

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report # 349 of the Academic Appeals Committee
November 16, 2010

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Wednesday, October 20, 2010, at which the following persons were present:

Professor Hamish Stewart, Chair
Professor Maydianne Andrade
Professor Robert Baker
Professor Michael Marrus
Ms Priatharsini Sivananthajothy

Secretary: Ms Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty
Grievances

In Attendance:

Mr B . B , The Student
Mr Daniel Goldbloom, Law Student, Downtown Legal Services

Professor Berry Smith, Vice-Dean of the School of Graduate Studies
Ms Jane Alderdice, Director, Quality Assessment and Governance, School of Graduate
Studies

I. The Appeal

In the Spring of 2009, The Student received a failing grade in CIV1174 (Finite Elemental Methods). He asked the Graduate Departmental Academic Appeals Committee (GDAAC) to allow him to withdraw from CIV1774 without academic penalty. In a decision dated June 15, 2009, the GDAAC refused his request. The Student appealed to the Graduate Academic Appeals Board (GAAB). The GAAB heard the appeal on September 23, 2009, and, on December 4, 2009, dismissed his appeal by a majority. The Student appeals to your Academic Appeal Committee, seeking the remedy of late withdrawal from CIV1774 without academic penalty.

II. Facts and Applicable Policies

The Facts of The Student's Case

The GAAB succinctly stated the facts of the case as follows:

The Student enrolled in CIV1174 ... taught by Professor Bentz in the Spring of 2009. The Course Description indicates that the evaluation consisted of 10 weekly short assignments worth 1% each, a mid-term test on February 27, 2009 worth 20%, and end of term project worth 20% and a final exam held on April 20, 2009 worth 50%.

The deadline for withdrawing from courses without academic penalty was February 27, 2009. At that point in time, The Student had had 5 of the 10 assignments graded, and was doing well in the course. The mid-term test written February 27, 2009 was returned on Wednesday, April 15, 2009. The Student did poorly on the mid-term. The deadline for withdrawal without academic penalty had passed on February 27, 2009. The Student wrote the final examination on April 20, 2009.

The Student received a mark of 62% on the final examination and a grade of FZ in the course.

Applicable Policies

The University of Toronto's University Grading Practices Policy, revised April 9, 1998, is hereinafter referred to as the University Grading Policy. This Policy "applies to all individuals and committees taking part in the evaluation of student performance in degree, diploma, and certificate credit courses (hereafter referred to as courses)." Its provisions include the following requirement (emphasis added):

II.2 Classroom Procedures

To ensure that the method of evaluation in every course reflects appropriate academic standards and fairness to students, divisional regulations governing classroom procedures *must be consistent with the practices below*:

...

(f) At least one piece of term work which is a part of the evaluation of a student performance, whether essay, lab report, review, etc., shall be returned to the student prior to the last date for withdrawal from the course without academic penalty.

...

The University of Toronto's Graduate Grading and Evaluation Practices Policy, May 12, 2004, is hereinafter referred to as the Graduate Grading Policy. This Policy "applies to all individuals and committees taking part in the evaluation of student performance in the School of Graduate Studies." Its Purposes are expressed as follows:

The purpose of the Graduate Grading and Evaluation Practices Policy is to ensure:

- (a) that grading practices in the School of Graduate Studies are consistent with those throughout the University and reflect appropriate academic standards;
- (b) that the evaluation of student performance is made in a fair and objective manner against these academic standards;
- (c) that grade scales in the School of Graduate Studies are compatible with those in other divisions of the University.

Part II.1 of the Graduate Grading Policy generally parallels Part II.2 of the University Grading Policy, but does not explicitly incorporate para. II.2(f) of the University Grading Policy or any requirement comparable to it.

It is not disputed that both the University Grading Policy and the Graduate Grading Policy apply to The Student as a student enrolled in CIV1774. The University Grading Policy applies because CIV1774 is a course offered by the University of Toronto. The Graduate Grading Policy applies because The Student was an SGS student enrolled in CIV1774.

III. Previous Decisions

In June 2009, The Student appealed to the GDAAC, seeking late withdrawal from CIV1774 without academic penalty. "The Student argued that he was not provided with timely feedback and that it was unfair to deny him the opportunity to assess his performance, and withdraw from the course if necessary." (GAAB Decision, p. 2.) The GDAAC found that the instructor had "provided adequate and timely feedback in the form of 5 assignments prior to ... February 27th", the deadline for withdrawal without academic penalty. Accordingly, the GDAAC rejected The Student's request.

The Student appealed to the GAAB. The Student once again argued that he had not been provided with adequate feedback before February 27. A majority of the GAAB found that the letter of the University Grading Policy had been complied with and therefore dismissed the appeal (p. 4). However, the GAAB, in what might be characterized as *obiter dicta*, expressed concern about the evaluation scheme in CIV1774H:

... the practice in CIV1774 was not consistent with the spirit of [the University Grading Policy]. The policy is intended to ensure students have meaningful feedback which might then inform their decision to stay in the course or to withdraw without penalty. ...

The panel recommends that the Department develop and disseminate best practices within the existing SGS policy setting out the proportion of graded work which should be returned prior to the date for late withdrawals. At a minimum, a meaningful portion of graded work should be returned to the student with

feedback before the deadline, unless there are pedagogic reasons in a particular course where this is not possible.

