein LLP

Witness Ruling

In September 2021, the Student was enrolled in RSM1160 at Rotman School of Management (Rotman). He received a grade of B+ for the course. The grade included three components: class participation, a group presentation, and a reaction paper. The Student sought a review of the grade. Rotman 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 to the Graduate Department Academic Appeals Committee (GDAAC). The GDAAC recommended that his appeal be dismissed. Rotman’s Interim Vice-Dean accepted that recommendation. The Student’s further appeal to the Graduate Academic Appeal Board (GAAB) was dismissed.

The Student now appeals to your Committee, seeking to have a grade of CR substituted for B+, 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. His appeal materials are dated May 15, 2023, and are 429 pages long. Rotman’s materials, dated July 17, 2023, are 319 pages long (24 pages of submissions, a Book of Documents of 5 pages, and a Book of Authorities of 290 pages). The Student’s reply, dated September 5, 2023, is 12 pages long. The Senior Chair has rejected Rotman’s request to file a revised version of its submissions. The hearing panel has been constituted and the hearing is scheduled for the afternoon of November 23, 2023.

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: Professor Richard Powers, who was the course instructor in RSM1160; Professor Scott Liao, who at the relevant time served as Academic Director of the Full-Time MBA Program at Rotman; and Professor Michael Ryall. The Student helpfully appended draft summonses to his request. On November 15,

counsel for Rotman provided written submissions opposing the Student's request. The Senior Chair has advised the parties that the Student's request was denied, with reasons to follow. These are the reasons.

Article 3.1.8 of your Committee's Terms of Reference provides that your Committee follows "[t]he procedures for hearings required by the [*SPPA*] ..." The relevant sections of the *SPPA* provide:

2 This Act ... shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.

10.1 A party to a proceeding may, at an oral or electronic hearing,
 (a) call and examine witnesses and present evidence and submissions; and
 (b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.

11 (1) A witness at an oral or electronic hearing is entitled to be advised by a representative as to his or her rights, but such representative may take no other part in the hearing without leave of the tribunal.

...

12 (1) A tribunal may require any person, including a party, by summons,
 (a) to give evidence on oath or affirmation at an oral or electronic hearing ...

relevant to the subject-matter of the proceeding and admissible at a hearing.

The power conferred by s. 12(1) is discretionary. The objectives stated in s. 2 of the *SPPA* are relevant to the exercise of this discretion. A necessary, though not sufficient, condition for exercising the discretion to summons a person to be a witness before an administrative tribunal is that the person could offer testimony that would be necessary or helpful to the tribunal in resolving the factual issues before it. The Senior Chair finds that this condition is not satisfied because the issues before your Committee in this appeal are not primarily factual, and to the extent that they are factual, the testimony of the proposed witnesses would be unhelpful.

As counsel for Rotman correctly submits, "the standard of review of an academic appeal is reasonableness." While the application of this standard depends on the facts of the case, on reading the parties' materials, the Senior Chair notes that there are very few facts in dispute that are material to a determination of the reasonableness of any of the decisions appealed from. On pp. 5-7 of his appeal materials, the Student outlines the facts underlying his appeal. In its responding materials, Rotman relies almost entirely on the Student's appeal materials in its recounting of the facts and, with some exceptions, does not take issue with any of the material facts recounted by the Student. To the extent that there are facts in dispute, the Senior Chair finds that testimony from the proposed witnesses would add little if anything to the written record.

The Student has characterized the issues to be decided by your Committee as follows (Student's appeal materials, 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?

In resolving these issues, the panel will interpret the relevant University and Rotman policies and will decide whether those policies were reasonably applied in the Student's case. If the parties' approach to these issues raises any questions about the jurisdiction of your Committee, your Senior Chair will determine those questions.

Under Issue (A), the Student makes five submissions.

- (i) Rotman's policy concerning disputes about grades provides that "participation points or presentations are not subject to a re-read ..." (Student's appeal materials, p. 8). The Student submits that the GAAB's decision to uphold this policy was unreasonable (Student's appeal materials, pp. 8-13). Rotman defends its policy. Resolving this issue requires your Committee to interpret University and Rotman policies. It does not require fact-finding. The proposed witnesses cannot provide any testimony that is material to this issue.
- (ii) The Student submits that neither the GAAB nor the GDAAC conducted a substantive review of the participation and presentation components of his grade and that their refusal to do so was unreasonable (Student's appeal materials, p. 14). Rotman does not dispute the fact that the GAAB refused to conduct a substantive review. The question whether the GDAAC provided a substantive review must be, and can be, determined on the face of the record, without additional evidence. If your Committee ultimately agrees with the Student's statement that "not a single decision maker has initiated a substantive review of the [Student's] participation and presentation components", the issue will be whether that refusal was a reasonable application of the relevant policies. Resolving this issue does not require fact-finding. The proposed witnesses cannot provide any testimony that is material to this issue.
- (iii) The Student submits that the participation grade awarded by the course instructor was unreasonable (Student's appeal materials, pp. 15-19). To the extent that this submission requires a substantive review of the course instructor's evaluation of the Student's participation, it is outside the jurisdiction of your Committee. It is well-established that on a grade appeal neither the GAAB nor your Committee will consider the substantive merits of a student's work (see, for example, Report #358 and Report #363-1, Student's appeal materials, pp. 419-428; Report #359-1 and Report #415, Rotman Book of Authorities, Tabs 7 and 8). To the extent that this submission turns on allegations that the process of determining the grade was unfair, see (C)(ii) below. The proposed witnesses cannot provide any testimony that is material to this issue.

- (iv) The Student submits that the presentation grade awarded by the course instructor was unreasonable (Student's appeal materials, pp. 19-21). Again, to the extent that this submission requires a substantive review of the course instructor's evaluation of the Student's participation, it is outside the jurisdiction of your Committee. To the extent that it turns on allegations that the process of determining this component of the grade was unfair, it can be determined on the face of the record. To the extent that it turns on the Student's submission that he was disadvantaged by the fact that his group was smaller than the others (a fact that Rotman does not appear to dispute), the evidence of the proposed witnesses would be immaterial. Similarly, there appear to be no facts in dispute concerning the timing and the process by which the groups were constituted. The Student's claim that the groups were constituted after the "drop date" can, if necessary, be resolved by your Committee on the basis of the written record. The drop/add date for the course is clearly stated in the record (Student's appeal materials, p. 391) and is not contested by Rotman. Whether, as Rotman has argued at previous levels of appeal (Student's appeal materials, p. 324), there was also a later date by which students could withdraw without academic penalty is a question of Rotman policy that, if material to any issue in this appeal, can be determined at the hearing. The proposed witnesses cannot provide any testimony that is material to this issue.
- (v) The Student submits that the grading scheme for the course violated Rotman's policies (Student's appeal materials, pp. 21-22). Resolving this issue requires interpretation of the relevant policies. It does not require additional fact-finding. The proposed witnesses cannot provide any testimony that is material to this issue.

Issue (B) concerns the third component of the Student's grade, the reaction paper. As noted above, on a grade appeal neither the GAAB (from whose decision the Student appeals) nor your Committee will consider the substantive merits of a student's work. Your Committee will therefore not conduct a substantive assessment of the Student's paper or of the second reader's review of the paper. For the same reason, your Committee will not entertain the Student's submission that the GAAB's decision was unreasonable because it did not include such a substantive assessment of the paper (Student's appeal materials, pp. 24-25). Rather, Issue (B) 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, Rotman'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" (Student's appeal materials, p. 28). These facts are not in dispute. Rotman 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. Rotman submits that its process "adhered to the provisions of the Faculty Policy providing for re-read requests" (Rotman submissions, para. 56). Your Committee will be required to interpret Rotman's re-reading policy and to decide whether Rotman applied that policy fairly to the Student's case. If your Committee agrees with Rotman's submission that refusing to disclose the second reader's identity was in accordance with Rotman's policy (and that will be for your Committee to decide), then the identity of the second reader will be irrelevant. If, on the other hand, your Committee agrees with the Student's submission that the refusal to disclose the second reader's identity was an unfair application of Rotman's policy, then

it will be for your Committee to determine an appropriate remedy. The proposed witnesses cannot provide any testimony that is material to this issue.

The Senior Chair would add the following. The Student states that he has sought to discover the identity of the second reader via a freedom of information request pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, that his request was refused, and that he has appealed the refusal to the Information and Privacy Commissioner (Student's appeal materials, pp. 23-24). He also submits that "the evidence suggests that Professor Ryall was the Anonymous Re-grader" (p. 23). He now asks the Senior Chair to summons Professor Ryall as a witness. The Senior Chair infers that the Student wishes to ask Professor Ryall directly, under oath, whether he was the second reader. Even if it were otherwise appropriate to summons Professor Ryall (which it is not), the Senior Chair would not allow the Student to ask him that question. The Student's using your Committee's process as a vehicle for determining the identity of the second reader would be in the nature of a collateral attack on the *FIPPA* process and would therefore be an abuse of your Committee's process.

