

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report #321 of the Academic Appeals Committee
February 19, 2008

To: The Academic Board,
University of Toronto

Your Committee reports that it held a hearing on Monday December 10, 2007, at which the following members were present:

Professor L. Sossin (Chair)
Mr. Ken Davy (Student)
Professor Ellen Hodnett
Professor Joel Kirsh
Professor Louise Lemieux-Charles

Ms. Nancy Smart, Judicial Affairs Officer

Appearances:

For the Student Appellant:
Mr. J.V. (the Student)

For the Graduate Department of Architecture, Landscape and Design:
Professor J. Danahy
Professor E. Kesik

The Appeal

This is an appeal from a decision the Graduate Academic Appeals Board ("GAAB") dated April 2, 2007, dismissing an appeal of the Student from a decision of Professor George Baird, Dean of the Faculty of Architecture, Landscape and Design, dated August 4, 2006, dismissing an appeal by the Student from a grade of B- in the course LAN1011Y taken in the Fall term of 2005, and from a grade of B in the course LAN1032H, taken in the Winter term of 2006. The Dean was acting upon and confirming the recommendation of the departmental Graduate Academic Appeals Committee.

Facts

The Student enrolled in the M.L.A. programme of the Graduate Department in the Fall Term of 2005. This is a three year program. He had previously received a degree in Forestry from a university outside of Canada. In addition to the grades under appeal, he received grades of B+, B+ and B in half-courses taken in the Fall term of 2005, and A- in a quarter-credit course in that term. In the Winter term of 2006, he received a grade of B in a full course, grades of A- and B in half-courses, and B+ in a quarter-credit course. He entered the second year of his programme in good standing.

Previous Decisions

The grounds for the Student's appeal relate to bias on the part of Professor North, who was a co-instructor in LAN1011Y, and the instructor in LAN1032H. The Student disputed a failing grade of 50% which had been assigned to the class participation mark, worth 5% of the total course mark, and a B grade in the fourth assignment worth 40% of the of the total course mark, in LAN 1011Y. Finally, the Student believed that, calculated properly, his grade in the course should have been a B and not a B- as indicated on his transcript.

GAAB accepted Professor North's explanation that she assigned this class participation mark because the Student missed some important Monday morning class discussions, and was not a vigorous participant in class discussions generally. The Student stated that he attended all of his classes and did participate actively. He also claimed that in his notebook he had dated all lectures. Professor North stated that she did not make a written record of attendance in her classes. GAAB split on this issue, with a majority concluding that the instructor's recollection was sufficient for the purposes of the participation grade, but a minority of the Board taking the position that in fairness to students and in the spirit of the grading policy of SGS, instructors should maintain a written record of attendance in courses which have a class participation component in the evaluation scheme, and that, absent that record, the student's version should be accepted, if there is no good reason to reject the student's version. This Committee upholds the majority view of GAAB. The Design Studio is a small, "hands-on" teaching environment and there is no basis to question Professor North's overall assessment of the Student's participation.

As for the Student's claim that his grade in LAN1011Y should have been a B rather than B-, it is important to restate the grades assigned to the various aspects of the course: (the percentage of the total course mark for the assignment is given in brackets): B- (15%); A (10%); B- (25%); B (40%); B (5%) and FZ (5%).

In translating these letter grades into numerical grades for establishing a final grade, Professor North stated that she started off by assigning the minimum numerical grade for the letter grade mark. She sometimes assigned a higher numerical mark than the minimum to individual students if she considered that the student's work justified this, but this was not the case with respect to the Student. Using the basis of calculation employed by Professor North, the Board agrees that the final grade would be B-, as assigned to the Student. Again, GAAB split on this point. The minority of the Board considered that in fairness the mid-point rather than the minimum point in the approved scale should be used as the starting point, unless the minimum or some other point has been stated in the course outline or otherwise at the commencement of the course. The majority of the Board found that Professor North was consistent in using the minimum numerical grade in the range in starting her calculations. This Committee agrees with the majority of GAAB that the issue here is one of consistency and equity to all students. If the same grading scheme was applied to all students, and was not contrary to any information provided to students, then no unfairness could arise in relation to the Student.

Finally, with respect to bias on the part of Professor North, GAAB held as follows:

We could not discern any hostility between the Student and Professor North at the hearing, in either direction, and could see no reason for her to seek to downgrade the Student for other than legitimate academic reasons. The Student believes that Professor

North assigned him to a group of other students who were antagonistic towards him, for a group project. Professor North explained that she arbitrarily made up the working groups on the basis of where students had seated themselves in the studio. She denied the Student's perception that throughout the course, she deliberately devoted more time to some students at the expense of others, and particularly at the expense of the Student. The Student stated that he did not believe racism on the part of Professor North played any part in his complaints concerning her treatment of him. In summary, the Board unanimously finds that there is no basis for concluding that any improper considerations influenced Professor North's evaluation of his work.