A minority of the GAAB would have allowed The Student's appeal.

IV. Decision

Submissions

Both the GDAAC's decision and the GAAB's decisions were premised on the assumption that para. II.2(f) of the University Grading Policy applied to CIV1174H. The written submissions received in advance of the hearing were similarly premised on this assumption.

The central thrust of The Student's written submissions was that while the grading scheme for CIV1174H may have complied with the letter, it did not comply with the spirit of para. II.2(f). He stated that if "he had received meaningful feedback in a timely fashion, he would not have continued with the course" (The Student's written submission at para. 23; see also The Student's affidavit of March 2, 2010, at para. 4). The Student's written submission conceded that the letter of the University Grading Policy had been complied with, but relied on the GAAB's observation that the intent of para. II.2(f) was to require "meaningful feedback". The Student submitted that work amounting to 5% of the final grade was not "meaningful feedback", and noted by way of comparison that in H courses offered in the Faculty of Arts and Science, instructors are required to return marked assignments worth at least 10% of the total mark before the deadline for withdrawal without academic penalty. The Student submitted that he was entitled to the remedy of late withdrawal without academic penalty because the spirit of the policy had not been followed. This remedy, analogous to the equitable remedies available in a superior court, would put The Student in the same position he would have been in if the spirit as well as the letter of para. II.2(f) had been followed.

In its written submissions, the SGS argued in effect that because some graded work had been returned to The Student before February 27, the University Grading Policy had been complied with. The SGS submitted that The Student's statement that he would have withdrawn from the course if he had received timely feedback was "purely speculative", and noted that there were no "extenuating circumstances" militating in favour of late withdrawal. Finally, the SGS took issue with the GAAB's *obiter dicta*, noting that the University Grading Policy did not require "meaningful" feedback and asserting that the word "meaningful" was "open to extensive subjective interpretation."

In his written reply, The Student submitted that the 5% portion of work returned before February 27 was "not substantial enough to allow [him] to take stock of his academic performance" (at para. 7), noted that he was not relying on any extenuating circumstances of a personal nature (at para. 17), and provided additional evidence in support of his sworn statement that he would have dropped the course if he had had more meaningful feedback (paras. 11-13 and affidavit of June 10, 2010). Finally, The Student submitted

that the word “meaningful”, though not capable of precise definition, was a useful way of expressing the intent behind para. II.2(f) of the University Grading Policy. The Student submitted that it would be “patently unreasonable for the university to require that a ‘meaningless’ amount of term work be returned to the student by the drop deadline.”

At the hearing on October 20, Professor Smith, on behalf of the SGS, did not rely on the arguments made in the SGS’s written submissions, but instead introduced an entirely new argument. He submitted that because para. II.2(f) of the University Grading Policy was not explicitly incorporated into the Graduate Grading Policy, it did not apply to any SGS courses, including CIV1174H; thus, any debate over non-compliance with either the letter or the spirit of para. II.2(f) was irrelevant. In support of this interpretation of the grading policies, Professor Smith proffered a print-out of an e-mail dated August 28, 2009, from Anil Purandaré, SGS Governance Officer, forwarding an e-mail from Professor Brian Corman, Dean and Vice-Provost, Graduate Education, to “Graduate Department, Centre & Institute Directors, Chairs, Coordinators and Administrative Assistants”. A copy of this e-mail is appended to your Committee’s report. In the e-mail, Professor Corman quotes the Provost, Professor Cheryl Misak, as follows:

It seems very clear to me that some of the practices embedded in the Grading Practices Policy are not apt for many graduate courses. At issue, of course, is the practice that a substantial piece of work be marked before the drop date. The reasons for this practice’s lack of fit in graduate education are varied. For instance, in some graduate programs (particularly in professional programs), courses are compulsory and there is no possibility of dropping a particular course; some courses are practicum based; and some courses, such as those in my own discipline, warrant the bulk of the evaluation being based on a substantial research paper which can only be written towards the end of the course. University policy allows for local variation and I hereby interpret the current SGS grading policy as such local option.

It is obvious from the record that in its original decision, the GDAAC assumed that para. II.2(f) of the University Grading Policy applied to CIV1174. The argument that para. II.2(f) did not apply was not considered by the GAAB. It was not considered in The Student’s original written submissions. It was not raised in the SGS’s written submissions. Therefore, it was not considered in The Student’s written reply or in Mr Goldbloom’s initial oral submissions. It was made for the first time during Professor Smith’s presentation of the SGS’s case at the hearing.

The decisions of your Committee are in the nature of reviews of decisions made by other tribunals and decision-makers within the University. Basic norms of procedural fairness dictate that in an appeal hearing of this kind, the parties should not be surprised by new arguments that have not been raised earlier in the proceedings. The parties are entitled, in advance of the hearing, to have notice of the issues to be raised and of the submissions to be made. The evidence put before your Committee is typically documentary and should be filed in advance. The Chair of your Committee notes that the e-mail from Professor Corman was sent on August 28, 2009, more than three weeks before the GAAB heard

The Student's appeal, and long before the SGS was called on to reply to The Student's written submissions in this appeal. To the extent that the SGS relied on this document in support of its position, it had ample opportunity to raise the argument that para. II.2(f) did not apply, well in advance of this hearing. Professor Smith could provide no satisfactory explanation for the failure of the SGS to raise this argument at an earlier stage in the proceedings.

