

REPORT NUMBER 258 OF THE ACADEMIC APPEALS COMMITTEE

November 19, 2001

To the Academic Board,
University of Toronto

Your Committee reports that it held meetings on Thursday, November 8, 2001, and Monday, November 19, 2001, at which the following members were present:

Professor Emeritus Ralph Scane (Acting Chair)
Professor Luigi Girolametto
Professor Gretchen Kerr
Ms Karen Lewis
Ms Geeta Yadev

Mr. Paul Holmes, Judicial Affairs Officer, Secretary to the Academic Appeals Committee

In Attendance:

Mr. Craig Coughlan, Counsel for the Appellant
Ms A.M., the Appellant (the Student)

Ms Sari Springer, Counsel for the Faculty of Applied Science and Engineering
Ms Colleen Kerluk, Faculty of Applied Science and Engineering
Ms Barbara McCann, Faculty of Applied Science and Engineering
Professor Kim Pressnail, Faculty of Applied Science and Engineering

This is an appeal from the decision of the Ombuds Committee of the Faculty of Applied Science and Engineering, dated February 28, 2001, dismissing an appeal from the decision of the Committee on Examinations of that Faculty, dated January 29, 2001. The latter Committee had dealt with a petition by the Student for relief in the Course CIV424, taken in the Fall Term of 2000. The Committee ruled that the final examination in the course, which the Student did not write, should not be counted in computing the final course mark. That mark was to be calculated by computing the average of all of the other grading components in that course, including the second of the term tests, which the Student also did not write. This test, which comprised one-fifth of the possible marks on which the final mark was to be calculated, was graded for the purpose of arriving at the final course mark as 0/20. On the basis determined by the Examinations Committee, the Student received an "F" in CIV424.

The Student entered the Faculty's B.A.Sc. programme in 1998. She completed the first full year of the programme with a cumulative 3.43 GPA. After completing her second full year, she had slipped to a cumulative GPA of 2.50, and was placed on academic probation. In the Fall Term of 2000, she received a sessional GPA of 1.69, including the "F" in CIV424. She was required to withdraw for eight months, and to repeat the session upon her return. She did withdraw, has now

Report Number 258 of the Academic Appeals Committee

completed her period of suspension, and has returned to continue with her programme. During the period of her suspension, she was permitted to attend classes and laboratories, pending the resolution of the appeal process she had launched with respect to CIV424. Her unofficial grades during this period were poor, as she failed three of four courses. As the Student has served her suspension, and is repeating the last term taken by her, success on this appeal cannot restore the *status quo ante* for her. However, she does ask that the failure in CIV424 be removed from her transcript, and be replaced with a permitted late withdrawal without academic penalty.

The original petition by the Student was for relief on medical grounds. However, in responding to the appeal, the Faculty introduced a strong collateral attack against the Student personally. Your Committee was invited to find that she was not credible, was a chronic absentee from lectures, laboratories and seminars, and was a frequent petitioner for special relief during the course of her undergraduate programme. These factors were argued to be relevant in considering her petition based upon medical grounds, and in justifying the decision arrived at by the tribunals below.

In determining the result of this appeal, your Committee first considered what the result would be if the appeal were to be considered on the medical grounds only, stripped of the "collateral" factors.

The second mid-term examination in CIV424 was scheduled for November 20, 2000. The Student gave evidence that the symptoms of which she complained commenced shortly before that date, and increased to the degree that, on the date of the mid-term examination, she felt unable to attend at the examination. She went to a medical clinic. She received an extremely terse medical "certificate" as a result of that visit, which did little more than corroborate the fact that the Student had attended a doctor on that date. It could be read as offering some slight corroboration that the doctor thought that there was justification for her missing examinations on that day, but standing alone, it could not justify relief from the consequences of missing the examination. The Student continued on with her courses, but acknowledged that her attendance was poor for the balance of the term, attributing this to the symptoms of the illness from which she was suffering.

