

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report # 388 of the Academic Appeals Committee
May 8, 2017

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Tuesday, March 28, 2017 at 8:45 a.m., at which the following members were present:

Ms. Sara Faherty, Chair
Professor Hugh Gunz, Faculty Panel Member
Mr. Mohammad Amin, Student Panel Member

Hearing Secretary: Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Mr. F.Z. (the Student)
Mr. Cormac Donovan, Student Lawyer, Downtown Legal Services
Ms. Jennifer Fehr, Staff Lawyer, Downtown Legal Services

For the Division, Faculty of Arts and Science/Woodsworth College:

Professor Anne-Marie Brousseau, Associate Dean, Undergraduate Programs
Mr. Rob Centa, Paliare Roland
Ms. Emily Home, Paliare Roland, Articling Student

I. The Appeal

This is an appeal from a decision of Professor Adrienne Hood, then Acting Associate Dean, Undergraduate Faculty of Arts and Science, dated January 30, 2015 reviewing the decision of Jamie Stafford, Chair of the Department of Statistical Science, denying the Student Appellant's request to change his grade in STA 302, *Methods of Data Analysis*, from 70 to 80 by reallocating the weight of the Student Appellant's missed October 23, 2012 term test to the deferred final exam he wrote on June 24, 2013.

II. The Facts

The Student Appellant graduated from Woodsworth College, majoring in mathematics and statistics, in November 2013. During the fall term of 2012 the Student Appellant enrolled in two courses that both met on Tuesday and Thursday mornings. STA 62, *Stochastic Processes*, met on the University

of Toronto's Scarborough Campus. The timing for STA 62 was different on the two days: it met on Tuesdays from 8:00 am to 9:00 am and on Thursdays it met for longer, from 8:00 am to 10:00 am; STA 302, *Methods of Data Analysis* met on Tuesdays from 10:00 am to 12:00 noon and on Thursdays it ended earlier, beginning at 10:00 am but running only until 11:00 am on the University's St. George campus in downtown Toronto. The two campuses are about thirty kilometers apart. In neutral traffic conditions it should take between 30 and 40 minutes to drive between the two campuses. Public transportation options entail a combination of bus rides, train rides, and walking that should take about an hour and fifteen minutes provided there are no disruptions. The Student Appellant reports that he relied on public transportation.

Note that on Tuesday mornings this meant the Student Appellant had one hour to get from his Scarborough class ending at 9:00 am to his St. George campus class that began at 10:00 am. He reports, classes start at ten minutes after the hour, or in this case, 10:10 am. Given the length of the trip, this was an ambitious transportation plan under the best of circumstances. At best, he could hope to arrive to his St. George campus class five minutes after it started.

On Thursdays, the plan was entirely unfeasible: the Scarborough campus *Stochastic Processes* class ended at 10:00 am. It was absolutely impossible for the student to be on the St. George campus in time for the 10:10 start time of the *Methods of Data Analysis* class. Since the St. George campus class went only until 11:00 am on Thursday mornings, attendance at the Thursday meeting of both of these classes was physically impossible. The second class would be ending about fifteen minutes before the student arrived from the Scarborough campus. The student was aware of the obstacles posed by this schedule.

On October 23, 2012, a Tuesday, the student was faced with a conflict. The earlier morning class, *Stochastic Processes*, which met at Scarborough from 8:00 to 9:00 am, had a homework assignment due. The student appellant reports that the teacher would not accept homework assignments via email, or later in the day. The student also said that he did not know anyone in the class whom he could ask to hand in the assignment on his behalf, and points out that the assignments were only accepted at the end of class, not at the beginning of class. This was, in part, because the instructor would discuss the assignment during the class, and students were expected to alter their written work according to the instructions and tips given during class. For these reasons, the Student Appellant believed his only option to hand in that day's assignment, which was worth 5% of his final mark, was to attend class and hand it in personally at the end of class.

This posed a problem, because there was a midterm that was worth 25% of the final mark scheduled in the second class, *Methods of Data Analysis*, at 10:00 am on the St. George campus.

After his class *Stochastic Processes* class ended at 9:00 am, the Student Appellant set out on the TTC trip from Scarborough to the St. George campus, optimistic that he would arrive in time to write and perform well on the *Methods of Data Analysis* midterm. Unfortunately, he did not arrive in time. Even though the predicted average travel time was one hour and fifteen minutes, the Student Appellant did not arrive at his midterm until beyond 10:40 am. The Student Appellant does not recall why the trip took twenty-five minute longer than usual. He did not attempt to write the midterm that day.