In the opinion of the Chair of your Committee, simply to have proceeded with the hearing at this stage would have been a denial of procedural fairness to The Student. The Chair explained his concern to the parties and called a recess so that the parties could consider their positions. When the hearing resumed, the Chair offered The Student the opportunity to adjourn the hearing to another date, to give him time to develop a response to the SGS's new argument. Mr Goldbloom, on behalf of The Student, stated that he was prepared to proceed and would not object to the evidence proffered by the SGS. Your Committee is very grateful to The Student and Mr Goldbloom for their willingness to proceed on October 20.

In response to the SGS's new argument, Mr Goldbloom made several points. First, he submitted that Professor Smith's reliance on the new argument indicated that the SGS no longer took issue with The Student's original arguments. Second, he sought to establish that CIV1174 was not a course of the kind where, according to the Provost's quoted words, the application of para. II.2(f) would be unsuitable; it was not compulsory, it was not practicum-based, and it was not evaluated on the basis of a substantial research paper. Finally, he noted that there appeared to be no way that an SGS student could determine whether or not para. II.2(f) would apply to any given course.

Reasons

The SGS argues that para. II.2(f) of the University Grading Policy does not apply to SGS courses because it is not explicitly repeated in the relevant part of the Graduate Grading Policy. Part II.1 of the Graduate Grading Policy parallels Part II.2 of the University Grading Policy; therefore, the omission of para. II.2(f) must have been deliberate. This argument has important implications for graduate grading practices, not only with respect to para. II.2(f) but potentially with respect to any provision of the University Grading Policy that is not explicitly repeated in the Graduate Grading Policy. But the Graduate Grading Policy might also be interpreted as preserving any provision of the University Grading Policy that is not inconsistent with it. Both policies are equally authoritative, and both policies apply to SGS courses. The Graduate Grading Policy was enacted after the most recent amendments to the University Grading Policy; moreover, the stated purposes of the Graduate Grading Policy indicate Governing Council's intention that grading practices in SGS be consistent with grading practices in other divisions of the University. Since para. II.2(f) is not inconsistent with anything in the Graduate Grading Policy, on this interpretation, it would apply to SGS courses.

Thus, a complete consideration of the arguments raised at the hearing would require your Committee to resolve the following issues:

1. Does para. II.2(f) of the University Grading Policy apply to SGS courses?
2. Does the spirit of para. II.2(f) require students to be provided with “meaningful feedback” before the last date for withdrawal without academic penalty?

If the answer to either question 1 or question 2 is “no”, then The Student’s appeal would fail. But if the answer to questions 1 and 2 is “yes”, then a third question would arise:

3. Does a failure to provide “meaningful feedback” before the last date for withdrawal without academic penalty result in unfairness to students, entitling them to a remedy?

If the answer to question 3 is “yes”, then the following questions relating to The Student’s experience in CIV1174 would have to be answered:

4. Did the grading scheme for CIV1174, though in compliance with the letter of para. II.2(f), fail to comply with its spirit by failing to provide The Student with meaningful feedback on his performance before February 27, 2009?

If the answer to question 4 is “no”, then The Student’s appeal would fail. But if the answer to question 4 is “yes”, then your Committee would have to consider the final question:

5. Is The Student entitled to the remedy of late withdrawal without academic penalty?

Your Committee found that it was unnecessary to resolve all of these questions about the proper interpretation of the grading policies. The Student concedes that, strictly speaking, the grading scheme for CIV1174H complied with para. II.2(f), but argues that this technical compliance did not comply with the spirit of the paragraph. For that purpose, he argues, “meaningful feedback” is required, and in the absence of “meaningful feedback”, he has been treated unfairly and is entitled to the remedy of late withdrawal without academic penalty. A majority of your Committee was of the view that the evaluation received by The Student was sufficient to constitute “meaningful feedback” and therefore complied with the letter and, if required, with the spirit of the university’s grading policies. The five weekly assignments provided The Student with regular graded feedback on different topics related to the course material and amounted to 5% of the final grade, which, though not as great a proportion as in the Faculty of Arts and Science, is nonetheless a meaningful, not a meaningless, amount. In other words, the majority of your Committee found that the answer to question 4 was “no”, and therefore found it unnecessary to answer the remaining questions.

A minority of your Committee would have found that the evaluation received by The Student did not comply with the spirit of the university’s grading policies and therefore would have granted the remedy sought.

The appeal is dismissed.

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report #351 of the Academic Appeals Committee
November 25, 2010

To the Academic Board
University of Toronto

The Academic Appeals Committee reports that it held a hearing on Friday, November 19, 2010, at which the following were present:

Assistant Dean Kate Hilton, Chair
Professor Robert Baker
Professor Ellen Hodnett
Professor Henry Mann
Mr. Olivier Sorin

Secretary: Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

In Attendance:

For the Student Appellant:

Mr. S M (the "Student")

For the University of Toronto, Faculty of Applied Science and Engineering:

Professor Thomas Coyle, Associate Professor & Interim Associate Chair, Undergraduate Studies
Mr. Khuong Doan, Associate Registrar, Student Services

I. The Appeal

The Student is appealing the decision of the Academic Appeals Board of the Faculty of Applied Science and Engineering ("AAB"), dated August 17, 2009, which denied the Student's request for late withdrawal without academic penalty.