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 (Student's appeal materials, pp. 26-27). This submission raises questions of law and of interpretation of University and Rotman policies, to which the testimony of the proposed witnesses would be immaterial.
- (ii) The Student submits the course instructor impermissibly delegated his authority over grading the participation component of the grade to the teaching assistant (Student's appeal materials, pp. 16-47 and 27-28).
 Rotman notes that the GAAB rejected the allegation of impermissible delegation and submits that the GAAB's decision was reasonable and that your Committee should defer to it (Rotman submissions, paras. 50-53). Rotman's position throughout this appeal has been, as Professor Liao 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" (Student's appeal materials, p. 324). This position is consistent with an email dated February 7, 2022, in which the 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 adding significantly to the topic and/or discussion" (Student's appeal materials, p. 38).
 The Student, however, does not accept Rotman's position. He asks your Committee to infer that the course instructor "focused entirely on the quantitative metrics recorded by the [teaching assistant]" and did not exercise any independent judgment concerning the stated criteria of "thoughtfulness, understanding, and promotion of further questioning" (Student's appeal materials, p. 16).
 Although this factual issue is for your Committee to decide after the hearing, not for your Senior Chair to decide on a pre-hearing ruling, the Senior Chair observes that if Rotman's position is correct, the Student's assertion of impermissible delegation is likely without merit, whereas if your Committee draws the inference urged by the Student, then the assertion of impermissible delegation may have some merit. Two of

the proposed witnesses (the program director and Professor Ryall) have no knowledge of this issue. Therefore, the question for the Senior Chair on this motion is whether testimony from the course instructor would assist your Committee in determining it. Your Senior Chair finds that it would not.

The Student's appeal materials include the course instructor's email to the Student (Tab A); the Student's account of his meeting with the course instructor (p. 6); records of the participation grades (Tab R); emails between Professor Doidge and the course instructor concerning the appeal to the GDAAC (Tabs S and T); and the Student's submissions as to why the inference should be drawn (pp. 15-17). The inference sought by the Student can be drawn on the basis of this written record, if your Committee chooses to do so; it would then be for your Committee to determine the significance of the impermissible delegation to the outcome of the Student's appeal. Testimony from the course instructor would be of limited, if any, assistance, for the following reasons.

The Senior Chair infers that the Student intends to cross-examine the course instructor with a view to impugning the credibility of his description of how he determined the participation mark. But it is improper to call a witness for the purpose of cross-examining them to impugn their credibility (*R. v. Soobrian* (1994), 21 O.R. (3d) 603). The Senior Chair will not permit the Student to do so. As counsel for Rotman correctly points out, if the course instructor were called as a witness, the Student would have to begin by examining him in chief. The Senior Chair anticipates that the course instructor would testify in accordance with his email to the Student. As counsel for Rotman correctly points out, the Student would be unable to cross-examine the course instructor in the absence of a ruling from the Senior Chair that he was a hostile witness. The possibility that the course instructor might turn out to be a hostile witness and that, following a ruling to that effect, the Student's cross-examination of him would add anything significant to the written record before your Committee is vanishingly small.

On the other hand, the course instructor might well be a witness adverse to the Student's position. Section 23 of the Ontario *Evidence Act*, R.S.O. 1990, c. E.23, concerns the cross-examination of an adverse witness. Rotman has cited authority for the proposition that s. 23 does not apply in proceedings before administrative tribunals governed by the *SPPA*. Whether or not that is a correct statement of law, the Senior Chair notes that s. 23 provides only for a right of cross-examination of an adverse witness on a prior inconsistent statement to impeach credibility, not for cross-examination at large, and would therefore be of very limited assistance to the Student. Finally, it is always impermissible to impeach the credibility of one's own witness by evidence of bad character (*Evidence Act*, s. 23). Page 30 of the Student's appeal material suggests that he might attempt to do so. The Senior Chair would not permit this form of impeachment.

- (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 (Student's appeal submissions, p. 28). These facts are not in dispute. Rotman accepts that the Student was not consulted but submits that Rotman acted in accordance with its policies. As noted above, in considering the Student's submission on this point, your Committee will be required to interpret

- Rotman's re-reading policy and to determine whether Rotman applied that policy fairly to the Student's case. The evidence of the proposed witnesses is immaterial to this exercise.
- (iv) The Student submits that the conduct of (a) the course instructor and (b) the GAAB demonstrated reasonable apprehension of bias. As to (a), Rotman does not challenge the facts underlying the Student's assertions concerning the course instructor's apparent support for the Liberal Party of Canada; rather, Rotman submits that those facts do not give rise to a reasonable apprehension of bias (Rotman submissions, paras. 65-66). Your Committee can determine this issue without testimony from the proposed witnesses. As to (b), the proposed witnesses' testimony would be irrelevant.
 - (v) The Student submits that "the instructor's assessment was procedurally unfair because of the inordinate delay in rendering his decision" (Student's appeal materials, p. 32). Rotman does not challenge the Student's assertion that he received his grade 103 days after the course ended, but submits that the delay did not create procedural unfairness (Rotman submissions, paras 73). On this issue, there are no facts in dispute and therefore no need for the testimony of the proposed witnesses.

For these reasons, the Student's request to summons the three proposed witnesses was refused.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #430 of the Academic Appeals Committee
January 8, 2024

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on November 15, 2023, at which the following members were present:

Academic Appeals Committee Members:

Cheryl Milne, Chair
Professor Ernest Lam, Faculty Governor
Dveeta Lal, Student Governor

Hearing Secretary:

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

For the Student Appellant:

W.Y.L. (the “Student”)
Hyun Tae Kim, Downtown Legal Services, Representative for the Student
Aimee Veiner, Downtown Legal Services, Co-Representative for the Student

For the University of Toronto Mississauga:

Charlotté Calon, Paliare Roland Rosenberg Rothstein LLP

OVERVIEW

This is the consolidation of two appeals brought by the Student respecting related decisions of the University of Toronto Mississauga (UTM) Academic Appeals Subcommittee (AAS). The first appeal is that of the decision of the AAS rendered January 18, 2023, refusing to grant No-Credit (NCR) notations in two chemistry courses, CHM242H5F and CHM231H5F. The second appeal is that of the decision of the AAS rendered October 25, 2023, denying the Student’s appeal for a lift of his three-year academic suspension so that he can return early from the academic suspension. At the request of the Student and with the consent of the Respondent, the two appeals were heard together. As the factual basis for both appeals are related, your Committee granted this request in the interests of expediency and fairness.

FACTS

The Student is an undergraduate student registered with the Department of Chemical and Physical Sciences at UTM. He began his studies in the Fall of 2018 in the Chemistry program and experienced academic challenges from the outset. The Student was an Academic Culture & English (ACE) student, which is a program designed for new students who require English language development. In May 2019, the Student was placed on academic probation as a result of earning a cumulative grade point average (CGPA) of less than 1.5. In May 2020, after completing his second Fall-Winter session, the Student continued on academic probation as a result of his CGPA remaining below 1.5 but avoided academic suspension because he earned a sessional GPA (SGPA) above 1.7 for the Fall-Winter session.

In the summer of 2020, the Student took four courses in an attempt to make up for courses he had failed. The Student was unable to keep up with the fast pace of the summer courses and as a result was only able to pass three of the four courses and obtained a CGPA below 1.5. He was then placed on academic suspension for the 2020-2021 academic year. Despite being encouraged to enroll in the Promoting Academic Skills for Success (PASS) program during that year, the Student did not take advantage of this program and returned to school in the Fall of 2021 with a course load of six courses. He failed two of those courses, CHM231 and CHM242, for which he seeks an NCR notation. As a result of the grades in those courses, the Student's CGPA once again fell below 1.5 and he was placed on a three-year academic suspension as of May 2022. His academic suspension is scheduled to end on May 1, 2025.