The STA302 *Methods of Data Analysis* syllabus set forth the following policy regarding missing the midterm:

“There is no makeup test. If the test is missed for a valid reason, you must provide appropriate documentation such as the University of Toronto Medical Certificate, University of Toronto Health Services Form, or College Registrar’s Letter. You must submit this documentation to the course instructor (Hadas Moshonov) or the Departmental Office (SW6018) within one week of the test. Print on it your name, student number, course number and date. If documentation is not received in time, your test mark will be zero. If the test is missed for a valid reason, its weight will be shifted to the final exam.”

[Syllabus, *Methods of Data Analysis*, Fall 2012; Student Appeal, Exhibit C].

The Student Appellant met with Hadas Moshonov, the course instructor, on October 30. He presented her with a copy of his ROSI Timetable and some TTC transfers, which documented the reason for his lateness to the 10:00 am midterm. At this meeting, Professor Moshonov told the student appellant that she would decide the question later and let him know of her decision by email.

The Student Appellant reports that he had an informal conversation with Professor Moshonov in passing on December 4, 2012. He asked about her decision on the missed midterm. He recalls that she told him she was waiting to see his final exam mark before deciding. At that time, the instructor and the Student Appellant believed he would be writing the final exam, which was scheduled for December 13th, nine days later.

As it happens, however, the Student Appellant did not write his exam that week. He missed that exam, and ended up writing a deferred exam on June 24, 2013. He was informed of the mark for that exam shortly thereafter. On July 4, 2013 he inquired about the raw score and was answered on July 5, 2013. When the course grade was made available, it became clear that the weight of the midterm had not been shifted to the final exam.

It was not until eight months later, in March of 2014, however, that the Student Appellant followed up. On March 6 of 2014 the student contacted Professor Moshonov, asking to discuss his exam in the course he had attended in the Fall of 2012.

Professor Moshonov informed the Student Appellant that she was no longer in Toronto in an email dated March 12. They commenced their discussion via the email exchange presented as Exhibit I in the Student Appellant’s materials. When the Student Appellant inquired about the breakdown of his final grade, on March 19, 2014, he seemed to assume the instructor had found his reason for missing class the day of the midterm was valid, writing “As your fall course only had one assignment instead of two in which I got a 63% plus I had submitted documentation within one week of missing term test, should my course mark be [calculation]?” In support, the Student Appellant cited a policy from the University of Toronto campus at Mississauga. She replied on March 24th, five days later, “Your reason for missing the midterm test was not valid and hence your mark in the test was 0.” [Student Appeal, Exhibit I, email dated March 24, 2014.] In a later email she told the Student Appellant that she had consulted with higher officials and learned that a TTC transfer is not proof for a valid reason to miss a test. [Student Appeal, Exhibit I, email dated March 30, 2014.]

The higher officials with whom Professor Moshonov consulted seem to have relied on the Faculty of Arts and Science policy. Its 2013-2014 calendar instructs students to avoid course conflicts:

“ROSI does not check for course time conflicts, so plan your schedule carefully.

“Once you have decided which courses you are eligible to take, make sure that none of your choices are offered at conflicting times. You can find a weekly schedule worksheet here to help you create a conflict-free schedule. If you enrol in courses which conflict with one another, you do so at your own risk and you cannot expect special consideration from instructors as a result of the conflict.”

The Student Appellant responded to Professor Moshovov, suggesting that the U of T Registrar had confirmed that 1 hour between two campuses is a legitimate conflict warranting special consideration [Student Appeal, Exhibit I, email dated April 23, 2014.] The Student Appellant did not identify which registrar made that confirmation in his email, which may have confused Professor Moshonov. However his Exhibit N includes language from the UTM website. The heading reads “I have an exam at UTM in the morning and an exam at St. George/UTSC in the afternoon. What do I do?” Of course, in this case the student did not have exams on two different campuses. This policy appears to refer to final examinations, not midterms, In any event, since it is the University of Toronto at Mississauga policy, it is not relevant.

To this the instructor replied “Please contact your college directly regarding this issue.” [Student Appeal, Exhibit I, email dated April 27, 2014.]