II. Facts

The Student enrolled in Faculty of Applied Science and Engineering ("Engineering") in Fall 2006. He experienced academic difficulty due to family circumstances, and ultimately withdrew from the program.

The Student took a year off, and in the summer of 2008, he was preparing to return to school. That summer, his fiancée became unexpectedly pregnant, and they decided to terminate the pregnancy. This event had a number of negative repercussions for the Student. The Student's parents disapproved of his and his fiancée's decision, causing a rift in the family relationship. He moved out of the family home, which increased his living expenses; although he got a weekend job as a window cleaner, he still struggled to support himself financially. In addition, the Student experienced mental distress as a result of his estrangement from his parents and his guilt over the termination of the pregnancy.

While all of these events were unfolding, the Student returned to school. In Fall 2008, the Student enrolled in the first year program in Engineering. Because he had withdrawn from the program in 2006, the Student was determined to succeed. However, his personal circumstances affected his ability to focus on his studies. The Student experienced academic difficulty throughout the term, but he persisted and wrote his final examinations in December 2008. The results of the examinations, however, were very disappointing. The Student failed the term, and was expelled from the program.

The Student petitioned the Examinations Committee, requesting late withdrawal without academic penalty due to his personal circumstances. In its decision of January 28, 2009, the Examinations Committee denied the petition.

The Student then appealed to the AAB, which upheld the decision of the Examinations Committee on August 17, 2009.

On November 16, 2009, the Student appealed to the Academic Appeals Committee of Governing Council, requesting once again that he be granted late withdrawal without academic penalty, so that he could enroll once again in the Engineering program.

III. Decision

This Committee accepts that the Student was distressed by his difficult family circumstances and financial situation in the Fall of 2008, and that the Student's academic performance was likely affected by these factors. However, such a finding is insufficient to merit the extraordinary remedy of late withdrawal without academic penalty.

The Academic Appeals Committee has repeatedly affirmed that late withdrawal without academic penalty will only be awarded in cases where there is a change in circumstances after the drop date for courses. Once the drop date is past, the University holds the student to his or her decision to continue with the course, and will not make exceptions for circumstances that existed at the time of the drop date, however difficult those circumstances may be for the student. The drop date policy requires students to make a reasonable assessment as to their probability of success; it does not permit them to gamble that they will be able to overcome their circumstances and succeed in their courses while retaining the option of late withdrawal if their gamble fails.

In this case, the Student argued that his circumstances became more difficult following the drop date, as he had less income towards the end of the term from window washing and he began arguing more frequently with his fiancée. For these reasons, he suggested that his mental distress became more acute and affected his studies more dramatically following the drop date. It is difficult for this Committee to assess the extent of the Student's mental distress and the degree to which it affected his studies, since the Student did not present any medical evidence at the hearing, and he testified that he had never sought medical or counseling support of any kind. As stated above, late withdrawal without academic penalty is not available as a remedy for circumstances which existed at the time of the drop date. For the Student's argument to be successful, he would have had to demonstrate that his situation deteriorated so dramatically following the drop date that it amounted to an unforeseen change in circumstances, rather than an extension of existing circumstances. This is a high standard, and in light of the fact that the Student did not present any medical or other compelling evidence to support his argument, this Committee could not conclude that the test was met.

In short, the Student had been distressed about his family circumstances and financial situation well before the drop date, and he continued to be distressed about them following the drop date. He hoped that he would be able to turn the situation around and improve his academic performance. Unfortunately, his hopes were not realized, and the Student must accept the consequences of his choice.

The appeal is denied.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report # 352 of the Academic Appeals Committee
December 8, 2010

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Tuesday, November 16, 2010, at which the following members were present:

Professor Markus Dubber, Chair
Professor Christina Kramer
Ms Natalie Melton
Professor Andrea Sass-Kortsak
Mr. Gregory West

Secretary: Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

the Student Appellant
the Student Appellant's Father

For the University of Toronto at Scarborough (UTSC):

Professor Mark Schmuckler

I. Appeal

The Student appeals a decision of UTSC's Subcommittee on Academic Appeals, dated March 21, 2010, denying his petition for an extension of time to write the final exam in the 2009 Summer Session course BGYC13H3. Before your Committee, the Student requests the remedy of late withdrawal without academic penalty from this course.

II. Facts

The Student asked for, and was granted, a deferral of the final exam in this course, along with another Summer Term course (GGRA03H3). Both deferred exams were scheduled

for December 4, 2009, the exam for BGYC13H3 at 9:30am, and that for GGRA03H3 at 2 p.m.

According to the Student, he could not take the exam in BGYC13H3 on December 4, 2009, because he fell seriously ill on the morning of the exam. He went to the doctor at noon. The doctor filled out a UTSC Student Medical Certificate indicating that the Student suffered from nausea, vomiting, and diarrhea and that the Student was "unable to fulfill academic obligations."

Nonetheless, the Student then went ahead and took the afternoon exam in GGRA03H3. He did well on this exam, well enough to earn a grade of A for the course. Not having taken the final exam in BGYC13H3, which counted for 60% of the final course grade, he received an F (27) for the course; he had earned a C+ (68) on the midterm, which counted for 40% of the course.

