



FOR INFORMATION

TO: Members of the Academic Board

SPONSOR: Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

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AGENDA ITEM: 14b)

ITEM IDENTIFICATION:

Semi-Annual Report: Academic Appeals Committee, Individual Reports Spring, 2013

JURISDICTIONAL INFORMATION:

Section 2.1 of the Terms of Reference of the Academic Appeals Committee describes the function of the Committee as follows:

To hear and consider appeals made by students against decisions of faculty, college or school councils (or committees thereof) in the application of academic regulations and requirements and to report its decisions, which shall be final, for information to the Academic Board. The name of the appellant shall be withheld in such reports.

Section 5.3.4 of the Terms of Reference of the Academic Board provides for the Board to receive for information Reports of the Academic Appeals Committee without names.

BACKGROUND INFORMATION:

The purpose of the information package is to fulfill the requirements of the Academic Appeals Committee and, in so doing, inform the Board of the Committee's work and the matters it considers, and the process it follows. It is not intended to create a discussion regarding individual cases or their specifics, as these were dealt with by an adjudicative body, with a legally qualified chair and was bound by due process and fairness. The Academic Appeals Committee's decisions are based on the materials submitted by the parties and are final.

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**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #364 of the Academic Appeals Committee
December 13, 2012

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on November 21, 2012 at 8:45 am, at which the following members were present:

Sara Faherty, Chair
Mr. Michael Donnelly, Student Member of Academic Board, Governing Council
Professor Hugh Gunz, Faculty Member of Academic Board, Governing Council

Secretary: Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Ms. A [REDACTED] M [REDACTED], the Student Appellant

For the University at Toronto Scarborough Campus (UTSC):

Professor John Scherk, Vice Dean, UTSC

I. Appeal

The Student appeals a decision of the University of Toronto Scarborough Academic Appeal Committee dated March 30, 2012, denying her request to rewrite two final examinations she took during the 2011 Summer Session: courses ECMA04H and POL208Y. The Appeal Committee dismissed the Student's December 8, 2011 appeal from the decision from the Subcommittee on Standing, which had also denied her request to rewrite the two examinations.

II. Facts

In September of 2011, after several years of struggling with academic and personal problems, the Student enrolled in three courses, including Introduction to Microeconomics, ECMA04H, and Introduction to IR, POL208Y. Her final examinations in those courses both took place on

Tuesday, August 16, 2011. She received a mark of 39, or F, in Introduction to Microeconomics and a mark of 57, or D+ in Introduction to IR. The Student asked to take those two examinations again, on the grounds that she was ill on August 16, 2011. Her e-petition explains that on that day she “had red teary eyes, severe headache, difficulty with breathing, and also weakness and dizziness [and] ...was in really bad shape, completely dehydrated, dizzy, severe headache, and stuffy nose.”

The Registrar noted that on September 2, 2011 the Student handed in an undated medical certificate, and that the certificate had been returned to the Student so she could get that field completed. The Student also told the registrar that she was trying to get a letter from the invigilator. Ultimately, the student submitted a medical form that was dated September 1, 2011, and no invigilator letter. During her hearing the Student reported that she asked an invigilator for a letter, but the invigilator declined to provide one, saying, according to the Student, that the examination was a long time ago and she did not remember the conversation.

In its decision letter created on September 16, 2011, the Subcommittee on Standing denied the petition, citing the UTSC Calendar entry stating,

“If you choose to write an examination, you may not petition to rewrite it. In truly exceptional circumstances such as a significant illness that manifests itself during an examination, you may petition to defer the exam that you have begun (see D below). This would require both corroboration from the examination invigilator and documentation from a health care professional.”

The Subcommittee on Standing found that the medical note dated on September 1, almost two weeks after the day of the exam, did not constitute compelling evidence to support granting a rewrite.

