UNIVERSITY OF TORONTO

GOVERNING COUNCIL

Report #384 of the Academic Appeals Committee
June 23, 2016

To the Academic Board
University of Toronto.

Your Committee reports that it held a hearing on Friday, May 27, 2016, at which the following members were present:

Professor Malcolm Thorburn (Chair)
Professor Avrum Gotlieb, Faculty Governor
Mr. Faizan Akbani, Student Governor

Secretaries: Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances
Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Mr. Alex Redinger, Law Student, Downtown Legal Services
Ms. Ejona Xega, Observer, Downtown Legal Services
Ms. Melanie Warren, Social Work Student, Downtown Legal Services
The Student

For the Faculty of Arts and Science:

Mr. Robert A. Centa, Counsel
Professor Adrienne Hood, Associate Professor, Dept. of History and Acting Associate Dean, Undergraduate, Faculty of Arts and Science
Ms. Shelley Cornack, Registrar, University College
Mr. Michael Nicholson, Coordinator, Student Academic Progress, Office of the Assistant Vice-President

The Appeal

This appeal relates to a decision of the Academic Appeals Board ("AAB") of the Faculty of Arts and Science dated 17 November 2014. The AAB decision rejected The Student's petition for second consideration of his earlier petition for a further extension of time for filing a petition to appeal a 5 September 2012 decision of the Faculty of Arts and Science

Committee on Standing which had rejected his petition requesting a re-write of his final examination in PSY 290H1 and late withdrawal from six other courses.

The Facts

The Student first enrolled at University College in the Faculty of Arts and Science in the fall of 2005. He experienced a number of difficulties over the first few years of his studies. On the advice of Shelley Cornack, the Registrar of University College ("Ms. Cornack"), The Student registered with Accessibility Services in the fall of 2009.

In the summer of 2011, he enrolled in three half courses: POL380H1, PSY372H1 and PSY290H1. On 15 July 2011, The Student's godfather died, causing The Student a great deal of upset. The Student then dropped one of his courses (PSY372H1) on the advice of Ms. Cornack.

On 22 August 2011, The Student advised Ms. Cornack and Mily Van, the Registrarial Advisor at University College ("Ms. Van") that he had had a panic attack during his final exam in PSY 290H1, which prevented him from completing the exam. He also advised them that he had documentation of the incident and that he would be filing a petition seeking academic accommodation.

In light of his struggles in the summer and in the years before, Ms. Cornack advised The Student on numerous occasions that he should take a reduced course load in the fall of 2011. The Student wrote to Ms. Cornack on at least three occasions (9, 12, and 15 September 2011) indicating that he would heed her advice and take a reduced course load, take courses that did not require exams or take courses that were independent studies. Ms. Cornack continued to write to The Student through the fall but received no reply from him until 2 December 2011.

The Student did not, in fact, heed Ms. Cornack's advice. Instead of reducing his course load, he enrolled in six challenging courses in the fall of 2011 (BIO120, CHM139, POL341, PSY333, UNI330, and UNI373H1S.). In his testimony at the appeal before this Committee, The Student indicated that he enrolled in these courses on the advice of a family friend, the then-registrar of Trinity College. The Student suggested in his oral testimony that the Trinity College Registrar advised him that these courses would help him to prepare for studies in global health, which was his career objective at the time.

The Student did not attend any classes nor did he complete any assignments in any of these six courses. Indeed, The Student indicated that he resided in London Ontario (and not Toronto) during the fall semester. However, The Student did enter into the ROSI system on 27 September 2011 in order to withdraw from another course (HIS496H1) in which he had enrolled at the same time as the six courses he now seeks to have removed from his record. He was awarded a grade of "0" in all of the six courses.

On 2 December of 2011, The Student contacted Ms. Cornack for the first time since the summer. In his email to her, he indicated that he had been out of touch due to his anxiety. He also indicated that he had enrolled in these six courses because of a panic attack. Ms.

Cornack, in her reply email, advised him that his only option was to come in to the office to have his course removed through the late withdrawal process ("LWD"). The Student did not reply to this email nor did he reply to another email from Ms. Cornack, dated 13 December 2011.

The deadline for commencing a LWD petition in the Faculty of Arts and Science is the last day of classes in the relevant term. This is undertaken by making a request to the College Registrar who has the authority to grant such requests if the circumstances warrant approval of an exception to the normal drop deadlines. According to the faculty rules, this process is usually available for a maximum of three courses. However, in oral testimony, Ms. Cornack indicated that she has the discretion to grant LWD for more courses should the circumstances warrant this.

