

**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.