

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Motion Decision #363-1 of the Academic Appeals Committee
May 29, 2012

To the Academic Board
University of Toronto

Your Committee reports that it heard a motion in writing in May 2012.

Professor Andrew Green (Chair)

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

Appearances:

For the Student Appellant (the “Student”):

Ms J.C.

For the School of Graduate Studies (“SGS”):

Mr. Robert A. Centa, Counsel, Paliare Roland

Nature of the Motion

The Student appeals from a decision of the Graduate Academic Appeals Board (“GAAB”) of the University of Toronto dated November 16, 2011 which awarded her a non-grade report of WDR for the course RSM2120: Health Policy and Health Care Markets (the “Course”). In place of the non-grade report of WDR, the Student asks the Academic Appeals Committee (“AAC”) to:

- Increase her grade on a team assignment from 12/25 to 12/16.5; and
- Allow her to submit a term paper in place of an examination that she wrote in November 2010.

The SGS moves pursuant to s. 3.1.7 of the ACC Terms of Reference asking the Chair to determine that the AAC does not have jurisdiction to grant the Student either of the remedies she seeks and therefore to refuse to give formal hearing to this appeal. The Student submits that a hearing should be held. For the reasons that follow, the Chair agrees that a hearing should be

held, although only in relation to the issue of the submission of the term paper in substitution for the exam.

Background to the Appeal

The Student was enrolled in the Course in The Joseph L. Rotman School of Management ("Rotman") in the Fall of 2010. In its decision on the Student's appeal in this matter, the GAAB noted that the Student had been dealing with medical issues since prior to the term. On the way to write the exam in the Course on November 22, 2010, the Student states that she was in an accident that caused her to reschedule the exam until November 26, 2010. She wrote the exam on November 26, 2010 but states that she was feeling unwell from the medication she was taking as a result of the accident. In addition, she did not participate in a presentation of group work during the term and received 0/10 for that portion of the assignment. The Student states that she could not attend the presentation because of the unexpected presence at her home of building management. She ultimately received a grade of FZ in the Course.

The Student appealed the grade to Rotman's Graduate Department Academic Appeals Committee ("GDAAC"). The GDAAC dismissed her appeal. The Student then appealed this decision to the GAAB. The GAAB accepted the Student's statement concerning the accident, the increased pain, the subsequent increased medication and the fact that the medication negatively affected her ability to perform on the exam. In its decision of November 16, 2011, the GAAB allowed her appeal and directed that the grade of FZ in the Course be vacated and replaced with the non-grade course report of WDR. While the Student had asked for a number of forms of relief including the assigning of a passing grade for the Course and the opportunity to re-write the exam, the GAAB was unwilling to award either of these remedies. It found that assigning a grade is the task of the University's appointed examiners and not the GAAB. Further, it found that rewriting the examination was not feasible due to the time that had already passed.

Jurisdiction

The Student appealed to the AAC requesting that:

- her grade on the team assignment be increased from 12/25 to 12/16.5 (that is, remove the portion of the grade assigned to the group presentation) because of her inability to attend on the date of the presentation; and
- she be allowed to write a term paper and have it evaluated in place of the November 26, 2010 exam.

The SGS requests that the Chair exercise his discretion under s. 3.1.7 of the ACC Terms of Reference which states:

The Chair may refuse to give formal hearing to an appeal on the grounds that it is not within the jurisdiction of the Committee.

The SGS states that the AAC does not have jurisdiction to grant either remedy.

The AAC is a committee of Governing Council and only has the powers granted to it explicitly or implicitly by Governing Council. The AAC Terms of Reference states that the AAC's function is:

2.1 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...

In reviewing decisions of the GAAB, some guidance on the AAC's jurisdiction can be found by examining the jurisdiction of the GAAB. The GAAB's Terms of Reference state that:

s. 3(b) The Board may vacate, reverse, or amend the decision appealed from and in the case of an appeal of a grade, may order a re-evaluation of the student in such manner and on such terms and conditions as the Board considers appropriate.