In her appeal to the UTSC Academic Appeal Committee, the Student raised an additional argument to the one presented in her original petition. There, she argued that since entering the University she has suffered from depression and anxiety, and that this had been greatly exacerbated by her mother’s health problems over the winter of 2009-2010. In this second petition, the Student continued to stress her illness on the day of the two examinations, and reported that when she spoke to the invigilators they suggested that she should try to sit in the exam and if she still had difficulty, she should leave.

In its March 30, 2012 letter, the UTSC Academic Appeal Committee denied the Student’s appeal to rewrite her exams. The letter expressed sympathy for the Student’s circumstances, but concluded that because the Student had not submitted an appropriate medical certificate or confirmation from the invigilators they did not consider the circumstances sufficient to warrant grounds for permission to rewrite the examinations. The letter erroneously asserted that the Student wrote a third final examination the day following the two exams she took on August 16, 2011. The Student corrected this error, and at the hearing the UTSC representative acknowledged that the student was correct and that the error was the Division’s. However, UTSC also maintains that the mistaken date was not the basis for its decision, and the ruling should stand because the student did not properly document her illness.

III. Decision

The facts of this appeal are, from the Division's perspective, straightforward and simple. The requirements for rewriting an examination are reasonable and clear. The burden is placed on a student to document an illness that prevents her from completing an exam once the exam has begun. In order to substantiate her case, the Student needed a doctor's note and some corroboration from the invigilators.

The record of what happened on August 16, 2011 is frustrating because we have no reliable documentation of the Student's condition on that day. She does not appear to have advocated well for herself, either in clearly explaining to the invigilators what she wanted to do, or in following up immediately after the examinations to acquire the necessary documentation. When asked why she did not simply leave the examinations, the Student recalled that the invigilators told her that if she could not perform then she could go. The Student reports that the wording of their responses made her decide to stay and "try [her] level best" to do well on the examination.

While this Panel understands that the obligation to document an illness is properly placed on the student who is asserting a medical excuse, we were disappointed in the possible lack of clarity on the part of the examination invigilators. There are different practices at other divisions. For example at University of Toronto Mississauga each exam is preceded by a formal spoken announcement, which advises examination takers, "You CANNOT petition to re-write an examination once the exam has begun. If you are feeling ill, please leave the room now and seek medical attention immediately." If a similar announcement had been made at Scarborough, this appeal might have been unnecessary because the Student may not have taken the tests that day. This panel cannot be sure of exactly what was said to the Student during her examinations, or what she said to the invigilators. Nonetheless, we believe this appeal would have been much less difficult if UTSC had a standardised practice establishing for both students and invigilators, how to proceed under these circumstances. We urge the division to consider adopting such a practice.

The Student does not argue that she was unaware of or did not understand the policy. No one on the panel doubts that she was suffering from a cold and allergies on August 16, 2011, and the panel is sympathetic to the Student's overarching difficulties with her own health and her mother's health. What we do not know, and cannot know due to the lack of documentation, is whether she was too sick to take the examinations that day. In the final analysis, it seems clear that the Student made decisions on the day of the tests. She decided to attend the afternoon examination. Later that day, she decided to attend a second examination in the evening. At both examination sites, she reports that she indicated to the invigilators that she was not feeling well, but at both examination sites, she ultimately decided to stay and take those examinations. In any event, the Division would have taken the same steps it is taking here if the Student had walked out and refused to complete her examinations—it is simply asking her to document the illness.

Under these circumstances, UTSC was justified in invoking its policy requiring the Student to document her significant illness, and asking her to provide corroboration from the examination invigilator and documentation from a health care professional. We agree that a certificate dated on September 1 was insufficient to document the Student's condition on August 16. The lack of

certainty about what transpired between the Student and the invigilators is unfortunate, but it does not change the clear requirements set forth by the Division.