Decision

This Committee agrees with this conclusion. Clearly the Student strongly believes he has been treated unfairly, but there is no credible basis for that view in the evidence presented.

The appeal is dismissed.

Professor Lorne Sossin, Chair

UNIVERSITY OF TORONTO GOVERNING COUNCIL

Report #322 of the Academic Appeals Committee
January 29, 2008

To: The Academic Board,
University of Toronto

Your Committee reports that it held a hearing on Tuesday January 15, 2008, at which the following were present:

Professor Emeritus Ralph Scane (Senior Chair)
Professor Clare Beghtol
Ms Saswati Deb (Student)
Professor William Gough
Professor Ronald Kluger

Ms. Nancy Smart, Judicial Affairs Officer

Appearances:

For the Student Appellant:

Mr. Eric Polten (Counsel)
Ms. Amy Mitchell (Counsel)
Ms. E. G. ("the Student")

For the Faculty of Applied Science and Engineering:

Ms. Lily Harmer (Counsel)
Mr. Danny Kastner (Counsel)
Ms. Barbara McCann
Ms. Ella Lund-Thomson
Professor Kim Pressnail

The Appeal

This is an appeal from the decision of the Examinations Committee of the Faculty of Applied Science and Engineering (the Faculty), dated October 25, 2007, acting upon the recommendation of the Ombuds Committee of the Faculty, to deny the Student permission to withdraw without academic penalty from the course ECE221H1, taken in the Winter term of 2007, and for which a failing grade was assessed. Following upon this decision, the Student was found to have failed that term, and is required to repeat it. In the circumstances of her failure, the Student does not retain credit for courses taken in that term that she passed, and must repeat those courses. It is this requirement that these courses be repeated that is really what this appeal is about. At the hearing, the Student expressed willingness to accept the failure in ECE221H1 if she could retain credit for courses passed in the term in question.

Facts

The Student entered the B.A.Sc. program in the Department of Electrical and Computer Engineering in the Faculty in the Fall session of 2005. Her progress until the Winter session of 2007 had academic difficulties which it is not necessary to discuss in detail here, except to state that she entered the Winter term of 2007 as a student in the Second Year program of the Faculty with the status of being on previous probation. This status determined the minimum requirements that she was required to fulfill to proceed to the next session of instruction.

In the Winter session of 2007, the Student took six subjects. In the course in question, the Student received an original final grade of 43%. In one other course, ECE243H1, she received an original final grade of 50%. In the remaining courses, she received original final grades of 60% or slightly better. Overall, her original weighted sessional average was 56%. Under the Faculty's rules, this result would place a student upon "repeat probation", and require that the student repeat the session at the next opportunity. The Faculty operates on a "session" basis, rather than on a "course" basis, as some other divisions do, so that a student required to repeat a Winter session, for example, would normally have to sit out until the next Winter session arrived, in order to repeat the courses taught within that session.

With respect to the course ECE221H1, the Student failed a term test written on February 5, 2007. After a second term test failed to improve her average, she consulted an instructor, who advised her to petition, even though the time for petitioning for relief from a course mark had long passed. The Student did petition the results of the term test, on grounds of illness, on April 11, 2007. This date was more than one week after the Student's return to classes, which is the Faculty deadline for such petitions. The Faculty submits that the Student withdrew the petition on or about April 30, 2007, an assertion that the Student's submission denies. The submissions of neither Faculty nor Student reveal any formal disposition of this petition. The Student alleges that her anxiety stemming from her lack of knowledge regarding the results of this petition contributed significantly to the health problems which affected her final examination in ECE221H1.

The Student did poorly on the final examination in ECE221H1. She petitioned for permission to withdraw from this course, and from the course ECE243H1, without academic penalty, for health reasons. At the hearing before your Committee, the Faculty acknowledged that its committees reviewing these petitions had accepted the validity of the Student's grounds for seeking relief, and accepted the validity of those grounds for the purpose of this hearing. Accordingly, your Committee did not hear evidence on this issue, and proceeded on the basis that the Student had established this element of her case.

However, under the Faculty's regulations, establishment of sufficient grounds for relief will not necessarily get a student out of academic difficulty. Although the Examinations Committee has jurisdiction to grant withdrawal without academic penalty, it did not consider that this was an appropriate situation to award that remedy, given the restricted circumstances in which your Committee has previously held this remedy to be available, and given that it was being applied for after the final results of the term had been released. Instead, the Examinations Committee applied the remedy of assessing a grade, which is the usual procedure within the Faculty when a student misses a final examination or establishes that the examination has been adversely affected by outside events beyond the student's control. "Assessing a grade" involves the application of a mathematical formula: the student's closely supervised term grade times the class examination average, divided by the closely supervised class average. Under this formula, the better the student's

term work, the higher the assessed grade, which will become the course mark, will be. The assessed grade is compared to the actual grade, and the higher of the two becomes the course grade.