The Student Appellant complied with this request, bringing the matter to Alison Gibbs, Associate Chair for Undergraduate Studies in Statistics and Cheryl Shook, the Registrar of Woodsworth College. Cheryl Shook, informed the Student Appellant that she would be managing the matter. On June 6, 2014 she communicated the response to the student: “It is my understanding that [the Student Appellant] does not have a record of an agreement between him and the instructor to re-weight his course grade to discount the missed test. In the absence of such a record, it is the position of the Department of Statistical Sciences that the course grade, as it was submitted, stands.” [Student Appeal, Exhibit I, email dated June 6, 2014.] After this the Student Appellant attempted to contact Jamie Stafford, Chair of the Department of Statistical Sciences, who declined to meet with him, and referred him back to the Registrar. [Student Appeal, Exhibit I, email dated September 8, 2014.]

The exchange was elevated to a petition to Adrienne Hood, who declined to alter the decision of the department in the absence of written documentation of an agreement with the instructor to re-weight his exam. [Student Appeal, Exhibit A, email dated January 30, 2015.]

The Student Appellant responded to Associate Dean Hood’s decision by asserting that he did have the instructor’s consent to re-weight the final exam, and that the consent was in the text of the course syllabus quoted above, in which the instructor explained.

“There is no makeup test. If the test is missed for a valid reason, you must provide appropriate documentation such as the University of Toronto Medical Certificate, University of Toronto Health Services Form, or College Registrar’s Letter. You must submit this documentation to the course instructor (Hadas Moshonov) or the Departmental Office (SW6018) within one week of the test. Print on it your name, student number, course number and date. If documentation is not received in time, your test mark will be zero. If the test is missed for a valid reason, its weight will be shifted to the final exam.”

III. Decision

Jurisdiction of the Student Appeal Committee

In its submission dated June 12, 2015, the Faculty of Arts and Science raised a jurisdictional issue, citing section 11.1 of the Faculty of Arts and Science Academic Handbook, which states that academic appeals involving marking conclude “with the Dean’s Office being the final level of appeal.” This assertion contradicts the mandate of the Academic Appeal Committee, which is to hear appeals from any student “as to the applicability to his or her case of any academic regulation of the University.” [*Policy on Academic Appeals Within Divisions.*] Indeed, the University of Toronto Governing Council’s policy expressly instructs Divisions to advise any student whose appeal has been denied of his or her further right of appeal. [*Policy on Academic Appeals Within Divisions.*]

A Division may have more than one set of processes for inter-divisional appeals, and it can prevent some appeals from proceeding to its internal appeal board. However, Divisions may not circumvent the University level appeal process by preventing appeals from coming to the Academic Appeal Committee of Governing Council.

It is possible that the Academic Handbook language cited is meant to refer exclusively to assessments of the academic merit of a student’s work. In that case, the policy is correct. This Committee is not empowered to consider the academic merit of the work submitted, as this Committee has no expertise in the field of statistics. However since the student is raising issues around the rules for determining whether the reasons for an absence were valid the Committee has jurisdiction to decide this appeal. Its role will be to determine whether the Division’s policies were applied fairly, and the standard for their application is reasonableness.

Who Determines Whether the Reason For an Absence Is Valid?

The facts cited above, about which there is little disagreement start and end with a rule set forth in Professor Moshonov’s syllabus for *Methods of Data Analysis*. That rule establishes that students who miss the midterm will not have a second opportunity to sit for the test. Instead, a student with a valid reason for missing the test can have the weight of the midterm shifted to the final exam. The syllabus is silent on the issue of what might constitute a valid reason for missing the test, although it gives a University of Toronto Medical Certificate as an example of appropriate documentation, and suggests students could proffer a College Registrar’s Letter. The reference to medical certificates suggests that a valid reason might entail illness. The reference to a College Registrar’s letter suggests that there may be some circumstances under which a College’s policies would be considered as relevant to the validity of an absence.

The syllabus does not directly answer the question of who determines whether an absence is valid. However it instructs students to submit their documentation to the course instructor or the departmental office. The Student Appellant apparently assumed that the instructor would determine whether his absence was valid, as he brought her his documentation, he asked her what she had decided when he saw her in December of 2013, and he followed up with her in March of 2014. This assumption seems reasonable.

The Student Appellant attempted to influence the instructor’s decision by referring her to UTM’s policy on final exams. He also suggested that the University Registrar had a policy saying one hour travel time between two campuses constituted a legitimate reason to miss an exam. It is not clear that either of those points was controlling, but in any event, the instructor did make an effort to determine whether there was a relevant policy she should follow. The instructor told the Student Appellant that she had “consulted with higher officials” and determined that the TTC transfer was not valid.

Nothing in the syllabus language suggests what specific process the instructor would follow to determine whether an absence was valid. Under these circumstances, the process that she followed (consulting with officials) seems reasonable.

Did the Instructor Agree to Reallocate the Weight of the Midterm to the Final Exam?