The UTM Academic Calendar (the "Calendar") sets out the course enrollment and grading policies that apply to the Chemistry program. The four tiers of academic standing including grade point averages are set out in the Calendar as follows:

Students who have attempted at least 0.5 credits at the university will be assessed for academic standing as follows:

1. Students who achieve a cumulative GPA of at least 1.50 are considered to be in good standing.
2. Students will be on academic probation if they:
 - a. have a cumulative GPA of less than 1.50, or
 - b. return from suspension, or
 - c. have been admitted on academic probation.
3. Students who, at the end of any session (Fall/Winter or Summer) during which they are on probation:
 - a. have a cumulative GPA of 1.50 or more will be in good standing;
 - b. have a cumulative GPA of less than 1.50, but a sessional (Summer) or annual (Fall/Winter) GPA of 1.70, or more, will continue on probation;
 - c. have a cumulative GPA of less than 1.50 and a sessional (Summer) or annual (Fall/Winter) GPA of less than 1.70, will be suspended for one calendar year unless they have been suspended previously, in which case they will be suspended for three calendar years.

4. Students who return from a three-year suspension and are again liable for suspension will be refused further registration to the University of Toronto.¹

The Calendar also sets out the policies respecting the availability and function of CR/NCR notations. A student is required to request that a course be assessed as CR/NCR using their ACORN account during the term in which the course is offered, and the request must be made or cancelled no later than the last day of classes for a course with a final exam. Both courses in question had final exams. Courses designated as CR/NCR will not be included in the calculation of a student's GPA to assess the student's academic standing.

There is no dispute that if the Student had requested CR/NCR notation for the two chemistry courses in question within the time limit, his failure in those courses would not have impacted his CGPA and he would not have been placed on academic suspension in May 2022. The Student claims that he made the CR/NCR request through ACORN in October 2021, after he completed his mid-term evaluations and realized that he might fail those courses. He claims that he first learned of the lack of designation as CR/NCR when he received a failing grade on ACORN for CHM231 instead of NCR. He sent two online inquiries through AskRegistrar in December, but rather than indicating that there was a mistake in the notation, he asked about changing the courses to CR/NCR without academic penalty after seeing the grades in January 2022. He was advised that he could not do so as a UTM student.

The Student did not follow up with this concern until later in the Winter 2022 term. He says that he noticed another error through ACORN when he was unable to drop a course in March 2022. When he inquired about this request, he contacted AskRegistrar to resolve the issue, but AskRegistrar replied that their records did not indicate that he had requested to drop the course. Instead, he used the Late Withdrawal after the Drop Date through a separate portal to successfully drop the course. He did not raise the issue of the failure of ACORN to register his request for the CR/NCR notation for the two Fall chemistry courses until the end of the Winter 2022 term in an inquiry on April 29, 2022, in which he says there was a mistake in his courses. In a request made on May 1, 2022 he asks for help to "have a check and add the CR/NCR back" and on May 3, 2022, he repeats this request, noting his low GPA.

The Student's explanation for the courses not being designated CR/NCR in October 2021 was that his University email account was hacked that same month. The username and password for his email and ACORN are identical, and therefore, he asserted that his ACORN account must have also been hacked. He provided copies of screenshots of emails sent from his email address to a large number of recipients with "aku butuh bantuanmu" in the body of the email as proof of this hacking. He claims that over 100 emails were sent from his email account without his knowledge.

In response to the hacking claim, the Respondent provided detailed records from ACORN which are date and time stamped. These records failed to show any activity in October 2021 with respect to the CR/NCR notation for the courses in question either by the student or another person hacking into his account. There were two entries that month, one for the notation of an

¹ Submissions of the University of Toronto Mississauga, Tab 1, pages 61-62

absence and the other in which the Student advised that he was having a problem with his email account. The response by the Office of the Registrar was to warn the Student about phishing messages and to recommend that he change his password. The records show the Student's inquiries about retroactive notation of CR/NCR for the chemistry courses on December 18 and 20, 2021, and January 10, 2022, and then further inquiries respecting the CR/NCR notation between April 29 and May 6, 2022. The entries show the IP addresses of persons accessing the account and appear to be consistent with the Student using their own computer. It is the Respondent's position that the Student only made the CR/NCR request upon learning that the grades in those two chemistry courses would bring his CGPA below 1.5.

If the CR/NCR notation is not granted, the Student is asking that he be permitted to return early from his three-year academic suspension on the basis of compelling evidence of a change in his circumstances. In support of this claim he cites his completion of the PASS program and a more reasonable approach to his studies including a reduced course load, better management of his stress and better organization including time management. He also states that he has been avidly reading textbooks checked out from his local library to develop his academic interests and, during his suspension, travelled to several countries and attended universities to learn about study methods. He did not provide a list of the books other than their general subject matter, nor proof of the borrowing. Furthermore, he did not provide a list of courses taken at other universities, nor proof of attendance of these courses. In addition, he cites his improved SGPA of 1.7 if he had taken a smaller course load in the Fall 2021 academic session, and which was consistent with his sessional GPA for the Winter 2022 term. The Respondent noted that during that term, he failed one course.

DECISION

In the Student's appeal of the AAS decision of January 18, 2023, he asks your committee to overturn the AAS decision and permit a notation of CR/NCR for the two Fall 2021 courses, CHM242H5F and CHM231H5F, and alternatively to permit his early return from academic suspension on the basis of a change in his circumstances. The Respondent argued, in respect of that appeal, that the alternative request was not properly before your committee as it had not been raised before the Committee on Standing ("COS") or the AAS. The Student subsequently petitioned the COS, and appealed its decision to the AAS, for an early return from his three-year academic suspension. As a result of the consolidation of both appeals, this issue is now properly before your committee. Therefore, the two issues decided by the AAS that are now before your Committee are as follows:

- a. Did the Student request the CR/NCR notation for CHM242H5F and CHM231H5F within the time frames dictated by UTM policy?
 - b. Has the Student presented compelling evidence of a change in circumstances to support an early return from his three-year academic suspension?
- a. Did the Student request the CR/NCR notation for CHM242H5F and CHM231H5F within the time frames dictated by UTM policy?**

The Student claims that he requested the CR/NCR notation in October 2021 through ACORN, but that as a result of the hacking of his email account, this request was either blocked or reversed without his knowledge. The evidence he submitted in support of this explanation for the failure of the ACORN system to register this request within the time limits set by UTM policy included examples of emails sent out without his consent or knowledge, his inquiries about the lack of a CR/NCR notation once he received his grades for the final exams in the courses and another alleged error in a course-related request when he sought to drop a course in March 2022. At every stage of the Student's request to change the CR/NCR notation, ACORN records showing the activity on the Student's account were considered to attempt to verify the Student's claim. The email from the Petitions Coordinator dated July 22, 2022, denying the Student's petition, states:

The Office of the Registrar takes these matters concerning account security very seriously, and our office carefully reviewed your ACORN activity log for the period of the entire 2021 Fall Session and found no indication the Credit/No Credit notations were added to those courses at any time and removed.²

The COS and AAS reviewed these records as did your committee. The Student provided no additional evidence to challenge the accuracy of the ACORN records, but argued that hackers could change IP addresses and that he could not otherwise explain why he was unable to register his request for the changed notation as well as his attempt to drop the BIO375 Winter course.

The Respondent argues, and your Committee agrees, that the language of the Student's inquiries upon learning about his grades in the two courses support the conclusion that he had not made the request in time. On December 18, 2021, he inquired:

Hello, I see a news [sic] said we can change the courses to CR/NCR without any academic penalty after we see the grades in January. Is that real? Also, what is the dead line of the CR/NCR?³

Again, on December 20, 2021, he inquired:

I see a news [sic] said we can change the courses to CR/NCR without any academic penalty after we see the grades in January. But I can't add the CR/NCR. Some of my friend said on st. G. We are in the same school right?⁴

In reply to both inquiries, the Office of the Registrar stated that the policy for CR/NCR for UTM had not changed. On January 10, 2022, the Student reached out again and asked:

Hello, I want to ask a question. My classmate who on the same course said he can add the CR or NCR to the course but I can't Find my [sic]. I want to know happen?⁵

The Office of the Registrar responded that the Student had not indicated which courses he was referencing and provided information about the deadlines set out in the Calendar. The Student

² Student's Notice and Statement of Appeal, Tab 7, page 30

³ Book of Documents of the University of Toronto Mississauga, Tab 5, page 43

⁴ Submissions of the University of Toronto Mississauga, Tab 8, page 730

⁵ Submissions of the University of Toronto Mississauga, Tab 8, page 732

acknowledged that he did not make a further inquiry about the CR/NCR notation until between April 29, 2022 and May, 6, 2022 after he received his final grades. He was placed on a three-year suspension on May 6, 2022, due to his CGPA which included the failing grades for CHM242H5F and CMH231H5F.