In this case, while the assessment process brought the Student's grade in ECE243H1 from 50% to 61%, it would have lowered the grade in ECE221H1 from 43% to 40 %. Under the Faculty's regulations, in such a case, the higher original grade was allowed to stand.

As noted above, the Faculty operates on a "session" basis, and bases promotion decisions upon a student's sessional average. Using the Student's course marks as revised by the assessment process, her revised sessional average moved from 56% to 57.8%. However, a student on past probation, as in this case, who obtains a sessional average of less than 60% fails the session and must repeat it. Under the Faculty's regulations, a student does not retain credit for courses taken in the session that must be repeated in which a final mark of less than 70% was awarded. As all of the grades obtained by the Student in courses taken in the term in question were less than 70%, she was denied credit for all of them.

Subject to one matter that troubled your Committee, the Faculty's application of its regulations to the Student, following its acceptance of the validity of the Student's petition for relief from the course in question, was unexceptionable. The Student was treated as any other student in the Faculty would have been.

The troubling matter is the term test taken in ECE221H1 on February 5, 2007, which was petitioned by the Student. Frankly, your Committee did not appreciate the possible significance of this matter until the hearing had concluded and it was considering its decision. This was largely the result of a coincidence. At the beginning of the hearing, it appeared that counsel on both sides were under a misapprehension as to your Committee's usual process. Your Committee normally proceeds by a *de novo* hearing, that is, it hears evidence and cross-examination thereon, including evidence that may have been before lower appeal tribunals, and reaches its own conclusions on that evidence. It does not restrict itself, as counsel stated that they had assumed, to a review of the record of the material before the lower tribunals, and a consideration, based upon that review, of the reasonableness of the conclusions drawn by the tribunals below. As counsel on both sides indicated that they had not prepared to introduce oral evidence, or to cross-examine the other party's witnesses, and as the Faculty acknowledged the validity of the Student's grounds for petitioning the results of her final examinations, as described above, the Committee attempted to adapt its procedure to the type of hearing counsel had prepared for. As a result, the evidentiary stage, which in the normal course might well have highlighted this matter as an important issue, was almost non-existent, and did not do so.

Your Committee was troubled because the term test, which was the subject of a petition for illness, supplied a component of the mathematical formula used to assess the final mark in ECE221H1. If the term mark was unreliable, due to the Student's illness, the assessment must correspondingly lack reliability. As the term mark in question was very low, its inclusion would operate to reduce the final assessed mark. Your Committee has no basis upon which to decide whether the term mark petition was or was not withdrawn, a matter in dispute in the written submissions. The petition does not appear to have been formally addressed and decided by the Faculty. It may well have been dismissed for lateness if it had been heard, but there is no evidence whether this preliminary issue was considered by the Faculty either. Even if the petition were allowed and the term mark in question was removed from the equation, or was itself assessed from

the remaining marks, whatever was the usual procedure in such cases, your Committee cannot determine whether the overall result would be affected, as it has no evidence as to the totality of the term marks in this course employed in the calculation.

Your Committee could have recalled the parties to a continuation of the hearing, whenever this could be arranged given the number of persons involved, to resolve these undetermined issues. However, your Committee thought that this would create undue hardship to the parties, especially to the Student. The Student indicated at the hearing that, due to uncertainty as to her status at the beginning of the current term, and the realization that she would lose some valuable time which she could not afford to lose at the beginning of the session, until her status was resolved, she would voluntarily sit out this term. Observing her record to date, your Committee felt this to be a wise decision on her part. Your Committee notes that it was originally scheduled to hear this appeal on December 20, 2007. Had this hearing proceeded, it is very possible that your Committee could have given a decision prior to the opening of the Winter term, 2008. Your Committee has been informed by the Judicial Affairs Officer that the hearing was adjourned from this date at the request of the University. Accordingly, by the time a new hearing date could be arranged, it was impossible for your Committee to deliver a decision until after the Winter 2008 session had commenced. As a result, because of the sessional structure of the Faculty's courses, the Student cannot resume her studies until the Fall session of 2008, if she were to succeed on her appeal, or the Winter session of 2009, if she fails to succeed. Your Committee also was informed by the Faculty that, on the hypothesis that the Student were permitted to withdraw without penalty from ECE221H1, her sessional average for the Winter session, 2007 would have been sufficiently high to permit her to proceed to the next session, still on probation, carrying the course, but retaining credit for the other courses taken in the session. Your Committee notes that granting a grade of WDR is a permitted remedy under the Faculty's rules, although the granting of such a remedy at this stage is an extraordinary exercise of your Committee's discretion. Giving the benefit of the doubt to the Student on the matter of the term examination by permitting withdrawal from the course in question will not compromise the Faculty's standards. The Student will still be on probation, and will still have to retake the course in her next term or as the Faculty may determine. However, repetition of the session, coupled with the undergoing of this unusually long period of enforced absence from her studies, is an unduly harsh consequence of an obviously terrible result in one course pulling down her sessional average below the ordinarily permitted level.