Both remedies will be considered in turn to determine whether they are within the AAC's jurisdiction and whether the Chair's discretion should be exercised to refuse a hearing of this appeal. The Student submits that under s. 3.1.4 of the AAC Terms of Reference (analogous to section 19 of the GAAB Terms of Reference referred to by the Student) any interpretation of university policies should be decided by simple majority of the panel hearing the appeal. However, s. 3.1.7 provides the discretion to the Chair to refuse a formal hearing if it is not within the AAC's jurisdiction. The exercise of this discretion must of necessity include the power to undertake some interpretation of the scope of the AAC's powers under its Terms of Reference.

(a) Grade on the Team Assignment

The Student requests an implicit increase in her grade on the team assignment by removing the portion of the assignment mark relating to the presentation. The AAC has held on a number of occasions that its role is not to assign or create grades. The assigning of grades is the function of the examiners appointed by the University and the AAC should not substitute its view of an appropriate grade for that of the examiner. For example in AAC Report 307, January 23, 2006, your Committee refused to increase a student's average that the student claimed was low due to illness. The Committee stated: "This Committee does not and should not substitute its discretion for that of the instructors. We may, if we choose, vacate a grade, substitute an academic penalty for another, allow late withdrawal without academic penalty, or award aegrotat standing. But in

the normal course of its duties, this Committee does not add percentages to grades to craft an average that would unlock an academic barrier to proceeding in a program.”

The Student states that in AAC Report 262, dated December 3, 2001, the student’s grade for the course was increased due to medical issues the student was experiencing. However, your Committee in that Report noted that while the professor was willing to accede to the request for an increase in the grade, he had no power to do so as the grade had not been properly appealed. As a result, the Committee stated that the mark for the course should stand at 74% and not be increased to 79%.

The AAC does not have the expertise nor the specific knowledge to exercise the judgment required in creating grades for particular courses. If a student's grade is to be re-assessed, s. 3(b) provides the power to the GAAB, and implicitly to the AAC on appeal, to order a re-evaluation. Unlike the AAC, the instructor for the course or a person with similar expertise and experience is able to assess the student’s performance in relation to the particular context of the course including the course material. As a result, the AAC does not have jurisdiction to implicitly increase the Student's grade on the group presentation.

(b) Re-evaluation by Submission of Paper

The Student also requests that she be permitted to submit a paper on a topic relevant to the Course in place of the examination written on November 26, 2010. The examination was worth 30% of the mark for the Course. As noted above, s. 3(b) of the GAAB's Terms of Reference states that the GAAB "in the case of an appeal of a grade, may order a re-evaluation of the student in such manner and on such terms and conditions as the Board considers appropriate."

The SGS submits that substituting a paper for the examination is not a "re-evaluation" as "re-evaluation" does not include a modification of the method of evaluation. It argues that a "re-evaluation" would include a re-read of the examination or a re-write of the examination but not a new form of evaluation. It submits that the instructor is responsible for deciding the appropriate method of evaluation and the AAC should not modify this method. Further, it argues that granting such a change in the method of evaluation would be unfair to the other students in the course who did not have the option of the alternate method.

Equity and consistency of evaluation for all students in a program or course are clearly important considerations in addressing any appeal. However, the powers of the GAAB, and by implication the AAC, to order re-evaluation in any grade appeal are very broad. Section 3(b) states that the GAAB may order a re-evaluation "of the student". It does not limit the GAAB to re-evaluation of the particular assignment. Further, and more importantly, s. 3(b) states that the GAAB may order re-evaluation of the student "in such manner and on such terms and conditions as the Board

considers appropriate." In deciding which form of re-evaluation is appropriate, the GAAB and the AAC must of necessity take into account the context of the particular appeal including the situation of the student appealing the grade as well as the implications for other students in the program or course. However, it is too narrow to state that it would never be appropriate or within the AAC's jurisdiction to order an alternate method of evaluation.

Conclusion

The Chair therefore does not exercise his discretion to refuse to hold a hearing based on a lack of jurisdiction. The Chair accepts the SGS submission that the implicit increase of the grade for the team assignment is not within your Committee's jurisdiction. However, the Chair finds that your Committee does have the jurisdiction to grant the Student her request to submit a paper in substitution for the examination if it finds it appropriate in these particular circumstances. As a result, a hearing should be held in this appeal but only on the issue of substitution of a paper for the November exam.