The question before your Committee is whether the AAS decision not to grant the CR/NCR notation, as confirmed by the COS, was unreasonable considering the evidence presented as to whether the Student made the request within the timelines dictated by the UTM policy. The Student argues that the designation should be made because he requested it in time, but it was not recorded or was reversed due to someone hacking his account. He does not argue any other reason for granting this change of the CR/NCR notation or any reason for not following the policy that set out the timelines required to make the request. Given the evidence presented and reviewed, your Committee finds that the AAS decision to uphold the decision of the COS and deny the petition for the CR/NCR notation was reasonable on the grounds that there was insufficient evidence to support the Student's contention that he requested the designation within the time limits of the policy.

b. Has the Student presented compelling evidence of a change in circumstances to support an early return from his three-year academic suspension?

Early return from an academic suspension is an extraordinary remedy that will not be appropriate unless the Student produces compelling evidence of a change in circumstances relevant to the purposes of the suspension in question, which require a reassessment of the likelihood of a recurrence of the poor performance that resulted in the suspension in the first place or unless the underlying decision to impose the suspension was unreasonable. As the decision not to grant the CR/NCR notation for the two Fall session chemistry courses, which led to the imposition of the three-year academic suspension according to the UTM policy on academic standing, was reasonable, the issue here is whether the Student has produced compelling evidence of a change in circumstances.

In Report #330 of the Academic Appeals Committee, your Committee considered the reasons behind the imposition of a suspension for poor academic performance, noting as follows:

The University sets minimum academic standards that apply to all students. Where a student fails to meet these minimum standards, he or she can be suspended or denied further registration at the University. Implicit in the imposition of a suspension is the expectation that the student will use the time to address the circumstances that may have led to his or her poor performance prior to re-enrolling at the University. Consistent with this underlying purpose, early return from suspension is an extraordinary remedy that is normally only granted in cases where there has been some substantive and well-documented change in the student's circumstances which indicates that his or her previous record of poor academic performance is not likely to recur.⁶

⁶ Report 330, March 30, 2009, page 4

The evidence shows that the Student has struggled academically throughout his enrollment in the UTM Chemistry program. He has been on either academic probation or suspension since the end of his first Fall/Winter session. Despite numerous recommendations from the Registrar's Office throughout his previous probation and suspension to avail himself of the University's academic resources, including academic and career advising and the services available at the Robert Gillespie Academic Skills Centre, and to reduce his course load, he failed to do so until he enrolled in the PASS program in 2023. As noted by the Student, he was in the Academic Culture & English (ACE) program designed for new students who require English language development, yet he provided no evidence of his efforts in this regard.

The evidence presented by the Student of a substantive change in his circumstances consisted of his completion of the PASS program, his review of relevant textbooks from his local library which he does not specify, attendance at other universities in other countries, also not specified, to learn about study methods, and his promise to take a more manageable number of courses when he returns. Rather than meeting the burden to show well-documented evidence of change in his circumstances to indicate that his poor academic performance to date will not likely recur, the Student has provided vague assurances with little proof beyond the completion of the PASS course. The Respondent argues, and your Committee agrees, that this program should not be the only strategy that a student utilizes to meet this burden. In its decision on October 25, 2023, the AAS rejected the Student's appeal against the decision of the COS to refuse to grant his petition to lift the three-suspension on the basis that he did not present a compelling case.

Your Committee agrees with the AAS that this evidence is not sufficiently compelling to justify an early return from the Student's academic suspension, and thus the AAS decision is reasonable.

Your Committee encourages the Student to take advantage of the support services available at UTM to develop a more feasible curricular plan to address his academic needs. The period of suspension is not intended as a punishment for the Student's academic performance, but rather a time to develop the skills necessary for academic success. Your Committee notes that students who face a further academic suspension after return from a three-year suspension can be refused registration at the University of Toronto.

CONCLUSION

- a. The appeal of the decision of the AAS dated January 18, 2023, is dismissed.
- b. The appeal of the decision of the AAS dated October 25, 2023, is dismissed.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #431 of the Academic Appeals Committee
February 5, 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:

Senior Chair:

Professor Hamish Stewart

Hearing Secretary:

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

For the Student Appellant:

J.Z. (the “Student”)

For the Rotman School of Management:

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

Background to this ruling

The Student appealed from the grade of B+ that he received in RSM1160 at Rotman School of Management (Rotman) in the Fall 2021 term. His appeals within Rotman and the School of Graduate Studies (SGS) were dismissed. He then appealed to your Committee. The appeal was heard on the afternoon of Thursday, November 23, 2023. The Student, who holds a J.D. degree from the Faculty of Law, was self-represented. Rotman was represented by counsel.

During Rotman’s oral submissions, reference was made to the SGS policy on “Re-reading & Retention of Examinations” (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 Rotman 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 submissions, 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 submission (concerning procedural fairness) was without merit. On January 10, 2024, he offered Rotman an opportunity to reply to the Student's second substantive submission (concerning relevancy). On January 11, 2024, the Student wrote to the Chair, objecting to Rotman's having been given the opportunity to make submissions and asking him to take "one of the following courses of action":

1. Deny the Faculty an opportunity to provide further submissions and render a timely decision on the basis of the information already in the appeal record; or
2. Issue an interim report with (i) written reasons for the AAC's decisions to (a) permit the Faculty's introduction of the Ambush Evidence during the hearing and (b) accept further submissions from the Faculty ...; and (ii) a confirmation that the Appellant will have an opportunity to respond to the Faculty's further submissions within 30 calendar days of the date on which the Faculty serves its further submissions on the Appellant.

On January 12, 2024, Rotman provided its response to the Student's submissions of December 19, 2023.

For the reasons outlined below, the Chair responds to the courses of action requested by the Student as follows. As for 1, the Chair rejects the Student's request to deny Rotman an opportunity to respond to the Student's submissions of December 19, 2023. As for 2(i), the Chair provides this decision, though the Chair notes that he did not decide to accept the SGS Re-Reading Policy at the hearing; rather, he invited submissions as to its relevance. As for 2(ii), in light of the ruling below, no further submissions from either party concerning the SGS Re-Reading Policy are needed.

Decision

Procedural Fairness

The Student's first submission is that your Chair should not consider admitting the SGS Re-Reading Policy at all because it would be procedurally unfair to do so. As he puts it, "the window of opportunity for the Faculty to introduce new evidence has long since expired." He notes that there are several points in the process where Rotman could have added the SGS Re-Reading Policy to its material but failed to do so. He describes Rotman's conduct at the hearing, and his response to it, as follows:

At the eleventh hour, out of sheer desperation in the face of an irrefutable appeal, the Faculty is grasping at straws to introduce nothing but the slightest sliver of evidence that, in reality, fails to support the Faculty's arguments and is irrelevant to the appeal. Now, the Appellant is being forced to provide additional submissions to prevent the Academic Appeals Committee ("AAC") from inappropriately accepting the Faculty's introduction of the School of Graduate Studies "Re-reading & Retention of Examinations" policy ("Ambush Evidence").

The Chair found the Student's submission concerning procedural fairness to be without merit.

This submission has two branches. First, the Student says that the Chair should not even consider receiving the SGS Re-Reading Policy because it is too late for Rotman to introduce new evidence. As he put it in his letter of January 11, 2024, "Under the AAC's procedures, the Faculty has exactly one opportunity to provide written submissions." The Student is correct to suggest that the parties should include in their materials everything they intend to rely on at the hearing. But it is not uncommon for the parties before your Committee to seek to introduce material that was not included in their original written submissions; whether to permit the panel to consider such material during their deliberations is a discretionary decision for the Chair of the panel to make, based on factors including the importance of the evidence, the reasons why it was not originally included, and the positions of the parties (see, for example, Report #332; Report #335, Report #400). There is no absolute bar to the introduction of new material following the filing of written submissions.

Second, the Student argues that your Committee should not consider the SGS Re-Reading Policy because it is "Ambush Evidence." This argument is entirely without merit. As counsel for Rotman rightly submits, the question whether the panel should consider the SGS Re-Reading Policy was raised by the Chair, not by Rotman; thus, there was no "ambush." Moreover, the SGS Re-Reading Policy is not a fact offered to prove the truth or falsity of another fact; thus, it is not "evidence." The SGS Re-Reading Policy is not a fact but a norm – a University policy. The Chair's tentative view, though it need not be determined for the purposes of this appeal, is that your Committee has the power to notice a University policy whether or not it was included by the parties in their materials. In the Chair's view, the appropriate way to deal with a policy that appears to be relevant but that the parties have not explicitly referenced is to ask the parties whether they wish to make submissions on its relevance. That is the procedure that your Chair followed in this case. If, on the other hand, the SGS Re-Reading Policy is properly characterized as "evidence," the same procedure would have been followed (as outlined above).

The Student also objects to the way in which the Chair followed that procedure in this case. In his letter of January 11, 2024, written in response to the Chair's granting Rotman an opportunity to reply to his submissions, he submits:

It is procedurally unfair, and indeed unprecedented, for the AAC to ... allow the Faculty to respond to the Appellant's submissions without receiving proper submissions on the issue from the Faculty in the first instance.