Accordingly, your Committee believes that the most just result, given all that has transpired, is to allow the appeal, and direct that the grade in ECE121H1 be vacated and replaced with the non-grade report WDR. Your Committee orders accordingly.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #323 of the Academic Appeals Committee
March 13, 2008

To: Academic Board,
University of Toronto

Your Committee reports that it held a hearing on Friday, February 15, 2008, which continued on Wednesday, February 20, 2008, at which the following were present:

Professor Emeritus Ralph Scane (Chair)
Professor Jan Angus
Professor Douglas Reeve
Ms Lorenza Sisca
Ms Maureen Somerville

Secretaries: Ms Nancy Smart, Judicial Affairs Officer
Ms Mette Mai

Appearances:

For the Student:

Dr. C.B. (the Student)

For the Faculty of Medicine:

Ms Sari Springer (Counsel)
Dr. David Tannenbaum
Dr. K. Iglar

This is an appeal from the Appeals Committee of the Faculty of Medicine (the Faculty), dated October 26, 2006, which dismissed an appeal from the decision of the Board of Examiners – Postgraduate Programs (BOE) of the Faculty, dated April 24, 2006. The latter decision accepted a recommendation of the Residency Program Committee of the Department of Family and Community Medicine (the Department) that the Student be dismissed from the Family and Community Medicine Residency Training Program (the Program).

The Student received his basic medical degree abroad. He was accepted into the Program conditionally upon successful completion of a three month long Assessment Verification Period

(AVP), which candidates with such degrees must complete successfully as a pre-Program requirement. The Student did complete the AVP successfully, and commenced the Program proper on March 26, 2005. Most, but not all of the Student's clinical work took place at the Sunnybrook site of Sunnybrook and Women's College Hospital.

By mid-June, 2005, the director of the residency program at the Sunnybrook site was writing to the Department's Director of Postgraduate Education, Dr. Tannenbaum, of concerns observed by the staff physicians who were working with, training and evaluating the Student. These involved perceived weaknesses in his medical knowledge base, his ability to diagnose problems, his management of investigation and therapy, and his record keeping. A remediation program in family medicine during the months of July, August and September, 2005, at Sunnybrook, was proposed. This recommendation was approved by the BOE on June 28, 2005, and the Student commenced this remediation period accordingly.

Unfortunately, the remediation program did not go well for the Student in the eyes of the supervising physicians. In mid-September, 2005, the residency program director at the Sunnybrook site was reporting to the Department's Director of Postgraduate Education that the Student was still well below the expected level of first year residents at that stage of their residency. He also reported increasing confrontational problems with some staff, and lack of insight on the part of the Student as to the Student's problems. On October 25, 2005, the BOE directed that the Student enter a program of remediation with probation, for a period of three months. The direction of the BOE contained the following sentence. "The Board requires that this period of remediation with probation take place at a Family Medicine Training site other than Sunnybrook & Women's College Health Sciences Centre."

The formal decision of the BOE was in fact anticipated in part by the Faculty, in that a new period of remediation with probation started at the beginning of October, 2005. In case relations between the Student and some other staff were contributing to the Student's perceived problems, six doctors from other sites were brought into the Sunnybrook site at various times throughout October, 2005, to observe, evaluate and counsel the Student regarding his clinical work with patients. In November, 2005, the Faculty arranged that the Student undertake the Standardized Patient Program, in which students are observed and evaluated while interacting with "patients" who are in fact coached actors. The assessing physicians expressed concerns, particularly with respect to the Student's lack of self-insight in dealing with suggestions for improvement.

The Student alleges that he was suspended from the Program during December, 2005 and January, 2006. The Department denies that there was any formal suspension during this time. Dr. Tannenbaum stated that the Student was put on a self-study regime while the Department sought an appropriate site to resume the Student's active program. The Department hoped that the Student might be more at ease, and perform better, if some of his clinical work in the remediation with probation program could be carried out in a non-hospital setting. The Residency Program Committee had recommended that the remediation with probation period be extended by another two months, and on January 16, 2006, the BOE accepted that recommendation. Accordingly, in February, 2006, the Student was assigned to a doctor with a community medical practice for more clinical work with her patients, and evaluation and coaching thereon. Unfortunately, this did not

succeed. Although the BOE had granted a two month extension of the remediation with probation program, the doctor in question was unwilling to continue with the Student after a period of about five weeks. The residency terminated in fact on March 16, 2006, and the BOE formally accepted the recommendation for termination on April 24, 2006, as noted above.