This panel was heartened to learn that the Student is taking steps to resolve her problems, and we join the Division in encouraging her to continue working on her plan to return to the University of Toronto Scarborough. The appeal is dismissed.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #365 of the Academic Appeals Committee
January 31, 2013

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on November 19, 2012 at 8:45 a.m. at which the following members were present:

Mr. Tad Brown, Chair
Professor Steven Thorpe, Faculty Member of the Academic Board, Governing Council
Mr. Andrew Girgis, Student Member of Academic Board, Governing Council

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

Appearances:

The Student Appellant

Mr. C [REDACTED] B [REDACTED], the Student Appellant

For the University of Toronto Mississauga (UTM):

Prof. Kelly Hannah-Moffat, Vice Dean, Undergraduate Programs, Teaching and Learning, UTM
Ms. Michelle Daley, Assistant Registrar, UTM

I. Appeal

The Student is appealing a decision of the Academic Appeals Board of UTM (the "AAB") dated July 4, 2012. The decision of the AAB dismissed an appeal by the student for late withdrawal without academic penalty for two courses taken in the 2009/2010 Fall/Winter Session at UTM, namely ANT241Y5Y (Aboriginal Peoples of North America) and PHL105Y5Y (Introduction to Philosophy) (collectively the "Courses"). The Student is appealing on medical and compassionate grounds. The

Student is seeking a remedy that would allow him to be granted late withdrawal without academic penalty from the Courses.

II. Facts

The Student is pursuing a Bachelor of Education at Brock University and was taking courses at the University of Toronto on a letter of permission. The Student first enrolled at the University of Toronto as a non-degree student at Woodsworth College for the 2008 Summer Session and completed 1.5 credits by the end of that session. In April 2009 the Student was involved in a serious automobile accident in which he sustained a head injury. The Student provided medical documentation confirming the diagnosis of acquired brain injury and was registered with the Accessibility Services office on St. George. The Student was provided with accommodations to compensate for the impact of his disability upon his academic performance including: (i) extra time on all tests/exams/quizzes, (ii) 10 minute breaks per hour during tests/exams/quizzes, (iii) use of Test Centre, and (iv) peer note-taker. The Student's next term of enrollment was as a non-degree student at Woodsworth College for the 2009 Summer Session and he completed 1.5 credits by the end of that session.

The Student was then enrolled as a non-degree visiting student at UTM for the 2009-2010 Fall/Winter Session. The Student registered for ANT241Y5Y (Aboriginal Peoples of North America) and PHL105Y5Y (Introduction to Philosophy) as well as LIN200H5 (Introduction to Language). The Student withdrew from LIN200H5 (Introduction to Language) before the required deadline.

In addition to his disability, the Student also experienced a number of family challenges during the 2009-2010 Fall/Winter Session. The Student was a single parent responsible for 5 children and took on primary responsibility as Power of Attorney for his terminally ill brother who subsequently passed away.

III. Previous Decision

In August 2011, the Student petitioned to UTM's Committee on Standing for late withdrawal without academic penalty from the Courses. This petition was denied by UTM's Committee on Standing on September 6, 2011. The Student appealed this decision to UTM's Academic Appeals Board on May 24, 2012. The decision of UTM's Academic Appeals Board to deny the appeal and uphold the decision of UTM's Committee on Standing was delivered on July 4, 2012. In the decision of UTM's Academic Appeals Board, the following comments were included:

1. On the basis of your presentation at the meeting and your overall academic record, the members of the Board decided that you did not have a compelling case for an exemption from the University regulations that apply to all students.
2. While the Board recognized that you had compelling medical and personal circumstances, it was noted that during this same time period, you made the

decision to withdraw from LIN200H5 (Introduction to Language), while choosing to remain in the two courses that are the subject of your appeal.