The Chair interprets this submission as an argument that Rotman should have first been required to make submissions as to the admissibility of the SGS Re-Reading Policy and that the Student should then have been given an opportunity to respond. It would perhaps have been preferable to proceed in that sequence; however, as the Chair now has the benefit of both parties' submissions on the issue, the point is moot.

There is, however, another possible interpretation of this submission. The timing of this particular claim of procedural unfairness suggests that the Student may be referring to the

Chair's decision not to ask Rotman for a response to the Student's submissions concerning procedural fairness. If that is the claim, the Chair rejects it. The Student made an argument for the proposition that it would be procedurally unfair for your Committee to receive the so-called "ambush evidence"; having carefully considered that argument, the Chair found that it had no merit; it was therefore unnecessary to receive Rotman's submissions in response.

Relevance

In his submissions of December 19, 2023, the Student argues that the SGS Re-Reading Policy is not relevant to the issues raised in his appeal and, in the alternative, that the policy strengthens his argument concerning the manner in which Rotman dealt with the re-reading of his paper for RSM1160, in that it provides for some consultation with a student as to a second reader. Rotman notes that the policy does not apply to the Student's appeal because there was no examination in RSM1160, but "submits that it is an example of another re-read policy (for use in different circumstances) which provides for double anonymity which is why it was provided to respond to the question asked of it by the Panel" (Rotman submissions of January 12, 2024, para. 3).

The SGS Re-Reading Policy is relevant, for the reasons given by the parties; however, its relevance is marginal, and the panel would not be significantly assisted by considering it and the parties' submissions concerning its relevance. The Chair therefore will not add it to the material before your Committee.

UNIVERSITY OF TORONTO
GOVERNING COUNCIL
Report #432 of the Academic Appeals Committee
February 9, 2024

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Friday, November 17, 2023, at which the following members were present:

Academic Appeal Committee Members:

Sara Faherty (Chair)
Professor Nhung Tuyet Tran, Faculty Governor
Dveeta Lal, Student Governor

Hearing Secretary:

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

For the Student Appellant:

P.Y. (the “Student”)
Thomas Mathews, Thomas Mathews Litigation, Counsel for the Student

For the Faculty of Applied Science & Engineering:

Professor Thomas Coyle, Vice Dean, Undergraduate

The Appeal

This is an appeal from a decision made on April 12, 2023, by the Faculty of Applied Science & Engineering’s Academic Appeals Board. The Appeals Board communicated its decision that day, explaining they were denying the Student’s request to continue his studies at U of T Engineering. In his decision Professor Don Kirk, Chair of the Academic Appeals Board expressed sympathy for the Student but found there was “insufficient justification” to grant the Student’s request.

The Student needed to request permission to continue in the program because following the Fall 2022 semester he had been refused further registration based on the grade he had been assigned in ECE241H1 *Digital Systems*. While this was a passing mark (a “D”), and the Student received credit for the course, the mark brought his sessional GPA beneath the threshold for continued enrolment in the Faculty. As we discuss below, the Student sought a number of remedies that would alter the treatment of the mark in ECE241H1, *Digital Systems* and raise his sessional average above the required minimum, including requesting an assessed mark, being granted *Aegrotat* status, or being allowed Late Withdrawal without Academic Penalty.

The Facts

The Student has had a long and challenging academic career at the Faculty of Applied Science & Engineering. He first enrolled as an undergraduate working towards his BAsC in Computer Engineering during the Fall of 2004, almost twenty years ago. For the first few years of his enrollment his progress was not strong. He was first placed on academic probation during his second semester, the Winter 2005 term, when his sessional average dipped below 60%. He continued to struggle academically, falling below a 60% sessional average again in the Fall of 2006, and for a third time during the term that is the subject of this appeal, during the Fall term of 2022. We note that he had long leaves during this period, including a five-year gap between the Fall of 2015 and the Fall of 2020. This student is clearly unwell and has struggled in this program for almost two decades.

During the Fall, 2022 term the Student enrolled in ECE241H1, *Digital Systems*. The Student's mark for this course was based on three evaluations:

Lab Work (weighted as 20% of final mark) —	82.5%
Midterm Exam (weighted as 30% of final mark) —	65.3%
Final Exam (weighted as 50% of final mark) —	39.8%.

This resulted in a course mark of 56%, or a D.

The Student attended his exam for ECE241H1, *Digital Systems*, on December 19, 2022. He became ill during the exam, suffering severe headaches and blurred vision. He did not abandon the exam, or even notify an invigilator of his health problems. He explained that he believed disturbing the other students taking the examination would have been inappropriate. Rather, the Student completed and submitted the exam. The Student concluded that the exam was a problem relatively quickly and requested either *Aegrotat* standing or an assessed mark in the course the following day, on December 20, 2022. In support of his request, he submitted a *Verification of Student Illness* form dated January 22, 2023, signed by Dr. Hung-I Henry Ho, a physician whom he sees regularly. On the form, Dr. Ho indicated that the impact of the Student's condition caused impairment that was between "severe" and "serious." He wrote that the Student suffers chronic illness with acute exacerbation, adding "I recommend AEG."

The stakes in this course are high for the Student, since this mark he was given brings his sessional average below 60% threshold required for continued enrolment, given his repeated probation status.

The Faculty of Applied Science & Engineering does not consider *Aegrotat* standing for courses in which all the work is completed and submitted. The Faculty also ruled out offering a deferred examination since the Student had completed the final exam as offered. The assignment of an assessed mark was complicated by the Faculty's practice of excluding work that was "not closely supervised" in determining whether an exam mark is significantly lower than the marks earned during a term (which would confirm a student's argument that there was an unanticipated issue during the writing of the examination.) Vice Dean Coyle explained that the Faculty compared the final exam mark (39.8) to his closely supervised work on the midterm (65.3) and concluded

that there was not a sufficient difference to warrant an assigning of an assessed mark that excluded the unsupervised Lab Work. This eliminated three remedies that might have been available if the Student had abandoned the exam and earned a lower mark.

Decision

The Student is anxious to have the mark he earned in ECE241H1 *Digital Systems* excluded from his transcript because the consequences of the mark are dire: they bring his sessional mark below the threshold for continued registration. In the course of his appeal, he has asked for three different remedies:

Aegrotat standing which would give him credit for the course but exclude the course from calculations of his grade point average because he was ill while writing the exam;

an assessed mark that excludes the low final exam grade and would result in a mark above the threshold on the grounds that his course work establishes his mastery of the material; or

Late Withdrawal without Academic Penalty on compassionate grounds because his mark was affected by circumstances outside his control.

He also challenges the reasonableness of the Academic Appeals Board decision and the reasonableness of the results.

***Aegrotat* standing**

The Student requests *Aegrotat* standing due to his illness during the exam. The illness is corroborated by the *Verification of Student Illness* form submitted by Dr. Ho. There is no disagreement that the Student is unwell, and he has worked hard to overcome the challenges posed by his condition. Had he abandoned the exam when he began to experience symptoms *Aegrotat* would have been a reasonable remedy. The Student's decision to complete the exam makes *Aegrotat* an inappropriate solution. His concern for the other students writing the exam should not have prevented him from quietly approaching an invigilator and seeking guidance. His transcript indicates that he has written at least nineteen examinations at the Faculty of Applied Science & Engineering, and he has a responsibility to be aware of his division's exam policies. It is difficult to conceive that in all these exams he has never interacted with an invigilator or seen other students interacting with invigilators. While the Student asserted that he was unwell and under pressure, and consequently he did not have the details of University policies at the front of his mind on the day of the examination, this does not exempt him from being subject to those policies. The Student's mistaken belief that he should not disturb other exam writers is unfortunate, but it cannot mean he will be treated as if he had abandoned the examination.

Your Committee is sympathetic to the Student's plight that day, and gives great deference to the form submitted by Dr. Ho. We note, however, that while Dr. Ho is a medical expert, he does not have expertise in academic accommodations or in University or divisional policies. His role is to

identify the level of impairment of the Student due to his medical condition—not to prescribe academic accommodations. Your Committee disagrees with Dr. Ho that *Aegrotat* is the appropriate remedy in these circumstances, given the Faculty’s policy, which is clearly stated in its Academic Calendar at page 21: “*Aegrotat* standing granted on the basis of session work and medical or similar evidence where the student *was not able to write* the final examination in the course.” [Emphasis added.]