Before your Committee, the Student divided his appeal into three basic sections, which he classified as academic, legal and humanitarian. For convenience, we will deal with the issues under the same classifications.

The principal argument of the Student is basically that the evaluations of him were wrong, and that in any event they were tainted with bias. Leaving aside the bias issue momentarily, the question of the correctness of the Faculty's overall evaluation of the Student's performance, and the evaluations made regularly throughout the program are issues into which your Committee will not enter, for the obvious reason of lack of competency. Your Committee has on many occasions indicated that it cannot and will not remark examinations or papers that have been evaluated by the examiners appointed by the University, and the same is true for clinical assessments when these are part of the evaluation process. Your Committee has in fact studied the various evaluation documents and reports to seek evidence of bias or lack of objectivity. In fairness to the Student, to your Committee, as lay persons in the medical field, these evaluation were not all bad, indeed some were good. The Faculty agreed that this was so, and particularly acknowledged the Student's hard work and motivation to succeed. However, the overall evaluation of the numerous individual appraisals is what matters, and your Committee cannot interfere with the judgment of the Faculty on the grounds that the judgment was wrong, if it has been fairly arrived at.

Again leaving aside for the moment the issues which the Student has characterized as legal, your Committee examined the evidence placed before it for evidence of bias which might make the evaluation of the Student unreliable. The Student alleged that the doctor who had been assigned as his supervisor throughout the Program had told him that he was too old, and that persons of his age should not be in the program. The Student stated that he had requested a transfer to a different supervisor, but that such transfer had been refused by the Program Director at the Sunnybrook site. The doctor who had been the direct supervisor of the Student was not called to give evidence before your Committee. Your Committee does not find bias on the part of this doctor which would impair the validity of the Faculty's decision to terminate the Student. Your Committee notes that, from a lay person's perspective, the first evaluation by this doctor, made during the AVG period, was very favourable. Whether the doctor was expressing a general view against older students or was simply expressing the view that the Student was demonstrating evidence of the truth of the adage about old dogs and new tricks is speculative. There were a large number of clinical evaluators during the various stages of the Student's program. Assuming the strongest position from the Student's viewpoint, this one relationship does not persuade us that the overall evaluation was suspect. The Student was asked point blank by your Committee whether he relied on any other evidence to establish bias or unfairness in the evaluations, and stated that he did not.

The Student also argues that his performance was adversely affected by the degree of stress which he was undergoing as his relations with some of the staff deteriorated and he became increasingly aware of the academic jeopardy of his position, and that this should be considered in discounting

the adverse assessments he was receiving in some cases. Your Committee accepts that the Student was under increasing stress as he continued to be made aware of adverse aspects of the evaluations of his clinical performance, with which he largely disagreed. However, as a matter of policy, your Committee will not consider stress and its secondary manifestations as mitigating factors to poor academic performance when the stress arises from a student's awareness of the fact the she or he is receiving adverse evaluations which are putting the student's future at the University in jeopardy. Your Committee is aware that the Student was also suffering serious personal family problems during the residency periods, but it is unable to conclude that the undoubted stressful and distracting effects of these could excuse the types of performance difficulties noted by the Faculty's evaluators.

The Student also points out that he did not have the benefit of the pre-residency program currently offered to international medical graduates. The Faculty notes that this program was not in place when the Student started his own residency program. Your Committee dismisses this issue as a valid ground of appeal.

Turning to the issues characterized by the Student as legal, the BOE, in its order of October 25, 2005, directed that the period of remediation with probation that it was then directing take place away from the Sunnybrook site, as noted above. As acknowledged by the Faculty, this did not happen. The Faculty explained that it had in fact started this second program prior to the meeting of the BOE in late October, at the Sunnybrook site, and that when this aspect of the BOE's decision became known, it was impracticable to change the site arrangements. The Faculty points out that it had attempted to deal with the dangers to which this part of the BOE order was directed by bringing in evaluators from outside the site during this period.

The Student also points out, and the Faculty acknowledges, that the Faculty breached s.5.2.5 of the *Guidelines for the Evaluation of Postgraduate Trainees of the Faculty of Medicine at the University of Toronto*, adopted June 10, 1996. This section requires, *inter alia*, that all periods of remediation must include a written mid-point evaluation. This did not occur during the remediation period from July to September, 2005, inclusive. The student also states that he did not receive a written mid-point evaluation for the period of remediation with probation.