Once the last day of classes in the relevant term has passed, the only means through which a student may have a course removed is by petitioning through the "WDR" process. According to the Faculty of Arts and Science's rules and regulations, the WDR process is available only when the reason for The Student's withdrawal from a course "has been caused by circumstances beyond The Student's control, arising after the last date for course cancellation. Changes to the record will be authorized by petition only in exceptional circumstances." The deadlines for submitting an appeal through the WDR process are the following 28/29 February for summer courses and the 15 November of the following academic year. The faculty's rules clearly state that "[l]ate petitions and petitions with late documentation will not be considered."

On 20 July 2012, The Student submitted a petition to the Committee on Standing ("CS") through the WDR process for late withdrawal without academic penalty from the six courses in which he had received a mark of "0" in the fall of 2011 and for either a re-write of the exam or for late withdrawal without academic penalty in PSY290H1 from the summer of 2011. This was more than four months after the deadline for WDR petitions regarding summer courses. It was, however, within the deadline for petitioning regarding the six fall courses.

On 5 September 2012, the CS rendered its decision denying The Student's petition. In its reasons, it rejected The Student's petition on its merits concerning late withdrawal from the six fall courses, stating: "You have not presented appropriate documentation nor compelling reasons why you could not withdraw in a timely manner." With respect to PSY290H1, the AAB indicated that re-write of an examination is not an available remedy. It further indicated that the appeal was filed past the deadline (of 28/29 February 2012). Finally, it also indicated that "[a]s you have had consideration given on two occasions you will not be provided with others as the Faculty rules are clear on appropriate procedures."

There was some disagreement as to precisely when The Student became aware of the CS's decision of 5 September 2012. The decision was emailed to The Student's "utoronto.ca" email account on 5 September 2012. The Student indicated that because of his anxiety, he was not able to log in to that email account. However, on 7 November 2012, he emailed Ms. Van (from his Gmail account) to ask if there was a decision from the CS. She replied that there was and offered to forward it to The Student's Gmail account, which she then did.

Due to his anxiety, The Student says that he was also unable to check his Gmail account to read the CS's decision. However, on 15 November 2012, Dr. Gillis, The Student's family doctor (who was also seeing him for psychiatric treatment), write in his clinical notes that "things haven't been good for a while, he has started smoking marijuana because his anxiety is out of control, he's not eating well, his appeal at U of T didn't go through…" This note seems to suggest that The Student was aware of the CS's decision at least by 15 November 2012. In the proceedings before the AAC, however, The Student and his counsel argued that he had not actually read the decision; rather, he was ruminating about the possibility of his appeal not going through, and the doctor had misinterpreted this to mean that he knew that it had not gone through.

It is now agreed by both sides that The Student was aware of the CS's decision by 30 November 2012 when his roommate accessed The Student's email account to read the decision and informed The Student of the decision. The Student contacted the University Ombuds office about this matter on 3 December 2012 indicating his intent to appeal the CS's decision. The Student's first contact with University College's Registrar's office after this was on 11 December 2012 when he emailed Ms. Van to ask what panel or adjudicator had rendered the earlier decision. Ms Van replied with the information he requested. She also reminded him that there was a 90-day appeals window from the date when the decision was rendered.

The Student did not make the 90-day deadline for appealing the CS's decision, nor did he request an extension of time to appeal. Instead, approximately nine months later, on 17 September 2013, he filed a petition to the CS requesting an extension of time to file a petition for a second reconsideration to that body. That request for an extension of time was denied on 16 December 2013. The Committee stated: "You have not provided compelling reasons or documentation for not appealing within the required 90 days. Your first communication with your College concerning the appeal was made after the 90 day deadline."

On 27 March 2014, The Student filed a petition to the AAB for yet another second consideration of the earlier petition requesting an extension of time to appeal the CS's earlier decision. This appeal was heard on 31 October 2014 and the AAB's decision was released on 17 November 2014. The AAB again denied The Student's request for an extension of time to appeal its earlier decision. In its decision, the AAB stated:

> While the Board felt that you had provided evidence of a chronic health issue, the Board needed to consider whether there was sufficient evidence that you encountered difficulties within the 90 day period that would have prevented you from filing the petition on time. The majority of board members did not find that you had presented compelling evidence that you were unable to check your email account around the time the Committee on Standing released the decision, and that you were only aware of the decision after the 90 day window had passed (as you testified).

The Student now appeals the AAB decision to the AAC, seeking the following remedies:

1. Aegrotat standing or Late Withdrawal without academic penalty in PSY290H1; and

2. Late Withdrawal without Academic Penalty in BIO120, CHM139, POL341, PSY333, UNI330, and UNI373H1S.

Decision

This is a difficult case. The Student clearly suffers from very painful anxiety and associated problems. The issues in this appeal have caused The Student a great deal of worry and upset over many years. This committee is very sympathetic to The Student's difficult situation and we wish him the very best.