An assessed mark

The Faculty of Applied Science & Engineering declined to assign an assessed mark to the Student in ECE241H1 *Digital Systems*. The decision rested on their evaluation of the difference between the mark the Student earned on the exam in question (a 39.8%) and his other closely supervised work in the course. The Student understandably wanted his Lab Work mark included as part of the “other work in the course,” since he did so well on his Lab Work. Including the Lab Work would have led the Faculty to compare the 39.8% mark on the final to an “other work” average of 72.2%. Excluding the Lab Work mark meant the comparison was between the 39.8% final mark and the 65.3% midterm mark. The Faculty did not find that difference to be compelling.

The first issue raised by the Student is that in his view the difference between the midterm and the final exam grades is significant, and the Faculty should have given him an assessed mark based on that difference. His second argument is that if they had included the Lab Work mark the even greater difference would have been even more compelling.

The Vice Dean explained that Lab Work and other work that is not closely supervised is reasonably excluded from these comparisons because they are not earned in tightly controlled settings like exam rooms, and often include contributions made by other students. The Student characterised the failure to include the Lab Work as a “glaring omission,” but your Committee finds this position to be reasonable.

Your Committee is of the view that the Faculty is justified in excluding work that is not closely supervised from these comparisons. Our view of the significance of the 25% difference in the midterm mark and the final mark is clouded by the lack of clarity in the Faculty of Applied Science & Engineering’s policies. While we are willing to defer to the Faculty’s Committee members and their academic judgement on this issue, we would be more certain in this conclusion if there were established guidelines on this important issue. The Faculty explained that they do not consider assessed marks in cases where a student has completed the exam.

The Committee notes that members asked which policies the Faculty administrators applied in this circumstance and was not given a response.

Late Withdrawal without Academic Penalty

The third remedy requested by the Student, Late Withdrawal without Academic Penalty, would deny the Student credit for the course but will give him an opportunity to remain enrolled at the Faculty of Applied Science & Engineering. It is unusual, but not unprecedented for a Student at

the University of Toronto to be allowed to Withdraw from a course after the drop deadline and even after an exam is written. Vice Dean Coyle explained that the mark is not appropriate based on the Faculty's normal procedures, suggesting that LWD is reserved for students who have struggled throughout the term. Your Committee finds that it would be confusing to tell a student his marks were too low throughout the term to warrant an assessed mark (see above), but too high throughout the term to warrant a late withdrawal. Your Committee notes that it gave the Faculty several opportunities to point to an existing policy related to these decisions. They were unable to do so. It would be important to have such a clear policy.

The Student provided clear medical documentation of his situation. While it would have been better if he had abandoned the examination on December 19th, he made a relatively prompt request for late withdrawal on December 20th, the following day. This remedy was not driven by an effort to manipulate the sessional average, since he made this request before he saw the final mark. The fact that the Student's circumstances are beyond his control lead your Committee to allow this request on compassionate grounds.

Vice Dean Coyle told us that the Faculty has a policy against allowing students to repeat courses they have completed. Your Committee agrees that the Student should not take ECE241H1 *Digital Systems* again unless the course is required for graduation. If the course is required for graduation, then the Student must be permitted to take this course, or a suitable substitute course.

The reasonableness of the Academic Appeals Board decision and the Reasonableness of the result

The Academic Appeal Board decision is brief. The section devoted to reasoning is two sentences:

“The AAB is sympathetic to your situation and acknowledges the difficult circumstances you faced due to health conditions. After carefully considering the information presented, the Board finds insufficient justification in granting your request.”

This summary decision does not illuminate the Faculty of Applied Science & Engineering's reasoning and made it hard for your Committee to assess what factors were important, which facts were determinative, and whether they were fair to the Student. We do not doubt the Faculty's respect for the Student and sympathy for his condition—it has accommodated him generously and patiently over the almost twenty years of his enrolment. As Vice Dean Coyle pointed out, they have been willing to bend policies in his favour more than once. A more expansive explanation of their thinking would have been helpful here. Were they concerned about the timing of the Student's submission of the Verification of Student Illness? Did they want more detail or more information about the Student's condition? It would have been helpful to the Student and your Committee if the decision had provided more insight into how the Academic Appeal Board assessed the Student's request.

Related to the above, your Committee could not find the result of the Academic Appeal to be reasonable. While he ultimately received a clear explanation in the Faculty's response to his Appeal and in Vice Dean Coyle's explanations at the hearing, the process within the Faculty was

too skeletal to be helpful. Your Committee finds that clarity in the policies and more fulsome explanations for decisions are important components of a fair grading and appeal system.

For the reasons outlined above the Appeal is allowed.

UNIVERSITY OF TORONTO
GOVERNING COUNCIL
Report #433 of the Academic Appeals Committee
February 28, 2024

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Monday, November 20, 2023, at which the following members were present:

Academic Appeal Committee Members:

Sara Faherty, Chair
Professor Sotirios Damouras, Faculty Governor
Firdaus Sadid, Student Governor

Hearing Secretary:

Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty Grievances

For the Student Appellant:

J.C. (the “Student Appellant”)

For the School of Graduate Studies:

Professor John Peever, Vice-Dean, Students

I. Overview:

This is an appeal from a decision made on July 17, 2023, by the Graduate Academic Appeals Board (GAAB). The GAAB denied the Student Appellant’s appeal from the School of Graduate Studies’ decision to accept the recommendation of Professor Carolyn Cummins, Director, Graduate Department of Pharmaceutical Sciences, Leslie Dan Faculty of Pharmacy to terminate the Student Appellant’s registration in the PhD Program in Pharmaceutical Sciences. The decision to terminate the Student Appellant originated in her Advisory Committee, which, after four meetings, communicated its recommendation to the Faculty of Pharmacy’s Graduate Committee on Academic Standing that the Student Appellant’s enrolment in the PhD program be terminated due to her failure to make progress toward her degree. The Academic Standing Committee accepted that recommendation and sent it to the School of Graduate Studies, where Dr. Yunusova accepted the recommendation and terminated the Student Appellant’s registration. The basis for this decision was the Student Appellant’s lack of academic progress. The Student Appellant submits that her Advisory Committee made an inaccurate assessment of her academic progress.

The Student Appellant challenges the GAAB decision, questioning the accuracy of her Advisory Committee’s assessment of her academic progress. The Student Appellant asserts that her academic submissions to the Advisory Committee met the threshold for being allowed to move forward to her qualifying exams. The Student Appellant referred to her impressive Curriculum Vitae, her success in course work at the Leslie Dan Faculty of Pharmacy, her extensive extra-curricular activities, her services as an exam invigilator and various awards and honours she received on her academic work. She alleges bias on the part of the Advisory Committee and suggests that the COVID-19 pandemic and a reduced access to in person lab work played a part in her lack of progress.

The Student Appellant also raised two procedural issues, first asserting that as a PhD student she was not required to write qualifying exams, and second claiming that one of the Co-Supervisors of her Advisory Committee served as the Committee Chair, which violated a Faculty of Pharmacy rule.

Finally, the Student Appellant pointed out some missteps taken by the University, where she was mistakenly permitted to engage in activities reserved for actively enrolled graduate students.

II. The Facts

Previous Termination

This is the Student Appellant's second attempt to achieve Candidacy (*i.e.*, complete all the requirements for the doctoral degree exclusive of thesis) She seeks to be found to be eligible to write her qualifying examinations, or in the alternative, a determination that she does not need to write those exams. She was originally enrolled in the PhD Program in Pharmaceutical Sciences in Fall of 2019. After three successful terms of course work, and two unsuccessful meetings with her original Advisory Committee, the Student Appellant's registration was terminated in March of 2021 due to failure to make satisfactory progress toward her degree. The Student Appellant appealed this 2021 termination to the GAAB, which reinstated the Student Appellant in July of that year, in part because it found deficiencies in Pharmacy's communication and support offered to the Student Appellant.

Enhancements to Support in Second Enrolment

The reinstatement included significant changes on the part of the Department of Pharmaceutical Sciences. To truly reintegrate the Student Appellant into the Department and support her success in the program, the Department and the Student Appellant agreed to several changes. They connected the Student Appellant with an academic progress worker to help ensure she had access to SGS and central University resources and provided academic advising to emphasize the need to focus on thesis research going forward. The advice was centered on the Student Appellant's need to find a supervisor, pass the qualifying examination, and achieve PhD candidacy. A key component of the new arrangement was the co-supervisory model that set Professor Grootendorst as the theoretical and subject-matter expert and a second supervisor who would ensure the Student Appellant was progressing through the program and understood the program requirements. The Student Appellant agreed to submit brief weekly progress updates. The Department also reinstated the Student Appellant's four-year funding.