Your Committee does consider these issues as serious. Deviation from a BOE stipulation as to a particular student is a grave matter, and in establishing the *Guidelines*, the Faculty must have considered the mid-point evaluations to be important for residents who, by virtue of being in remedial programs, are especially vulnerable. However, even serious breaches of this type do not necessarily warrant an academic verdict being overturned. With respect to the BOE decision, the Faculty, in getting the student started on the remediation with probation program in anticipation of the decision, did try to address the same concern as apparently motivated the BOE in ordering a change of site. If the BOE is to meet only at fairly distant intervals, the Faculty should establish a formal mechanism for dealing with situations, ordinarily dealt with by the full BOE, which may arise when the BOE is not scheduled to meet in the immediate future. No explanation was offered for the failure to provide mid-point evaluations, and your Committee attributes this to administrative oversight, which should be remedied, rather than an attempt to hamper the Student. Your Committee considers that the evaluations communicated to the Student during the

remediation periods made the Student well aware of his evaluators' concerns during this time. Indeed, the Student attributes the stress which he claims mitigates his perceived failings largely to these evaluations. Overall, your Committee does not find that the effect of these breaches by the Faculty of its own procedures is a sufficient ground to reinstate the Student in the program, in the face of the other evidence. The Faculty should not assume that your Committee will always come to this conclusion in other cases.

The Student also complained that he did not get the full three month period of remediation with probation specified by the BOE in its decision of October 25, 2005, referred to above. This is because of what the Student alleges, and the Faculty denies, was his period of "suspension" in December, 2005 and January, 2006, which was mentioned above. It was not in dispute that the Student was not undergoing clinical training with patients during this time, but your Committee was not directed to any regulation of the Faculty which requires all training during these periods to be clinical in nature. Your Committee does not find this to be a valid ground of appeal.

Finally, your Committee considered the grounds of appeal that the Student classified as "humanitarian". The circumstances of the Student's private life which afflicted the Student during his residency, and still do, will not be set out here, but your Committee accepts that these caused him much distress, and, as mentioned above, no doubt contributed significantly to the stress to which he pointed in mitigation. In addition, the results of the University's decision are grave for the Student. His temporary licence to practice medicine in this Province was withdrawn upon his termination, and it may very well be true that he will never get a second chance to obtain it. However, while individual members of the University community may feel compassion towards one adversely affected by its decisions, the University does not act upon, nor modify its decisions, on this ground. When it does grant relief on what are frequently called "compassionate grounds", it does so because the effects on the student concerned are such as to cause the University to conclude that they have so affected the academic evaluations in question that it is no longer proper and just to visit the normal consequences of such evaluations upon the student. As discussed above when we were considering the effects of the alleged stress upon this Student, your Committee could not so conclude in this case.

The appeal is dismissed.

UNIVERSITY OF TORONTO GOVERNING COUNCIL

Report #324 of the Academic Appeals Committee March 30, 2008

To: The Academic Board,
University of Toronto

Your Committee reports that it held a hearing on Friday March 14, 2008, at which the following were present:

Assistant Dean Bonnie Goldberg, Chair
Professor Ellen Hodnett
Professor Yuki Johnson
Mr Alex Kenjeev
Professor Arthur Ripstein

In Attendance:

Mr. D. V., the Student
Professor John Scherk, Vice Dean, University of Toronto at Scarborough ("UTSC")

Ms Nancy Smart, Judicial Affairs Officer

The Appeal

The Student is appealing the October 23, 2007 decision of the UTSC Sub-committee on Academic Appeals denying his request to "defer" his 12 month academic suspension, write two "deferred" examinations CHMB41H3S and BGYA02H3S and rewrite the final exam in PSYA02H3S.

Facts

The Student enrolled at UTSC in the 2005 Fall Session in an Honours Bachelor of Arts program. He completed 2.0 credits in his first session. He continued in the 2006 Winter Session, but only achieved 0.5 credits and was placed on academic probation. He completed courses in the 2006 Summer Session and earned another 0.5 credits, and at this time was placed on a four month academic suspension as a result of a sessional GPA of 0.23 and a cumulative GPA of 0.32.

Upon completion of the suspension, the Student enrolled in four courses in the 2007 Winter Session. He was on academic probation on his return. He earned only another 0.50 credits and was placed on a further 12 month suspension, commencing at the end of the 2007 Winter Session. His sessional GPA is 0.18 and his cumulative GPA is 0.29. He has earned 3.5 credits total. He may return from suspension in September 2008.