At one point (in December of 2013) the instructor is said to have told the Student Appellant she was waiting to see how well he performed on the final exam before she decided whether his absence on the day of the midterm was valid. [Exhibit G, Affidavit of Student Appellant]. This is incongruous with the policy written in the syllabus, which does not contemplate taking performance on other assignments into consideration. It is hard to conceive how the score on the final exam would logically weigh on the decision about the validity of the absence. The instructor may not have wanted the student to end up failing the course as a result of the missed midterm. However taken at face-value this comment is difficult for the Committee to reconcile with the system set forth in the course syllabus. The assertion that she made this point, however, does not constitute an agreement to reallocate the weight of the midterm to the final exam.

In her decision dated January 30, 2015, Associate Dean Hood wrote, “While I understand that you might have had a verbal agreement with Professor Hadas to [use your June 2013 deferred final exam grade as the sole basis of the final grade], it is also the case that the professor has left the university and that there is no existing documentation to support your claim.” In fact, the Student Appellant has never asserted that the instructor orally agreed to move the weight of the midterm to the final exam mark. Rather, she told the student, in December, that she was waiting to see the results of his final before she decided. (Exhibit G, Affidavit of Student Appellant.) The December comment was not an oral agreement to calculate the Student Appellant’s mark exclusive of the missed midterm, and the only definitive answer the instructor ever gave on the question was contained in her March, 2014 emails, in which she explained that the reason for the absence was not a valid one. The undocumented December, 2013 conversation is confusing because it invoked a new factor in the decision (performance on the final), but the ultimate decision was based on the language set forth in the syllabus, was the result of consultation with other U of T personnel, and was consistent with the Faculty of Arts and Science policy.

The Student Appellant’s response to Associate Dean Hood’s assertion that there was no written agreement to re-allocate the midterm grade weight was to assert that the syllabus itself constituted a written agreement. He wrote, “I am unsure if you got the consent written by instructor which I put into Registrar’s mailbox in December...Namely the 3-page course syllabus PDF clearly states on last page that “there is no makeup test” and “if the test is missed for a valid reason, its weight will be shifted to the final exam.” He concludes with his interpretation of these sentences, “As course outline is instructor consent that test weight will be automatically shifted to exam for all students who missed test legitimately, there is no need for “any special arrangement.”

The Student Appellant’s use of the word “automatically” is not supported by the language in the course syllabus. On the contrary, the course syllabus requires students asserting a valid absence to submit appropriate documentation within one week of the missed test. The last sentence begins with the word “if,” indicating that sometimes that documentation will be found to be valid, and other times it will not be. The Student Appellant’s oral and written follow up with Professor Moshonov indicate that he was aware the instructor would be making a decision regarding the validity of his reason for missing the midterm, and that there was nothing “automatic” about it.

Further, this argument suggests that it is not the instructor's decision that determines whether an absence is legitimate, but someone else's. The Student Appellant expressly asks Adrienne Hood to make that decision. [Exhibit I, email dated February 5, 2015.] As discussed above, this is not the arrangement set forth in the course syllabus, and it is not the arrangement relied upon by the Student Appellant from July of 2013 until February of 2015.

What Constitutes a Course Conflict?

The language in the Faculty of Arts and Science Course Timetable for the 2013-2014 academic year had specific language instructing students how to plan their schedules. It had an express policy on conflicting courses, which read:

“ROSI does not check for course time conflicts, so plan your schedule carefully. Once you have decided which courses you are eligible to take, make sure that none of your choices are offered at conflicting times. You can find a weekly schedule worksheet here to help you create a conflict-free schedule. If you enrol in courses which conflict with one another, you do so at your own risk and you cannot expect special consideration from instructors as a result of the conflict.”

The Student Appellant asks this Committee to read the language very narrowly, arguing that since the two courses in which he enrolled did not directly overlap, this policy should not apply. This Committee was not persuaded by that argument. Enrolling in a course that meets shortly after (on Tuesdays) and immediately after (on Thursdays) another course might work if the two courses are in the same building, or at least on the same campus. But to do that in two courses that are separated by thirty kilometers, and take 75 minutes to travel between creates as much a conflict as if they met at the same time. The student knew that he would be unable to attend both courses regularly. He acknowledged that it was necessary for him to choose which course to attend in his email to Professor Moshonov, “Please note I mostly went to your lecture at 10 am and thus did not often go to STAC62H3 at 8-9 am at U of T Scarborough.” With this comment, the student tacitly acknowledged the impossibility of attending both classes regularly.