Between July of 2021 and December of 2022, the Student Appellant continued her work in the Faculty with a new supervisor. The newly constituted Advisory Committee was made up of four faculty members:

Paul Grootendorst, Associate Professor in the Leslie Dan Faculty of Pharmacy (Supervisor);

Suzanne Cadarette, Associate Professor at the Leslie Dan Faculty of Pharmacy (secondary co-supervisor and Chair);

Ayman Chit, Assistant Professor at the Leslie Dan Faculty of Pharmacy;

Ashleigh Tuite, an infectious disease epidemiologist at the Dalla Lana School of Public Health.

At a meeting in September of 2021, the Student Appellant and her co-supervisors set up some additional processes meant to support the Student Appellant's success. They agreed to monitor the Student

Appellant's progress closely, using a one-page update the Student Appellant was to submit each Friday that would summarise her progress during the preceding week.

Progress with the New Advisory Committee

The Student Appellant met with her Committee more frequently than is typical, convening four times during this period. Meetings were held on January 5, 2022; June 9, 2022; July 15, 2022; and October 21, 2022. The assessments at each Committee meeting were progressively negative.

After the second Advisory Committee Meeting in June 2022, Carolyn Cummins sent the Student Appellant a letter expressing concern and offering to provide support services. She recommended appointments with the Academic Success Centre, the Health and Wellness department at Student Life, and suggested the Student Appellant connect with Accessibility Services, and offered to answer the Student Appellant's questions and help her connect with any of those supports. During the final meeting, in October, the Committee determined that the Student Appellant's progress was weak on all criteria and determined that the Student Appellant's draft proposal was not suitable to progress to a qualifying exam. For a second time, the Student Appellant's Advisory Committee recommended that the Student Appellant's registration be terminated.

III. Decision

The Student Appellant challenges the Advisory Committee's termination on several grounds. Her overall view is that the Committee was incorrect in its assessment of her progress.

a. The accuracy of the Advisory Committee's assessment of the Student Appellant's academic progress:

The Student Appellant asserts that her academic submissions to the Advisory Committee met the threshold for being allowed to move forward to her qualifying exams. The Student Appellant believes that she is making excellent academic progress. She has successfully completed her course work in the Department and is eager to take more courses. She also relies on what she believes was excellent feedback from Committee Members and the fact that they asked interesting questions to support her perception that she is doing well academically.

The written feedback from the Advisory Committee tells a different story, though, from what the Student Appellant recalls. Each Committee Meeting is summarised in a "Graduate Department of Pharmaceutical Sciences Advisory Committee Assessment Form" which assesses students on eleven factors:

- (a) Technical skills
- (b) Knowledge of relevant literature and methods
- (c) Design of the project
- (d) Problem solving
- (e) Critical analysis/interpretation
- (f) Originality/Creativity
- (g) Industry
- (h) Self-reliance
- (i) Communication Skills (Oral)
- (j) Communications Skills (Written)
- (k) Interaction with others in the research group

Each factor is checked off and assessed as either “Good,” “Satisfactory” or “Weak,” or the Advisory Committee reports that it has had “Inadequate Opportunity to Observe.”

The feedback on each form displays the following constellation of assessments:

First meeting (January 5, 2022):

Good:	2 factors
Satisfactory:	3 factors
Weak:	1 factor
Inadequate Opportunity to Observe:	5 factors

Second meeting (June 9, 2022):

Good:	1 factor
Satisfactory:	5 factors
Weak:	7 factors
Inadequate Opportunity to Observe:	none

(Note that these assessments tally up to 13 because there was not consensus on two factors, with some Committee member(s) determining that Originality/Creativity was “satisfactory” and others that it was “weak”; and some Committee Member(s) determining that Oral Communication skills were “satisfactory” and others that they were “weak”.)

Third meeting (July 15, 2022):

Good:	none
Satisfactory:	none
Weak:	10 factors
Inadequate Opportunity to Observe:	1 factor

Fourth meeting (October 21, 2022):

Good:	none
Satisfactory:	none
Weak:	11 factors
Inadequate Opportunity to Observe:	none

The Student Appellant’s optimism and positive outlook are admirable, but confusing. The data on these forms make it virtually impossible not to conclude that the Student Appellant was not making progress during this period. The stark disconnect between the written feedback and the Student Appellant’s understanding is addressed on each form, under the factor called “interaction with others in the research group,” which is assessed only by the Supervisor.

On the January form the Supervisor marked this as “good” and wrote that the Student Appellant was “Personable.”

On the June form the Supervisor again assessed this factor as “good” (this was the only factor which received this most favourable rating), noting “participates in meetings.”

In July, the Supervisor changed the assessment to “inadequate opportunity to observe” and wrote, “personable and attends meetings (good) yet the interaction to further development of PhD thesis (underlying aspect of the review) is hard to describe/assess. Team members continue to support her as best they can, yet she does not seem to comprehend discussions.”

Finally, in October, the Supervisor changed the rating to “weak,” and wrote: “does not follow feedback from supervisor or team—personable (good) yet the interaction to further development of PhD thesis (underlying aspect of the review) is hard to describe/assess. Team members continue to support her as best they can, yet she does not seem to comprehend discussions.”

b. The Student Appellant’s other accomplishments:

The Student Appellant is an energetic, talented member of the University Community and is understandably proud of her many achievements. The Student Appellant has indeed made many accomplishments during her time at the University of Toronto. She cites her impressive Curriculum Vitae, refers to her successful course work at the Leslie Dan Faculty of Pharmacy, and points to her extensive extra-curricular activities, including athletic accomplishments, service as an exam invigilator and various awards and honours to support this argument.

The Student Appellant’s energy and generosity with her time is admirable and, as she argued during the hearing, it is likely these activities enhanced her graduate studies. However, such activities cannot replace her graduate work, and the critical step for a PhD student is to develop a proposal with a framework that will support her doctoral thesis. Your Committee is impressed by the Student Appellant’s enthusiasm for course work and other activities but cannot find that they are a substitute for the work her Advisory Committee was urging her to complete.

c. Alleged bias on the part of the Advisory Committee:

The Student Appellant raised the possibility that her Advisory Committee was biased against her but was unable to articulate the grounds for bias she thought was being demonstrated. She suggested that the need to switch supervisors had turned the Advisory Committee against her but was unable to say how or why that might have happened or point to any instance of a Committee member acting against her for that reason. While the Student Appellant suggested that she was denied some awards and research opportunities by her Advisory Committee and her prospects were limited by the lack of positive recommendations from them, the Department pointed to the circularity of the argument, suggesting that until she had a well-developed thesis proposal such recommendations were not appropriate. The Department believed the best way to support the Student Appellant was to provide her with enhanced support and focus on her thesis development and to provide her with the feedback and resources to achieve candidacy.

The Student Appellant was under a misapprehension that only one member had completed her Advisory Committee feedback forms and mistakenly believed that only Dr. Cadarette had determined her scores. The Department explained that all four Advisory Committee members had generated the written feedback she received. Your Committee was pleased to see that this information seemed to reassure the Student Appellant. We hope this new understanding worked to relieve the Student Appellant’s anxiety about personal prejudice against her.

No negative representation of the Student Appellant appears in the file other than increasingly negative appraisals of her progress in the program. The feedback provided to the Student Appellant was detailed and rooted in academic assessments and recommendations—there is no evidence of unfair bias against the

Student Appellant. Your Committee accepts that the unwelcome academic assessments may have felt unfairly burdensome to the Student Appellant, but they do not constitute bias against her.

d. The COVID-19 pandemic and a reduced access to in person lab work played a part in her lack of progress.

The Student Appellant asserts that there may have been after-effects of the COVID-19 pandemic on her current research, but she does not specify any after-effects or connect them to her research. She refers to the School of Graduate Studies policies set forth in its Supervision Guidelines advising supervisors and academic advisors to continue to assess the impact of COVID-19 and the associated repercussions on student research, academic progress, and funding.

The Student Appellant gives an example of laboratories being closed but is not specific about when during the relevant period (late 2021 and most of 2022) they were closed or what she needed laboratory access for. The Student Appellant said that she had on-line access to laboratories, but that she preferred attending in person. She never alerted her Advisory Committee to a concern about laboratory access. She did not mention a lack of access to laboratories in her Requests for Extension to Candidacy dated August 20, 2022, or January 12, 2023.

While the Student Appellant received significant amounts of written feedback from her Advisory Committee, none of it suggests that her studies were impaired by having to take place partly on-line. Rather, the feedback consistently revolves around the Student Appellant's need to develop her theoretical framework and work with the relevant literature. The Advisory Committee recommended that the Student Appellant focus exclusively on developing her proposal and expressed concern that she was instead enrolling in courses and serving as the chief Presiding Officer for exams. There is no reference by either the Student Appellant or her Advisory Committee to delays being caused by lack of access to laboratories, or because some of the Student Appellant's work was completed remotely.