IV. Decision

The Student provided additional evidence to your Committee which was not presented to UTM's Academic Appeals Board. In particular, the Student provided additional information on the impact of his acquired brain injury on his studies during this period. The Student testified that the disability affected his decision making abilities, concentration, and his ability to attend classes due to physical limitations. The Student also testified that his conditions worsened over the course of the term. In the course of the hearing, it became apparent that the level of transparency and completeness of disclosure of information between the St. George campus and the Mississauga campus with respect to the extent of the Student's disability was lacking. The Student was assessed and provided his medical documentation to the Accessibility Services office on the St. George campus as that was his initial campus of registration. When the Student transferred to the Mississauga campus, the disability accommodation plan was forwarded to the AccessAbility Resource Centre at UTM. However, the full background information and documentation was not provided to UTM. As a result, all of the necessary information required for a full and informed decision on how best to accommodate the Student's situation was not available.

The only medical evidence that was presented before the UTM's Academic Appeals Board was a doctor's note confirming that the Student had sought medical attention in late March 2010 for severe symptoms pertaining to his neck, right shoulder and back. The Student had assumed that medical documentation provided to the University related to his acquired brain injury would be shared between offices. The Student had visited his doctor several times over the course of the 2009-2010 Fall/Winter Session in dealing with the effects of his recent disability including fear of driving and falling in the winter conditions which made it difficult for him to attend classes. At the end of the term, the Student did seek counseling from UTM on July 7, 2010 and the notes from the counselor indicated that the Student was "completely overwhelmed" which is consistent with and supportive of the Student's claims on the effect of his disability and family circumstances on his academic performance during that period.

In addition, the Student gave evidence that he knew that he was experiencing real difficulties in managing his courses due to his disability and family issues. He had sought academic counseling at the time that he withdrew from the third course LIN200H5 (Introduction to Language). The advice that he was given was that although he could withdraw from the Courses, it was not possible for him to recover any of his tuition fees. In the hearing, it became clear that there was a lack of coordination between academic and financial decision making functions of the registrar's office and, as a result, the options presented to the Student were limited. As a result, the Student felt that, due to his strained financial circumstances, he had little choice but to continue with the Courses despite his recognition of his family and medical difficulties.

Your Committee has on a number of occasions dealt with petitions for late withdrawal from a course without academic penalty and has consistently stressed that this remedy will not be lightly granted. The remedy of late withdrawal without academic penalty is an extraordinary remedy, reserved for unusual and unique situations. The idea of “drop dates” indicates that the University expects that a student will make a decision whether to continue in a course by a set date in the term. But by the drop date, a student is expected to have assessed his or her situation and made a decision. Once the drop date passes, the implication is that the student has decided to continue on in the course. Exceptions to this policy are rare, but could include situations where unexpected and unforeseeable circumstances occur after the drop date, where already existing circumstances become unpredictably worse, or where already existing circumstances do not reasonably resolve.

The Student was an extremely credible and forthright witness. Your Committee accepts the testimony and evidence presented by the Student on the effect of his medical and family conditions upon his academic performance in the Courses. There was no dispute from UTM on the evidence presented by the Student. Moreover, UTM acknowledged that there was additional information presented at this hearing which was not available to the earlier decision making bodies of UTM’s Committee on Standing and UTM’s Academic Appeals Board which may have had an impact on those decisions. There was evidence to support the impact that the Student’s medical and family circumstances had on his academic performance that would justify allowing this extraordinary remedy in accordance with the parameters set out above. In particular, the conditions related to the Student’s recently acquired disability continued to worsen unpredictably as did the volume of his family responsibilities. In addition, through no fault of the Student, the full history and background on the Student’s disability was not made available to the AccessAbility Resource Centre at UTM which would have permitted a more fulsome accommodation of his situation. Lastly, when the Student did seek academic counseling, it appears that he was not presented with a complete list of his academic and financial options given the circumstances. While each of these factors taken individually may not give rise to the level required for granting of the requested remedy, when taken cumulatively it is the view of your Committee that the threshold has been met.

Therefore your Committee has unanimously determined that this case is one which justifies the extraordinary remedy of granting late withdrawal from the Courses without academic penalty.

The appeal is granted.