On December 18, 2009, the Student requested an extension of time to write the final exam in BGYC13H3, which was denied on January 4, 2010. He appealed this decision to the Subcommittee on Academic Appeals and enrolled in the same course for the Winter Term, according to the Student, "as a precautionary measure" since he needed the course to graduate by June 2010 and had been informed that his appeal would be considered in mid-March, after the course enrolment deadline. He finished the course, took the exam, and received a final grade of B-. He graduated in June 2010.

Before your Committee, the Student, for the first time seeks the remedy of late withdrawal without academic penalty because the remedy he originally sought, taking the exam at a later date, is now pointless. He took the course again, sat the final exam, and passed the course.

III. Decision

Your Committee unanimously finds that the Student provided "compelling evidence of a significant medical or other emergency" in support of his request to defer the December 4, 2009 rescheduled final exam in BGYC13H3, as required by UTSC's provisions governing "Special consideration, petitions and appeals" (s. B.7.) The rationale for the denial of his deferral petition by UTSC's Subcommittee on Standing makes reference to the lack of "compelling evidence of treatment that [the Student] received for [his] illness." The Student, however, since has produced a second note from the same doctor that, in addition to restating the diagnosis indicated on the UTSC Student Medical Certificate of December 4, 2009 in greater detail, sets out the treatment prescribed (fluids, rest, BRAT diet, Gravol as needed).

Both in the rationale for the initial denial by the UTSC Subcommittee on Standing and at the oral hearing, much weight was placed on the Student's having not only taking an exam later in the day but having done well on it. Your Committee finds that the Student could not reasonably be penalized for his decision to take the afternoon exam against the

doctor's advice, particularly because the UTSC representative at the oral hearing clarified that UTSC takes the UTSC Student Medical Certificate of December 4, 2009 at face value and does not challenge its reliability or verifiability. There was also much discussion of the Student's Ontario Student Assistance Program (OSAP) standing. The Student argued, supported with evidence including a letter from an Assistant Registrar at UTSC's Financial Aid Office, that one of his reasons for taking the afternoon exam on December 4 despite his illness was that he was worried about retaining his OSAP eligibility. The Division responded that "there is no current threat to your being in good status with OSAP" (as stated in the decision by the UTSC Subcommittee on Academic Appeals). Your Committee does not consider the question of the possible effect of the Student's taking one or both exams on his OSAP eligibility relevant to the disposition of the case.

Moving on to the question of remedy, your Committee unanimously finds that late withdrawal without academic penalty is appropriate given that the original remedy sought by the Student, a deferred exam, is now beside the point; there is not only the significant passage of time (several months since he took the course), but more specifically in this case, the facts that the Student has taken the course again, including the final exam, received a grade (of B-) for the course, graduated, and joined the work force.

Your Committee appreciates that UTSC in particular, and the university as a whole, is strongly predisposed against granting the remedy of late withdrawal without academic penalty, a predisposition reflected in policies throughout the University of Toronto, including but not limited to UTSC. Your Committee, however, is charged with the fair application of all university policies, including those that do not on their face provide for exceptions, however generally worded. Finality is crucial for the proper functioning of any institution, including large academic institutions. But finality is not the only value, and rules designed to serve it are not exempt from scrutiny of their application in light of fairness and consistency.

Your Committee finds that the fair application of the policies regarding late withdrawal without academic penalty in the present case requires that an exception be made. The present case is exceptional in several respects. The Student seeks the remedy of late withdrawal without academic penalty only because the remedy originally sought has become irrelevant. The obsolescence of the original remedy is not due to any neglect or failure on the student's part. On the contrary, it is because he took the initiative to ensure that he would complete his program as planned, and be able to graduate in a timely fashion. He already repeated the course, wrote the exam, received credit for it, and graduated. The present case does not involve an expected or foreseeable circumstance that the Student could have taken into account when he requested, and received, a first deferral of the exam in question or, for that matter, at any time before the drop date. He deferred the exam once and then fell ill on the day of the rescheduled exam. It cannot be said that this course of events was something the student should have anticipated. To characterize the onset of a serious illness on the day of an exam as foreseeable would produce precisely the unfairness that resulted in the present case: to penalize a student

for his physical inability to take an exam, assuming of course that “compelling evidence of a significant medical ... emergency” is present, as determined by your Committee.

The appeal is allowed. The grade of F in the 2009 Summer Session course BGYC13H3 is vacated, and the Student is allowed retroactively to withdraw from this course without academic penalty.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report # 353 of the Academic Appeals Committee
December 17, 2010

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Friday, December 10, 2010, at which the following members were present:

Professor Markus Dubber, Chair
Professor Denise Belsham
Dr. Gerald Halbert
Mr. Jeff Peters
Professor Arthur Ripstein

Secretary: Ms Jasmin Olarte, Administrative Assistant, Office of Appeals,
Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

the Student Appellant

For the University of Toronto at Mississauga (UTM):

Professor Gordon Anderson, Chair, UTM Academic Appeals Board

I. Appeal

The Student appeals a decision of the University of Toronto Mississauga Academic Appeals Board (AAB), dated September 29, 2010, rejecting his appeal for lifting a one-year suspension. He now seeks the remedy of early return from his suspension.