This appeal is about delay at three stages of the process:

1. The Student's petition to the CS requesting a re-write of his examination in PSY290H1 was denied because he filed it on 20 July 2011, five months after the deadline of 28 February 2011.

2. The Student was unable to withdraw from the six courses in which he had enrolled for the fall of 2012 because he did not do so in time. He could simply have withdrawn through ROSI (as he did for another course, HIS496H1) at any time up to 3 November 2011. Having missed the add/drop deadline, The Student could also have withdrawn through the LWD process by petitioning his College Registrar up to the last day of classes on 6 December 2012. Because The Student missed both of those deadlines for dropping his courses, however, his only remaining option was the extraordinary WDR process, which was denied by the CS on its merits.

3. Finally, The Student was unable to appeal the CS's decision of 5 September 2012 because he missed the 90-day window for filing his appeal. His appeal was never heard on its merits because the CS held on 16 December 2013 and the AAB again held on 17 November 2014 that The Student did not have reasonable grounds for missing the deadline.

The Student does not deny that he was late in all three of these ways. Rather, he argues that his delays at each stage were reasonable given his special circumstances. The Student argues, first, that his request for an extension of time to appeal the CS's decision of 5 September 2012 should be allowed because his delay in filing the appeal was reasonable in light of his circumstances. He then argues, second, that his appeal on the merits of the CS's 5 September 2012 decision should be allowed because his failure to withdraw from those courses in a timely way was also reasonable given his special circumstances.

This Committee will consider each of these matters in turn. Before we do, however, we should note that we have not been asked to decide these matters *de novo*. Even if this Committee might have come to a different substantive conclusion on a specific matter, we should let the earlier decisions stand if they were rendered through a process that was fair and reasonable. However, we have been presented with some new evidence at this appeal (such as The Student's second affidavit (dated 13 February 2015) in which he acknowledges that some of his testimony before the AAB was incorrect. Specifically, he now acknowledges

that he provided incorrect testimony regarding when he learned that the CS rendered its decision. That is, he acknowledges that he was aware of the decision on 30 November 2012. He insists that this misstatement was simply the result of confusion on his part attributable in part of the fact that he did not have legal representation at that hearing. In our decision, we consider this new evidence afresh.

1. Delay in Filing Appeal of CS Decision

On 17 November 2014, the AAB refused to consider the merits of the Student's appeal of the CS's 5 September 2012 decision because the appeal was brought outside the 90-day window for bringing such appeals. We are asked, first, to consider whether that decision to insist on the 90-day filing period is fair and reasonable to The Student under the circumstances.

The Student argues that this would be unreasonable given his circumstances. He now argues that because of his anxiety and associated problems, he only became aware of the CS's decision on 30 November 2012, when his roommate opened his email and read the CS's decision and informed The Student of its contents. This was only six days before the deadline for filing an appeal. Further, since The Student was continuing to suffer from anxiety when he learned of the CS's decision, he argues, he was unable to draft an appeal in a timely manner.

The AAB considered The Student's request for special consideration on the issue of timeliness. It considered the evidence he presented of his anxiety and associated problems and made a determination of what could reasonably be expected of him under the circumstances. In its decision of 14 November 2014, the AAB wrote to The Student that it "did not find that you had presented compelling evidence that you were unable to check your email account around the time the Committee on Standing released the decision, and that you were only aware of the decision after the 90 day window had passed (as you testified)."

The AAB's decision indicates two important (and distinct) findings. First, the AAB did not consider The Student's anxiety and associated problems to be a sufficient reason for him not to check his email. Second, the AAB did not believe The Student's representation that he was only aware of the decision after the 90-day window has passed. In this appeal, The Student has made clear that his representation at the 2014 hearing that he was unaware of the decision only after the 90-day window had elapsed was incorrect. He was without representation at that hearing and he attributes that mistake to his own lack of experience at such matters.

This leaves the first of the AAB's reasons for judgment: that they did not take The Student's anxiety and associated problems to be sufficient reason for him not to check his email in a timely manner. It is clear that The Student suffers from an anxiety disorder and that this has led to a number of associated problems including substance abuse, insomnia, anxiety, and gastro-intestinal troubles. However, The Student's failure to file an appeal in a timely way must be read within the context of a very strong obligation on all students (which is made explicit in the Faculty of Arts and Science regulations) to read their emails in a timely way and to be aware of deadlines and to keep to them.

The question for this Committee is whether the AAB was reasonable in its determination that these issues did not constitute compelling evidence that The Student was unable check his email or to draft an appeal once he had learned of the Committee on Standing's decision. In the absence of any expert testimony on the matter, we are left to decide this matter on the basis of one academic article filed by the Student on the relationship of anxiety to avoidance behaviour and our best understanding of the Student's own conduct around this time.