Notes from the third Advisory Committee report articulate "serious concerns" about the lack of integration of comments from the previous committee meeting and about the Student Appellant's proposal lack of detail or coherence. The repeated theme in the Committee feedback is that the Student Appellant did not demonstrate the ability to incorporate Committee feedback or synthesize information from the relevant literature into her proposal. The file does not support a finding that the Student Appellant's progress was delayed by factors related to COVID-19 or its aftereffects. The Student Appellant's suggestion that her lack of progress was related to COVID-19, or its aftereffects seems speculative, and is not supported by the record.

e. Procedural Issues

i. Requirement to write qualifying examination:

The Student Appellant argues that she was not required to pass a qualifying examination because she had been admitted directly into the PhD program, and she asserts that a qualifying examination is required only from students moving from the Master program into the doctoral program. This argument is not supported. The Department of Pharmaceutical Sciences requires qualifying examinations for PhD students whether they enter the program after completing an MSc or after completing a BSc.

The file is replete with references to the Student Appellant writing a qualifying examination, starting with an email dated September 24, 2021, in which Professor Cadarette wrote a summary of her expectations,

including “focus over the next year vs. subsequent years (*i.e.*, main goal this year is proposal development and defense/pass qualifying exam).

The Student Appellant agreed to various significant “major milestones” during her Initial Meeting with Professors Grootendorst and Cadarette, which is memorialised and annotated by the Student Appellant on the Initial Meeting form she and her Supervisor and Co-supervisor signed on September 27 and October 7, 2021. It includes writing a qualifying examination.

In the first Advisory Committee Assessment Form summarising the January 5, 2022, meeting, the printed item 4 reads “is the student making satisfactory progress toward ~~graduation~~.” Someone crossed out the word “graduation” and handwrote “qualifying exam” in its place. The “yes” and “no” check box options were also crossed out and “too early to comment” was written above them. In her response to this form the Student Appellant thanks the Advisory Committee for the feedback.

The Student Appellant demonstrated her awareness of the need to write a qualifying examination in the “Request for Extension to Achieve Candidacy” she submitted on August 20, 2022. Under question 1, which asks the reason for the failure to achieve candidacy, she wrote “The third study is under development and I have not yet completed my qualifying exam. Also, a change in supervisor and topic.” Under question 2, which asked about the timetable for achieving candidacy, she wrote “1-6 months. My next committee meeting will be in October 2022 with a qualifying exam completed by December 2022.

Your Committee is satisfied that the Student Appellant was expected to write a qualifying examination to remain in the program and achieve candidacy for the PhD, and that she was aware of this expectation.

ii. Identity of Committee Chair

The Student Appellant pointed out that one of her co-Supervisors, Dr. Suzanne Cadarette, served as the Committee Chair, which she asserts violated a Faculty of Pharmacy rule. The rule to which she refers is plainly stated on the Graduate Department of Pharmaceutical Sciences Advisory Committee Assessment Form, which indicates in bold font: “The Committee Chair CANNOT be the Supervisor or the Co-Supervisor.” [Upper case font in original.]

The Division explains that the purpose of the rule is to make sure that the substantive leader(s) of the Advisory Committee (the Supervisor and Co-supervisor) can focus on academic work with the Student Appellant and not be distracted by the administrative responsibilities of leading the Advisory Committee. However, the Division believes an exception to this rule was appropriate in the case at hand. They characterised Professor Grootendorst as the “primary” supervisor and asserted that Professor Cadarette was a “secondary” supervisor, arguing that because Professor Cadarette was not playing the role of a substantive academic supervisor she was able to serve as Chair to the Committee. These roles were explained during the Initial Meeting the Student Appellant and Professors Paul Grootendorst and Suzanne Cadarette, and Student Support Counselor Elsie Obeng-Kingsley

The Division’s explanation is supported in writing in four instances.

First, in her email dated September 24, 2021, Professor Cadarette wrote an email with feedback about a weekly research report the Student Appellant had submitted. She opens the note with a reminder: “Please keep in mind as discussed during our meeting Wed Sept 22 (Carolyn, Elsie, Paul, you, and I), that my role as co-supervisor is more administrative than typical.”

Second, in describing the changes they made to the Student Appellant’s support system during their Initial Meeting (which was signed by the Student Appellant on September 27, 2021, and by both

supervisors on October 7, 2021) they emphasized the differing roles of each supervisor. In the first heading of the Initial Meeting Form’s checklist labelled “during my initial meetings with my supervisor, I have discussed the following topics:,” the Student Appellant made a marginal note reading: “Paul Grootendorst, more FYI for S. Cadarette.” The substantive topics listed include Professor Grootendorst’s name only.

Third, the Appendix 2 “Checklist for Students” Includes a Checklist for Supervisors that has S. Cadarette’s name. There are multiple places where the Student Appellant wrote marginal notes indicating the role was secondary to Professor Grootendorst (*e.g.* “second following Paul,” “more Paul,” and “Paul leads.”) in one place she handwrote “co-supervisor, more administrative/committee member role.”

Fourth, in her email dated September 24, 2021, Professor Cadarette wrote an email with feedback about a weekly research report the Student Appellant had submitted. She opens the note with a reminder: “Please keep in mind as discussed during our meeting Wed Sept 22 (Carolyn, Elsie, Paul, you, and I), that my role as co-supervisor is more administrative than typical.”

Finally, the form that summarises feedback from each of the four Advisory Committee Meetings identifies Professor Grootendorst as the “Supervisor.” It identifies Professor Cadarette as “Suzanne Cadarette (SC) as the “Committee Chair” at the top of the form, and then, under the heading listing other Committee Members it identifies “SC” as the Co-supervisor, with an added parenthetical note: “admin role, not typical co-supervisor.”

Your Committee finds that while the Department deviated from its clearly stated rule barring a graduate student’s supervisor from acting as Committee Chair, it did so because it determined that Professor Cadarette was not acting as a substantive academic supervisor. This decision was taken deliberately, was disclosed to the Student Appellant, and efforts were made to make sure the Student Appellant had a clear understanding of the modification to Professor Cadarette’s role. Your Committee is persuaded that this purely administrative role should not have been barred from acting as Chair to the Advisory Committee, and we are persuaded that the Student Appellant was informed of and agreed to this deviation from the rule. Since the Student Appellant has not pointed to any harm to her progress that was caused by the rule modification she agreed to, we cannot find this point, while technically correct, to warrant reversing the Department’s decision to terminate her registration.

We advise the Department to consider altering the language on the form that sets out an absolute bar and allows for reasonable modifications like this one.

f. University Missteps

Finally, the Student Appellant pointed out a handful of missteps taken by the University. There were instances in which the Student Appellant received communications and was treated like a currently enrolled student following her termination. For example, the SGS Centre for Professional Development invited the Student Appellant to speak on a panel for thesis-based students. As the Student Appellant points out, she used this opportunity to effectively demonstrate her leadership skills. It was gracious of the Student Appellant to share her experiences with incoming graduate students despite her change in status. However, the mistakenly issued invitation does not constitute re-registration in the Department. This was an unfortunate error of the kind that is likely to happen at an institution as large as the University of Toronto. Your Committee urges the Department and SGS to confer and update their records regularly to avoid accidents like this occurring in the future. However, an error like this cannot be the basis for establishing a student’s academic status.

The Student Appellant indicates that she was also able to upload a document to a platform that is meant to be reserved for current students only. Again, it will be helpful if the Department and the library can be in tighter communication to avoid sending mixed messages like this to students whose status has changed, but considered academic judgements about student eligibility to achieve candidacy cannot be reversed because of technical errors like this.

IV. Conclusion

The Student Appellant's repeated and continued requests to be allowed to enrol in courses demonstrates that she is attracted to the classroom and should be encouraged to pursue her passion for teaching in some capacity. It also demonstrates that she remains unclear about the requirements and expectations of PhD students. It is difficult when a hard-working student like the Student Appellant is unable to succeed despite extensive efforts on her part and on the part of the University. In this case the Student Appellant is clearly a personable, enthusiastic learner who enjoyed doing course work and other aspects of academic life. However, she has been unable to make the transition to a research-focused PhD student. The Department of Pharmaceutical Sciences has provided multiple opportunities to the Student Appellant, copious feedback, and enhanced support for the Student Appellant's success. The Advisory Committee correctly assessed that she was not making progress toward her degree and the termination of her registration is supported by the record in this case. Appeal dismissed.

**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:

J.Z. (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 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 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.¹ 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

¹ 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).² 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

² 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”?³ 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)

³ *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.