II. Facts

The Student enrolled at UTM in Fall 2007 and has been plagued by cardiac health problems, eventually requiring catheter ablation surgery on July 3, 2009. That surgery, which the Student reported, at various points, as having a 1% and a 3% failure rate,¹ proved unsuccessful. He experienced cardiac tachycardia episodes on January 22 and 29, 2010, and eventually underwent a second operation on March 26, 2010. He reports that his current health is "stable" and that the failure rate of a second operation is less than 1%.

In August 2009, the UTM Committee on Standing placed the Student on one-year suspension. On appeal, the UTM AAB lifted this suspension, and placed him on probation advising him to seek academic skills advising and, in view of his health concerns, to restrict himself to no more than three courses over the fall and winter sessions. He also was personally advised by the AAB Chair to withdraw from courses promptly when indications were that he was not progressing well.

After enrolling in three courses in Fall 2009, the Student increased his enrollment to five courses in Winter 2010. Rather than withdrawing from all or some of his courses during the Winter Term, either before the drop deadline or after the deadline for medical reasons, he soldiered on, behavior he attributed at the hearing to "overconfidence." He did poorly, and ended the Term with a Sessional GPA of 1.29, an Annual GPA of 1.38, and a Cumulative GPA of 0.99.

The Student set up an appointment with the Academic Skills Centre in July 2010. He did not keep this appointment; he has not scheduled another appointment since then. At the hearing, the Student explained that he had failed to seek the support of the Academic Skills Centre, as provided in the AAB's acceptance of his appeal from his first one-year suspension, because he felt that he did not lack the requisite skills to succeed at university, as evidenced by what he described as his status as a "top-student ... throughout my education over the past 13-14 years."

In June 2010, the Standing Committee once again placed him on one-year suspension. The Student again appealed that decision to the AAB. In September, the AAB rejected his appeal. From this decision, the Student appealed to the UofT Academic Appeals Committee.

III. Decision

Early return from a 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.

Here, there is no suggestion that the Standing Committee's imposition of the suspension was unreasonable. The only question, therefore, is whether the Student has succeeded in producing compelling evidence of the requisite change in circumstances relevant to the purposes of the concededly reasonable suspension.

A majority of your Committee concludes that the Student has not met this heavy burden. In fact, the Student produced no evidence of a change of relevant circumstances. There is consensus among Committee members on this point; the difference of opinion among Committee members concerns the significance of this fact. In the majority's view, the

absence of change requires rejecting the appeal; in the dissenting member's view, it requires accepting it.

The Student still has not sought the support of the Academic Skills Centre and continues to believe that no such support is required, given his success as a student before entering UoT. Rather than making realistic and specific plans about his future course of study, he spoke of plans to enter law school as early as 2012, after raising his GPA to the "mid- to high-2 range," from the current 0.99, by maintaining a GPA of 3 in all his courses, starting in Winter 2011. He testified about regularly attending weekly undergraduate pre-law society meetings at Queen's University in Kingston and University of Western Ontario in London, and reported that he had taken the Law School Admission Test (LSAT), obtaining what he described, at various points, as "an excellent score," a 154, and a 157 (out of 180). In fact, a score of 157 would place the Student in the 72nd percentile; a preliminary review of publicly available admissions criteria suggests that, even if combined with a GPA in the "mid- to high-2 range," this score would be insufficient to make him a competitive candidate for admission in the General category at either Queen's or Western.

The Student also has provided no evidence of significant changes in either his medical condition or in his capacity to produce academic work of sufficient quality. His medical condition is not in doubt, nor has it changed since the Standing Committee's decision to impose the one-year suspension in June 2010, or since the AAB's rejection of his appeal from that decision three months later. The Student also has not enrolled in programs at other educational institutions during his suspension, performance at which might have been considered as evidence of a significant improvement in academic skills, skills that the Student feels do not require improvement given his previous academic achievements.

The purpose of a suspension is not to punish the student but to allow him or her to consider whether, and how, further university studies fit into his or her future life and career path and to develop the level of maturity required for a successful completion of his or her university studies, in the event he or she decides to resume them. There is no indication, much less compelling evidence, that these goals have been achieved at this time in this case, and there is therefore no reason for cutting short the Student's suspension.

One member of your Committee would have allowed the appeal on the ground that having the Student complete his suspension would serve no purpose because he would be no more likely to seek academic counseling during the remaining four months of his suspension than he was during the preceding eight months of the suspension already served.

Your Committee very much hopes that the Student will take advantage of the various support services available at UTM, both during the remaining four months of his suspension and upon his return, including the Office of the Registrar, the Academic Skills Centre, and the AccessAbility Resource Centre, to develop a sensible and feasible

curricular plan and to monitor adherence to that plan through the rest of his academic career at UTM.