This Committee finds that the AAB's determination on this issue was entirely reasonable, given the facts before them and in light of the clear obligation on all students to check their utoronto email in a timely manner. Even in light of The Student's clear suffering from anxiety and associated problems, it is reasonable to expect him to find some way to ascertain the contents of his email, particularly when he was aware of the fact that an important decision was due to be released. The Student was capable of corresponding with university administrators in the fall of 2011, having written to Ms. Van in the office of the University College Registrar on 7 November 2012 to ask about the status of his petition. Further, there was good reason to believe that The Student did, in fact, read the decision sometime before 15 November 2012. Dr. Gillis's notes strongly suggest that he had learned of the Committee on Standing's decision at some time before he met with Dr. Gillis on 15 November.

Although it is clear that The Student's anxiety and associated problems would make it more difficult for him to draft an appeal of the CS's decision, it is still reasonable to expect him to send an email asking for an extension of time to file an appeal. This Committee finds that the AAB was fair and reasonable in its determination that the Student failed to provide sufficient evidence that he encountered difficulties within the 90-day period that would have prevented him from filing the petition on time. Accordingly, this appeal is dismissed. However, since this Committee has heard arguments on the merits of the Student's appeal, we choose to consider this argument in our reasons below.

2. Merits of Request to Withdraw

The Student argues that the CS's decision of 12 September 2012 (to reject his request to withdraw from six courses from the fall of 2011 without academic penalty through the WDR process and to reject his request either to re-write his examination in PSY290H1) was unreasonable and that this Committee should now grant his request for late withdrawal from the six courses and should either grant him aegrotat status or allow him to withdraw from PSY290H1 without academic penalty.

In many ways, the appeal on the merits turns on the same issues as the appeal of the timeliness issue of the appeal. That is, we are concerned, once again, with the reasonableness of the Student's delay in withdrawing from the six courses and his delay in seeking a remedy for his failure to complete the examination in PSY290H1.

In this case, the question before the CS was whether the Student met the requirements for late withdrawal without academic penalty under the WRD process. In its reasons of 5 September 2012, the CS stated (with respect to the six fall term courses): "You have not presented appropriate documentation nor compelling reasons why you could not withdraw in a timely manner." This finding is fully borne out by the evidence. If, as The Student

maintains, he never had any intention of enrolling in these courses, then it was open to him to withdraw through ROSI at any time up to 3 November 2011. The fact that he did, in fact, do so for another course (HIS496H1) on 27 September 2011 makes clear that The Student was capable of doing so.

There was a great deal of discussion as to whether The Student was in a position to withdraw through the LWD process near the end of classes in December 2011 and whether the student would need to "come in" to see Ms. Cornack (with whom he had a somewhat strained relationship) in order to initiate that process. In her testimony before this Committee, Ms. Cornack made clear that The Student would not need to be physically present before the end of classes in order to begin the LWD process and that he would have up to two weeks to complete related paperwork once the process had been commenced. In light of the ease with which The Student could have withdrawn from his courses through the regular add/drop process on ROSI, however, this Committee believes that this matter is moot. It was clearly reasonable for the AAB to conclude that the student did not meet the requirements of the WDR process – viz., that the reason for The Student's withdrawal from a course "has been caused by circumstances beyond The Student's control, arising after the last date for course cancellation." Coupled with the further requirement that "[c]hanges to the record will be authorized by petition only in exceptional circumstances…", it is clear that the AAB's determination on the merits of the Student's petition concerning the six fall courses was entirely reasonable.

Finally, with respect to PSY290H1, the considerations are rather different. Here, it was not open to the Student to withdraw from the course through the usual add/drop process, since his problem with the final examination arose long after the add/drop deadline had passed. Further, since his problem arose after the end of classes (during the final examination) the LWD process was not open to him, either. The only process open to the student at that point was the WDR process.

In this case, the CS's main concern was the lateness of the student's petition. In its reasons of 5 September 2012, the CS indicated that because the petition was filed past the deadline (of 28/29 February 2012), it would not be considered on its merits. Although the Student was clearly suffering from anxiety and associated problems for much of the time between the examination in PSY290H1 and the deadline for filing a petition on 29 February 2012, it remained reasonable for the CS to expect him to file a petition within the more than six month window the Faculty of Arts and Science policy allows. Moreover, it is reasonable to expect The Student to abide by these rules in light of his considerable prior experience with them. As the CS noted, "As you have had consideration given on two occasions you will not be provided with others as the Faculty rules are clear on appropriate procedures."

The appeal is dismissed.