

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

REPORT NUMBER 279 OF THE ACADEMIC APPEALS COMMITTEE

Your Committee reports that it held a hearing on Monday April 7, 2003, at which the following were present:

Assistant Dean Bonnie Goldberg, Chair
Professor Sherwin Desser
Professor Luigi Girolametto
Professor Gretchen Kerr
Mr. Chris Ramsaroop

Mr. Paul Holmes, Judicial Affairs Officer

In Attendance:

Mr. M.T., the Appellant
Professor William Michelson, formerly Associate Dean, Social Sciences
Faculty of Arts and Science, University of Toronto

The student appeals from a decision of the Academic Appeals Board of the Faculty of Arts and Science, dated November 26, 2001, denying his appeal for late withdrawal without academic penalty from BOT210Y (the “course”) taken in the academic session 1988-1989. The student was appealing a decision of the Committee on Standing (dated June 1, 2001) denying his request for late withdrawal without academic penalty from the course. This was an appeal of a petition the appellant made which was also denied (dated February 2, 2001).

The appellant began the hearing by presenting your committee with a letter from Dr W. McIntyre Burnham, Professor of Pharmacology, and the appellant’s Ph.D. thesis supervisor. Professor Burnham wrote that he had intended to be present at the hearing to act as the appellant’s “informal representative”, but had been quarantined as a result of the severe acute respiratory syndrome (“SARS”) outbreak in Toronto. This caused the appellant to consider the issue of whether he wanted to request an adjournment. The appellant clarified that Professor Burnham would be informally assisting him, and that the appellant himself would be speaking to his own case. The appellant was given time, both inside the hearing room and outside the hearing room, to consider whether he wished to proceed without his informal representative in attendance. Your committee took time to explain to the appellant the final nature of this appeal, and how the hearing would proceed. Ultimately, the appellant chose to continue with the hearing.

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The student seeks late withdrawal without academic penalty from BOT210Y taken in the 1988-1989 academic year. The student seeks this extraordinary remedy on medical grounds. The appellant received a failing grade of 40% in the course.

The appellant undertook this appeal twelve years after receiving the failing grade because he believes that the grade, caused in his opinion as a result of illness, could restrict his opportunities in pursuing postdoctoral studies or applying to professional schools such as law or medicine. After a poor performance in first and second year at the University of Toronto, the appellant transferred to the University of Guelph, earning a B.Sc. with excellent grades. Following that, he completed a M.Sc. in Pharmacology at the University of Toronto, and is currently a Ph.D. candidate and recipient of a three-year Canadian Institutes of Health Doctoral Research Award. He argues that a consolidated transcript that includes a failed course may unfairly restrict his opportunity to pursue an academic career given the extenuating circumstances that existed at the time of the failure, and his subsequent academic achievement. He chose to re-open the matter because it is only now that he realizes the detrimental affect a failure could have on his future. The appellant asks that the Committee not require proof that his future career prospects could be negatively impacted by his failure in the course, nor can he offer any proof.

The appellant relies on two pieces of medical evidence. The first is a University of Toronto Student Medical Certificate, dated December 18th, 2000. This certificate states that psychiatric services were provided to the appellant in November and December 1989, as a result of emotional difficulties. The Director of the Psychiatric Services, Dr Victor Likwornik, reviewed the appellant's files and wrote that the appellant's emotional difficulties were disruptive of his academic work and that he supports his request for a reappraisal of his performance during the 1988-1989 academic year. The doctor who treated the appellant is no longer at the Service. A letter dated December 1, 2000 from Dr Likwornik summarizes the information in the certificate.

The appellant also submitted a letter from Professor John R. Coleman, Chair of the Department of Botany at the University of Toronto, dated November 26, 2001, supporting his request for late withdrawal without academic penalty. Professor Coleman notes that although the academic records are incomplete, the appellant's performance in first term was a passing grade. This letter was not available at the first three considerations of this matter.

The University takes issue with the reasons supplied by the appellant for the more than ten-year delay in seeking relief. The University contends that the appellant is asking for selective removal of a course from a transcript that has been circulating for over a decade. The University argues that to selectively remove a failure, twelve years after the fact, based on insufficient academic and medical records, would set a dangerous precedent for the University and open up the floodgates to potential appeals and petitions. There is also currently no ability to obtain an accurate picture of the appellant's performance throughout the entire course. This position is consistent with findings of previous hearings of this matter. The Committee on Standing refused to grant the appellant relief on selective basis for a failed course, and one with insufficient academic records. The

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Academic Appeal Board affirmed this decision and expressed optimism that the appellant's future career would not be detrimentally affected by his undergraduate transcript.

At the time that the appellant was enrolled in the course, the Faculty of Arts and Science offered students a drop date for withdrawing from the course without academic penalty. This date was, and still is, the middle of February for a full year course. There was no deadline in place twelve years ago limiting the time in which a student could subsequently bring a petition for late withdrawal without academic penalty. The deadline is now approximately six months later, or mid-November.

Even without the deadline in existence, there are compelling arguments for placing limits on the length of time in which a student can petition to have a failure removed. First, only partial information about the appellant's performance in the course was available for review. There is thus no ability to accumulate sufficient documentary evidence from the Faculty as to the appellant's performance in the course, and specifically how it was affected by illness during the period in question. Second, the Faculty requires that medical documentation supporting such petitions be created at the time that the petition is made. The appellant is offering medical document written in December 2000 that is based on information obtained in the fall of 1989 regarding the appellant's medical problems in the spring of 1989. The physician saw the appellant six months after the course in question ended.

While your committee is sympathetic to the fact that the appellant was experiencing problems during the 1988-1989 academic terms, the University offers ample opportunity for students who experience unforeseen or worsening problems to withdraw from courses, both prior to and post, its stated deadlines. In fact, the appellant had sought late withdrawal from other courses during the 1990-1991 academic year, and was thus familiar with the University's procedures. Although chronic illnesses do manifest themselves over time and one is not always able to deal with problems concurrent with their onset, this appellant could have addressed the impact of his illness on his academic performance during the 1988-1989 academic year or even in the subsequent year. Instead, he chose to complete this course, and others, and did not seek treatment until the following fall. The result is that a decade later, upon seeking a re-appraisal of his performance, the appellant cannot obtain complete course information or detailed medical documentation to support this claim. Ultimately, your Committee cannot satisfy itself on the medical evidence presented as to the severity, nature, and impact of the appellant's illness during the winter term of 1989.

The appellant is seeking relief for a perceived detrimental effect that cannot be proven or disproven, but would, if granted, set a precedent of removing grades from transcripts, well past deadlines, well past reasonable time frames, and without sufficient supporting documentation.

Our decision is not unanimous. A minority of the Committee would allow the appeal based on compelling grounds for going outside the normal course of procedure for the

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University. The minority believes that the circumstances of the appellant's medical condition prevented him from seeking assistance at the time the problems occurred, and is sympathetic to the appellant's current concerns about being held back by a problem that occurred twelve years ago and for which he since sought treatment. The minority is comfortable with the medical documentation provided and the oral evidence received as to the nature of the appellant's illness during the time in question.

The decision of the Committee is by a majority decision, and therefore, the appeal should be dismissed.

May 6, 2003

Paul Holmes, Secretary
Judicial Affairs Officer

Bonnie Goldberg, Chair
Assistant Dean, Faculty of Law

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