The appeal is dismissed.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #354 of the Academic Appeals Committee
April 5, 2011

To the Academic Board
The University of Toronto

Your Committee reports that it held a hearing on Wednesday, March 9, 2011, at which the following members were present:

Professor Emeritus Ralph Scane, Q.C. (Chair)
Professor Elizabeth Smyth
Mr. Olivier Sorin

Secretary: Ms Natalie Ramtahal, Coordinator, Appeals, Discipline and
Faculty Grievances

In Attendance:

For the Student Appellant:

Mr. M.H.R. ("the Student") (Appearing by videoconference)

For the Faculty of Applied Science and Engineering:

Professor Thomas Coyle
Ms Barbara McCann (Registrar)

I. The Appeal

This is an appeal from the decision, dated September 24, 2009, of the Academic Appeals Board ("the Board") of the Faculty of Applied Science and Engineering ("the Faculty"), which dismissed an appeal from a decision of the Committee on Examinations of the Faculty, dated July 27, 2009. That decision dealt with a petition for consideration in two courses, APS105H1 and MAT188H1, both taken in the Winter Term of 2009. As will be discussed subsequently, relief was afforded in the case of the former course, but withheld in the case of the latter course. The Student failed his First Year in the Edward S. Rogers Sr. Department of Electrical and Computer Engineering even with the relief granted. In his appeal document filed with your Committee, the Student broadened his appeal to seek "reinstatement". This was drawn to the attention of the Faculty by your Committee's staff. The Faculty did not object to proceeding on this wider basis, and filed amended response documentation to address this broader remedy. Your Committee decided to consider the appeal on this basis.

II. Background

The Student, whose home is outside North America, entered the B.A.Sc. program of the Faculty in the Fall Term of 2008. His performance in that Term was very weak, even though he was permitted to defer one course to reduce his load. The Student attributed at least some of his poor performance to homesickness, and the cultural differences he faced on coming to this country. The Student was placed on academic probation at the completion of the Fall Term.

The Student was permitted to enroll in the Faculty's "T-Program", which allows students to take or retake courses over the Winter and Summer Terms, to bring themselves to a level which would permit them to proceed into the Second Year of their program. The Student took five courses in the Winter Term, 2009. He appealed one course, APS104H1, in which he received a grade of "D", on the ground that he had been ill with abdominal pain on the day of writing the examination. The petition was denied on the grounds that the Student did not consult a doctor until four days after the examination, and that the medical evidence did not establish grounds for relief. This decision of the Committee on Examinations was not appealed. Nevertheless, in view of the wider relief sought before your Committee, the decision was considered. Your Committee agrees that the medical evidence did not support relief.

Subsequently, the Student petitioned two other courses taken in the Winter Term, APS105H1, written on April 27, 2009, and MAT188H1, written on April 29, 2009. On April 26, 2009, the Student received news of the death of his grandfather, to whom he was very close. The death was unexpected, being the result of an accident. The Student did proceed to write the examinations. The Committee on Examinations accepted the event as justifying the application of the Faculty's standard relief in such cases, the application of the Boocock-Will Formula. This formula examines a student's "closely supervised" term work, the results of the evaluation that is being petitioned and the class averages for each. If the application of the formula gives a mark higher than that actually achieved in the course, this "assessed grade" is substituted for the original mark. If it does not, the original mark is allowed to stand. Application of the formula in the case of APS105H1 did result in an assessed mark, changing the final course mark from 40% to 50%, or D-. However, in the case of MAT188H1, the Formula produced a result less than the original final mark, which therefore stood unchanged. After recalculating his term average following the adjustment in APS105H1, the Student still had an average of only 56.2%, which was insufficient under the Faculty's rules to permit him to continue in the "T-Program" or at all. As a result, his status after the completion of the Winter Term was "Failed – May apply for readmission".

The Student appealed the result in MAT188H1 to the Board. He argued that an error had occurred in applying the Formula in this case, and submitted calculations showing that his term average prior to the final examination was higher than his final average. However, this calculation is not an application of the Formula, as it does not factor in the

relevant class averages. Unfortunately the Board's "decision", which appears to be no more than a general "one-size-fits-all" form for dismissing appeals, did not point this out to the Student.

The Student also again referred to the fact of his grandfather's death, and added the state of his mother's health as a concern affecting his performance. The Board obviously did not weigh these factors as sufficient to alter its decision.

The Student argued that his final course mark in MAT188H1 should not have been left untouched, but raised to compensate for the fact that he had written the final examination while handicapped by his reaction to his grandfather's death, and that it should be assumed that, absent this event, he would have written a better final paper. Your Committee rejects this argument. It would be pure conjecture to pull an arbitrary number of marks out of the air and assign them to this examination, as an alleged measure of the debility under which the Student was labouring. In some cases, students may write examinations under severe strain, and yet surmount the problem and perform well. In some divisions, a student in a similar position might be permitted to write a deferred or supplementary examination, where the mark might or might not be improved. That is not the route offered in the Faculty.

III. Decision

Your Committee considers that the Faculty has applied its rules correctly and fairly in this case, and that this Student has been judged as any other Student in a comparable position would have been. The Faculty has pointed out that if other remedies, such as *aegrotat* standing or permitting withdrawal without academic penalty had been applied to MAT188H1, even though these remedies did not here fall within the usual Faculty guidelines for their application, the Student would have had an even lower term average. MAT188H1 was his second best mark in the term, and applying either of these remedies would withdraw the mark from averaging. The Student did not fail his year because of two examinations written after his grandfather's death. He failed it because of generally poor work over two terms.