This Committee recognizes that there is a technical difference between classes that directly overlap and classes that do not overlap but that are located so far away from each other that the properties of time, space, and TTC travel make it either unlikely or impossible for a student to attend both. However we note that if the Faculty of Arts and Science does not accommodate one of those, it would not be reasonable to expect it to accommodate the other. The Student Appellant acknowledged, during the hearing, that the policy on Course Conflicts did not purport to set forth an inclusive list of all competing obligations that would not be given special consideration by instructors. The Committee concludes that a reasonable interpretation of the Course Conflict policy would include courses like the ones the Student Appellant chose. Even if it were not included in that policy, a regular travelling obligation that made it impossible for a student to attend a course on a consistent basis would not be one that we would expect instructors to accommodate.

Narcissistic Personality Disorder

The Student Appellant submitted extensive documentation on the disability of Narcissistic Personality Disorder. [Exhibits P (a definition of the term Narcissistic Personality Disorder from the Mood Disorders Association of Manitoba), Q (A letter from Accessibility Services dated January 18, 2010 and a consultation form completed on 29 May, 2009), R (a psychiatric note dated July 6, 2009)]

, and S (a set of Patient Encounter Notes dated May 27, 2011]. None of these documents relates to the period of time in question (The Fall term of 2012), and none of them includes recommendations about appropriate academic accommodations. This Committee cannot rely on the general or outdated documentation provided by the Student Appellant to account for or accommodate the student's specific request. There is no documentation guiding this Committee on how that disability relates to the matter at hand. It may be the case that the Student Appellant has a disorder, but the medical documentation provided was neither definitive nor up-to-date.

The student has offered no evidence, nor has he asserted, that he asked for any academic accommodations related to a disability before or during this course. Had the student been registered with the University's Accessibility Services, and had some qualified conclusions been drawn regarding what academic accommodations might allow this student to thrive, this Committee would have been able to judge whether the Faculty of Arts and Science had adequately followed those instructions, and whether the application of its policies had been fair. But here the Student Appellant is asking the non-expert members of this Committee to fashion an academic accommodation to suit his needs. That is not our province.

The accommodation of an increased grade three years after a course has closed would not be a valid remedy for the circumstances described by the Student Appellant. A disorder may have contributed to the Student Appellant's unrealistic expectations about how he would travel between the courses on Tuesdays. But the Faculty of Arts and Science gave him extensive counseling on course selection. Certainly the language in the Academic Handbook, warning students not to select conflicting courses and bluntly stating that they should not expect special consideration if they did so was unequivocal. The Student Appellant did not accept that guidance. A *post hoc* grade increase would not be a legitimate accommodation under these circumstances. While the Committee is sympathetic to the Student Appellant's situation, and can take no position on his condition, we are hopeful that with time he will learn to better manage his circumstances.

The Student Appellant's references to the fact that he is applying to graduate programs cannot be the basis for a change in his mark. The very request is problematic. For a faculty member to base a grade on any factor other than academic performance would constitute a violation of the *University's Code of Behaviour on Academic Matters* [(B)(i)(2)(c)], which forbids faculty members, "(c) to evaluate academic work by a student by reference to any criterion that does not relate to its merit, to the time within which it is to be submitted or to the manner in which it is to be performed." This Committee, which includes a faculty member, will not consider the fact that the student is applying to graduate programs as a factor in determining the appropriate mark for his course.

Conclusion

In his March 29, 2014 email to Professor Moshonov the Student Appellant acknowledged the difficulty of attending both classes due to the distance between the campuses. If he was naïve in disregarding the Faculty of Arts and Science's advice on course conflicts when he made his course selections, he quickly learned that he would often need to choose which course to attend. His decision to prioritize attending a class to hand in a homework assignment that was weighted at 5% of his final mark, rather than a class in which a 25% midterm was being administered was a poor choice. The course syllabus and the Faculty of Arts and Science policy on course conflicts, when

read together, bring this Committee to the conclusion that his absence was reasonably found to be invalid, and there was no basis for moving the weight of his midterm exam to the final exam. These policies were applied fairly to the student. This Committee sympathises with the Student Appellant's arguments about his personality disorder, but they were not adequately tied to the decisions he made, and were never translated into a viable academic accommodation. There is no evidence or suggestion that the Student Appellant asked for such an accommodation when this course was in process. His arguments about his pending applications to graduate school have no persuasive force. There is no basis for changing his final mark in STA 302, *Methods of Data Analysis*, from 70 to 80.

The appeal is dismissed.