The Student has faced personal hardship since he began University. He lived with his aunt and uncle for ten years. His uncle passed away during his first term in University. The Student took on a second job and did poorly academically as a result of his personal and work commitments. When he returned to school in January 2007 on academic probation, his aunt got sick and passed away that February. He wrote two of four of his mid-terms. After his aunt's death, he was not permitted to remain in their house and had to find alternate living arrangements and take on a third job. He did not attend tutorials and most labs. In two of the courses under appeal, his final exams would have been worth almost all or close to his entire final grade, as he had done virtually no work in the courses to date.

He was invited to live with another family member in June 2007. Since then, the Student reports that his life has stabilized, from a monetary and personal perspective. He is seeking a fresh start and has indicated a new and improved attitude and personal circumstances to match.

In two of the courses under appeal, he missed the final exams scheduled for April 19 and April 26, 2007, and in one of the courses, he wrote the April final but did poorly.

At our hearing, the Student informed this Committee that he had decided to attend a number of classes since September, hoping that his suspension would be deferred. He hoped that this Committee would retroactively overturn his suspension so that the courses he was attending as a non-registered student could "count" and he could write exams in them. It was also suggested that some of these courses were those that he had previously failed, and thus explained the request in the remedy before us to rewrite exams he had failed and which were not the subject of an appeal. In other words, the Student was effectively "doing them over" and wanted to write final exams and have them count for his grades in last year's courses, and was asking this committee to allow that remedy. The Student is not registered and, at the appeal, UTSC indicated that they were not aware that the Student was attending class.

Previous Decisions

There are several petitions and re-petitions in this matter.

First, on April 22, 2007, the Student petitioned for late withdrawal from 3 of his four 2007 Winter Session courses: STAB22H3S; BGYA02H3S; and CHMB41H3S. The Student's grounds for the petition were that his aunt had died, he lived on his own and he supported himself. He indicated he has not been able to show up to mid-terms, labs and tutorials for two of three courses. The supporting documentation consisted of his aunt's certificate of cremation, dated March 1, 2007.

The petition was denied, since the Student had not made a case to show that he was unaware of the difficulties he was in prior to the March 25, 2007 drop date. Thus, it was possible for him to know that he should drop the courses by the deadline. Having decided not to drop, he also did not demonstrate an inability to complete the course work. The Student was referred to academic advising to discuss his options and petitioning again.

On June 11, 2007, the Student petitioned again, this time to write retroactive “deferred” examinations for the examinations he missed in CHMB41H3S and BGYA02H3S. He also asked for a re-write for one of two examinations he did write, PSYA02H3S.

By this time, the Student knew that he would be placed on a one year academic suspension as a result of his performance. He again submitted a copy of the funeral certificate and noted that he missed the exams because his aunt passed away (the exams were on April 19 and 26, 2007). He also noted that he did poorly on the exam he did write, because he was not in the proper state of mind.

This petition was denied, as the Student “had not shown that extenuating circumstances prevented him from writing his exams, or in the case of [PSY] that these circumstances adversely affected your performance on the examination.” Further, upon review of the Student’s progress in the three classes, there was no evidence to suggest that had the Student written the examinations or re-written the examination, he would improve his academic position [and thus not face a 12 month suspension.]. For example, the instructor in BGYA02H3S indicated that the Student missed *all* the labs, the mid-term *and* the final.

Third, on August 13, 2007, the Student re-petitioned to “defer” his suspension, write two “deferred” examinations and rewrite the final exam in PSYA02H3S. In this case, the Student provided a more detailed statement outlining his serious personal difficulties. He requested special consideration as a result of his aunt and uncle’s deaths, the fact he could not remain in his aunt’s house after her death, the need to get a third job, and his inability to attend school during the 2007 Winter Session.

The petition was again denied, on the grounds that he had had ample time to drop his courses by the March 25, 2007 deadline, and that as a student on academic probation at the time, he should have better assessed his situation and reduced his course load. Further there was virtually no documentation to support the petition. The petition noted that the academic suspension would give the Student time to reassess his goals to determine whether University was something the Student still wished to pursue.

On September 9, 2007, the Student appealed the denial of the August 13, 2007 petition to the UTSC Sub-committee on Academic Appeals. In particular, the Student hoped for a deferral of his suspension so that he could attend classes, re-take courses he had failed, and start fresh.

The Sub-committee in a decision dated October 23, 2007 denied the appeal and found that the Student did not document the financial and family problems he brought forward, that the date of documentation that was provided (the cremation certificate) indicated that the Student had had time to assess his situation prior to the drop date of March 25th. Further, the Sub-committee noted that that the Student’s problems began well before January 2007 (as he has had continuing academic difficulty).