The final examination in CIV424 was written on December 12, 2000. The Student stated that, on that date, she was again very ill, and attended another physician, who advised her to rest. He also prescribed a CT scan, to be taken in January, 2001. She did not write that examination, but did attend to write final examinations in other courses on December 14 and December 17. She obtained a much more detailed medical certificate from this doctor.

The Committee on Examinations considered that the medical evidence was sufficient to excuse the Student from writing the final examination in CIV424, (worth 40% of the total marks for the course) but not from writing the second mid-term examination. Although the Ombuds

Report Number 258 of the Academic Appeals Committee

Committee heard evidence from the Student, it decided not to recommend a variation from the decision of the Committee on Examinations.

As the Faculty has accepted the sufficiency of the medical evidence to justify the absence of the Student from the final examination in the course, the key factual question, so far as the medical issues go, is whether the Student should have been relieved from the consequences of also having missed the second mid-term examination. As mentioned, the medical certificate issued on the date of that examination can itself have little weight. However, it does not stand by itself. Your Committee had the oral evidence of the Student, given in circumstances where she could be cross-examined on behalf of the Faculty. It also had available the medical certificate issued with respect to the visit to the doctor on December 12, 2000. That certificate indicated the onset of the problem which the issuing doctor was considering as being November 20, 2001. Almost certainly, the doctor would have had to rely upon the Student for that information, but at least the December certificate suggests that the doctor saw no inconsistency between that onset date and the condition with which he was presented in December. Bearing in mind the Faculty's attack on the Student's credibility (which is always relevant in considering evidence), your Committee made its own assessment of the available evidence. It concluded that it was more probable than not that the Student had been seriously affected on November 20, 2000 by the same illness that was admittedly affecting her on December 12, 2000, and that she had valid medical grounds for missing the second mid-term examination in CIV424. Accordingly, that examination should not have been included in the calculation of the final course mark.

This raises the question of what the final course mark should have been. If it were to be computed on the basis of the marks received in the first term test, her laboratory performance and her assignments, she would still have a failing grade in the course. Your Committee decided that it would be unsafe to extrapolate a final course grade from components worth only 40% of the total available marks in the course. Thus, the proper remedy should be either the granting of *Aegrotat* standing in the course, or permitted late withdrawal without academic penalty. The Student's performance in the course and in the other courses taken in the session did not justify consideration of *aegrotat* standing. Thus, if the medical issues in this appeal were to be considered alone, your Committee would allow the appeal and grant this remedy.

However, as mentioned, the Faculty took the position before the Committee that the Student was not credible, that she was a persistent petitioner for academic relief (which appears to be linked to the issue of credibility), and that she was a chronic absentee from classes and laboratories, and one who missed completing many assignments. The Faculty submitted to us that these factors justified the withholding of relief from the Student with respect to the final mark in CIV424 even if the medical grounds otherwise justified granting it.

Your Committee considered whether, as a matter of policy, the University should have a discretion to withhold relief in the case of a petition based on medical grounds on the basis of the factors (other than credibility) indicated. (As stated above, credibility issues, if they arise, must

Report Number 258 of the Academic Appeals Committee

necessarily be relevant in consideration of medical or other petitions). For the purpose of considering this policy issue, all of the facts alleged by the Faculty were assumed to be true.

Your Committee decided that such matters independent of the questions of the existence of the medical condition and the degree to which a student's performance was affected by it should not be allowed to affect the result of the consideration of those questions. Where the University grants relief to a student on medical or similar grounds, it does so because it accepts that the student's ability to perform to the standards normally demanded was so adversely affected that the University cannot rely upon the results obtained, or on the failure to undergo an evaluation process, to visit the student with the normal consequences of inadequate or missed performance. To do so would be regarded by our community as unfair. Whether a student has in other respects been academically delinquent is irrelevant in determining this issue.