The appeal is dismissed.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #355 of the Academic Appeals Committee
April 15, 2011

To the Academic Board
The University of Toronto

Your Committee reports that it held a hearing on Wednesday, March 10, 2011, at which the following members were present:

Professor Edward Morgan (Chair)
Professor William Gough
Mr. James Park

Secretary: Mr. Christopher Lang, Director, Appeals, Discipline and
Faculty Grievances

In Attendance:

For the Student Appellant:

Ms. C. K. ("the Student")

For the Faculty of Arts and Science, Woodsworth College:

Professor John W. Browne, Dean's Designate (Judicial Affairs), Faculty of Arts
and Science
Ms. Cheryl Shook, Registrar, Woodsworth College

I. Appeal

This is an appeal by the Student of failing course grades in two courses – HIS313Y and WDW330H – that she received while enrolled in a Woodsworth College ("Woodsworth") Certificate Program in Business in 1990-1991. She seeks late withdrawal from those courses and asks for their removal from her transcript. Woodsworth takes the position that the 90 day appeal period for seeking such relief expired for the later of the two courses in November 1991. It is the view of Professor John Browne, the dean of Woodsworth, that the matter cannot be re-opened twenty years later. This decision addresses the preliminary issue of the timeliness of the appeal.

At the outset of the hearing, the Student requested that her need for confidentiality of these proceedings be respected. She was advised that the University's policy is to publish

the results of all academic appeals with the student's name redacted from the publicly available copies. The Student indicated to the panel that she was satisfied with that procedure.

II. Facts

At the same time that the Student was registered in Woodsworth's Business program she was also registered as a full-time student in the Faculty of Arts & Sciences. She graduated with a B.A. from Arts & Sciences in 1993. Her submission is that she was at the time overloaded with two programs running simultaneously, and that she petitioned for withdrawal from the Woodsworth courses in the spring of 1991. There is, however, no evidence of any such petition or of any decision made in respect of such petition. Woodsworth's document retention policy requires it to maintain its student files for each current school year plus two years. As a result, the Student's file was long ago discarded, and all that remains of her Woodsworth academic records are the transcripts of the grades under appeal. The transcript does not indicate that the Student withdrew from those courses.

Woodsworth's registrar, Ms. Cheryl Shook, testified at the hearing. She indicated that the Student would have been issued a Statement of Results at the end of the 1990-1991 academic session, alerting her to the failing grades she received and to the fact that she remained registered in the certificate program. The Student does not recall receiving anything from Woodsworth at the time, although she does recall that in 1995 she requested a copy of her Arts & Sciences transcript and that there was no indication of her Woodsworth courses on that transcript. As Ms. Shook explains it, in the early 1990's Woodsworth issued separate transcripts from other University of Toronto faculties, and it was not until the late 1990's or early 2000's that the two institutions combined their transcripts.

The Student testified that in 2003 she was looking for work and, in order to put together her records, she requested a copy of her transcripts from Arts & Sciences. It was then that for the first time she saw the two Woodsworth grades in issue here. She testified that she wanted to have the two courses removed from her transcripts, and called Woodsworth in order to inquire how to go about doing that. She spoke with Ms. Susan Isbister, the Director of Professional and International Programs at Woodsworth, who spent a full hour on the telephone going over with the Student what the formal steps would be in order to commence an appeal of the two grades. The Student stated that Ms. Isbister encouraged her to submit an appeal petition in writing, but that she did not do so as she was busy at the time dealing with her search for employment.

In 2007, the Student contemplated applying for graduate programs. At this point she wanted to have the University eliminate the two Woodsworth courses from her transcript, so she submitted a formal appeal petition to this effect. This petition was dismissed by Woodsworth as being out of time. The Student has therefore appealed to this Committee.

III. Decision

While Woodsworth takes the view that the appeal period for the two courses in issue expired in 1991, the Committee is of the view that might be too strict a view. If a student did have evidence that there was a mistake in her transcript dating from 20 years ago, which error was only now recognized or seen by the student, the passage of time would not alone prevent us from addressing the error.

However, that is not the case with respect to the Student and the Woodsworth grades on her transcript. The Student fully acknowledges that she became aware of the problem for which she seeks redress in 2003, and that Ms. Isbister gave her all of the information she needed to submit an appeal at that point. The Student's testimony was that she did not submit her appeal at that point because, in her words, she was "going through a lot of things", and that not doing so may have been a "mistake on my part".

A university can be expected to make efforts to re-open an old appeal if an alleged error has only recently come to light; it cannot be expected to entertain a two-decade old appeal when the alleged error came to light several years before the student bothered submitting a formal appeal. As long as the student can claim with credibility that she was unaware of the alleged error, she should not be punished by the expiry of an appeal period. However, once the alleged error is discovered and the student is given a proper explanation of how to submit a formal appeal, the deadline begins to run. Woodsworth, and the University at large, is not open to appeals from every student for an indefinite time period, subject only to the student's subjective determination of her own timing. That would impose far too great a burden on the University's record keeping and appeal system.

It is the Committee's view that, whether or not the appeal period expired 90 days after the end of the Student's courses in 1991, it certainly expired 90 days after the long explanatory conversation she had with Ms. Isbister in 2003. It was incumbent on the Student to bring her appeal in 2003, and not to wait until 2007 before doing so.

The appeal is dismissed.