Now, the Student appeals that decision. He continues to ask for permission to re-write PSYA02H3S, and permission to write the final examination which he missed in CHMB41H3S. But he is now also asking for permission to withdraw from BGYA02HS that he took in 2007

(rather than the ability to write the examination), plus the ability to re-write three more examinations that he wrote in the 2006 Winter Session: SOCA02H3S, ANTA02H3S, and MATA35H3S, and permission to re-write two more exams - BGYA02H3Y and BGYA01H3Y from the 2006 Summer Session. He received a grade of "F" in all five of these courses; these grades were not the subject of any petitions or appeals before us.

Decision

At its core, this decision rests on an unfortunate series of personal circumstances and the conflict of these circumstances with the University's course selection policies, and its method of applying these policies.

In the first instance, we have a student who has experienced academic and personal difficulty since the beginning of his time at UTSC. The committee is sympathetic to this Student and yet must consider the second and third sets of circumstances – that is the existence of University policy and the application of those policies equitably and fairly to all students.

The ability to obtain late withdrawal without academic penalty is an extraordinary remedy, reserved for unusual and unique situations. The use of "drop dates" indicates that the University respects the ability of a student to choose whether to continue to remain in a course for any number of reasons. But by the drop date each term, in this case March 25, 2007, the student is expected to have assessed his or her situation and made a decision. Once the drop date passes, the University is of the view that the student has decided to continue in the course. Exceptions to this policy are rare, and usually occur in situations where unanticipated circumstances occur *after* the drop date, where already-existing circumstances become significantly more severe, or where already-existing circumstances do not resolve.

Applying this analysis to the present case, this Student's circumstances were acute in the month prior to the drop-date, when he had not done any work in most of the courses and was in dire personal straits. He was already on academic probation and it is unfortunate that he was not able to get assistance to provide guidance that would have allowed him to more accurately assess the chances for his success in the program. While it is possible to take the view that the Student's personal circumstances became worse or did not resolve themselves at the time of the April 22, 2007 petition, unfortunately, there was little evidence provided by the Student to support this, and thus UTSC had little choice but to deny the appeal.

Similarly, when the Student further petitioned through the summer for an opportunity to re-write one of his finals and to have a chance to take the missed finals, there was little evidence academically that the opportunity to write the finals would have lifted the 12 month suspension given how poorly the Student had performed and given how little work the Student had done in the courses. As well, there was no further documentary evidence proffered in accordance with the UTSC policies that showed further incapacitations and a deepening of the personal circumstances. Again, UTSC had little choice but to deny the further petitions and ultimately to confirm the denial at the Subcommittee on Academic Appeals.

In fact, by the time of the final Subcommittee appeal in September 2007, the evidence heard by this committee suggests that the Student's life had begun to turn around and there was every reason to believe that the one year suspension would provide the Student with the opportunity he sought, i.e., a fresh start at achieving his potential in University.

The Student's evidence suggests that the 2007-2008 year has been productive and positive – he is settled, healthy, and understands better how to succeed academically. The Committee notes approvingly of this Student's new-found self-awareness and desire to do better given another opportunity. Unfortunately, that new opportunity must be in the form of a registration *following* the required academic suspension, and cannot be in the form of “re-writes” and “do-overs” for the courses that form the subject of the petitions under appeals, and certainly for those which are not the subject of the appeal.

There are a number of remedial requests before us, most of which were not the subject of the previous decisions. We have confined our deliberations to the remedies that formed part of the decisions under appeal. The Committee is cognizant that these new requests come from a combination of the time that has passed, as is often the case en route to Governing Council appeals, but also because during the suspension, the Student took it upon himself to begin attending classes again, in the hope that he would be given a “fresh start” by this Committee. To do so would be well beyond the scope of this Committee.

Therefore, confining ourselves to the matter under appeal, namely the request to “defer” his suspension, write two “deferred” examinations CHMB41H3S and BGYA02H3S and rewrite the final exam in PSYA02H3S, the majority of the Committee is of the view that the appeal should be dismissed.

One member of the Committee is of the view that UTSC could have granted the Student's petition on the evidence (the March 1, 2007 death certificate) provided at the April 22nd petition. Alternatively, the minority is of the view that the August 13, 2007 petition decision relied too heavily on the single fact of the Student's aunt's death rather than giving more weight to the surrounding circumstances described in his petition. Accordingly, the member would have either allowed the Student to withdraw from PSYA02H3S, CHMB41H3S and BGYA02H3S (even if this meant the Student still faced academic suspension) or, alternatively, to re-write the final exam in PSYA02H3S and write the missed exams CHMB41H3S and BGYA02H3S (even if this meant that the Student still faces academic suspension as a result of his likely inability to pass these courses having done no term work, and although recognizing that this is not what the Student is asking for now).

The appeal is dismissed.