Your Committee is *not* asserting that the missing of lectures, seminars and the like cannot or should not be penalized by the University. If a division makes attendance mandatory, spells out its requirements, and the penalty to be assessed for failing to meet those requirements, sets up a reliable mode of policing for compliance, and formally advises the student that a penalty is being assessed, your Committee does not see any objection. What your Committee *does* say is that the University should not attempt to deal with this type of academic delinquency through the back door, by withholding otherwise proper relief in the case of a petition based on medical or similar grounds.

Accordingly, your Committee does not have to engage in a fact-finding exercise with respect to the charges, denials and counter-charges arising out of what your Committee has, for convenience, termed "collateral" issues. As the Student and the Faculty, and particularly her department, must co-exist for the remainder of her time in her programme, your Committee feels that it would be unwise for it to enter upon such an exercise gratuitously.

That being said, your Committee must also say that, had it come to the opposite conclusion on the "policy" issue, and been forced to make findings on the factual allegations, it would have been very uneasy in finding against the Student on the basis of much of the case made against her. A large portion of the evidence against the Student was hearsay, or consisted of statements made in reports and e-mails, where those making the statements did not appear before the Committee. While the absence of the instructor in CIV424 was explained by his illness, the absence of other faculty members who contributed to the case against the Student by reports or e-mails they had submitted to Faculty authorities, or by statements made to a Faculty member who did give evidence, was not explained, other than by a reference by counsel to a desire not to lengthen the proceedings. In their absence, neither counsel for the Student nor Committee members could examine them on the existence and accuracy of their records and recollections of attendance, or on their experiences with the Student from which inferences of lack of credibility had been drawn. Such evidence is not necessarily inadmissible, but the more contentious the facts sought to be proved, the more cautious a tribunal must be in acting upon it. In particular,

Report Number 258 of the Academic Appeals Committee

where a party determines to lead evidence intended to bring about a finding of fact that, as here, must necessarily impugn the character of a student, a member of the University or anyone else, the witnesses from whence that evidence emanates should be present to be confronted and cross-examined. If a tribunal's proceedings are thereby protracted, so be it.

Your Committee also notes that neither the Committee on Examinations nor the Ombuds Committee published any reasons for the decisions they delivered in this matter. Your Committee believes that elementary fairness to a student seeking relief requires that a tribunal publish at least a summary of the reasons for its decision. Published written reasons for a decision not only make the process more transparent, and therefore more credible, but may guide the student and the division with regard to future matters. They will also be of assistance to superior tribunals to which an appeal is taken. In particular, where expertise in the discipline, which higher tribunals almost certainly will not have, would be useful in the review of the original decision being appealed, the benefit of the review by a departmental review body is lost if no reasons are given for a decision. Obviously, the effort of preparing even summary reasons is a substantial burden on the resources of large divisions. However, if the University is to have a credible academic appeal process, it is one which the University must arrange its affairs to bear.

The appeal is allowed. The grade of "F" awarded to the Student in CIV424 in the Fall Term of 2000 shall be vacated, and the Student shall be deemed to have been permitted to withdraw from that course without academic penalty. If this requires a consequential change to the present annotation on the Student's official transcript, requiring her withdrawal and repetition of the term, such change shall be made in accordance with the Faculty's rules at that time.

Your Committee must also deal with the fact that the Student was permitted to attend classes unofficially during the Winter Term of 2001. As mentioned, her results were poor, but she did get a low passing grade in one course. The Student did her work that term with the dispiriting knowledge that, unless successful before your Committee, her efforts would be fruitless. Unfortunately, this Committee could not deal with her appeal during that term. Your Committee considers that the fair result should be that the Student may elect, within two weeks of the date of this decision, whether to retain credit for any one or more of the courses she took in that term. If she does so elect, she must accept the mark awarded in that course without further appeal. If no election is filed with the Registrar of the Faculty within the time limited, the Student will be taken to have elected against being recorded as having taken any of those courses. Your Committee recommends that, if the Student elects to retain credit for a course or courses, she should be charged a *pro rata* portion of her annual fee. If she elects not to retain credit for any of those courses, no fee should be charged for that term.

December 14, 2001