

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 92 OF THE ACADEMIC APPEALS BOARD

June 27th, 1985

To the Academic Affairs Committee,
University of Toronto.

Your Board reports that it held a hearing on Thursday, June 27th, 1985 at 2:00 p.m. in the Board Room, Simcoe Hall at which the following were present:

Professor J. B. Dunlop (In the Chair)	Ms. M. Meyer
Professor W. H. Francombe	Mrs. J. Uyede
Professor J. T. Mayhall	
Professor K. G. McNeill	Ms. Irene Macpherson, Secretary

In Attendance:

Ms. *N.* the Appellant
Mrs. G. Curri, registrar, Scarborough College

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

At a meeting on June 27th, 1985 the Academic Appeals Board heard the appeal of *MSN* against a decision of the Subcommittee on Academic Appeals of Scarborough College upholding the refusal of the Subcommittee on Standing to allow her to withdraw without academic penalty from a course in which she failed. The Board did not reach a final conclusion on the appropriate disposition of the appeal on June 27th, and was unable to meet again until September 16th. The decision reached by the Board was that the appeal should be dismissed.

There was evidence that the appellant's failure in the course, ANT A01Y, was the result of personal and medical difficulties during the examination period, although the medical problem was not properly diagnosed until after the end of that period. The appellant did not, however, petition until nearly five years later. She told the Board that she did not realize at the time that it was possible to petition. In any case until December of 1984 she did not believe it was important to do anything about the matter. At that time she obtained an application form for admission to the Master of Social Work Programme. She said that although she had been advised two years previously that part-time students applying to the programme were judged on their last five courses, the form stated that transcripts of every year were required. She then concluded that the failure could cause her difficulty. She petitioned the Subcommittee on Standing at Scarborough College. Her petition was refused on January 16th, 1985. She then launched an appeal.

The particular rule applicable to the appellant's case as published in the Scarborough Calendar for 1979-80 is (2)(b):

A student may find it necessary to request special consideration in a course owing to illness or other extenuating circumstances.

(b) Final Examinations. Where a student is unable to write a formal final examination (scheduled in one of the final examination periods), or where the student's performance on a final examination is adversely affected a student may submit a petition to the Subcommittee on Standing - see (1) above. The petition should be submitted as soon as possible and not later than the last day of the relevant examination period.

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Clearly the appellant did not bring the petition within the time limit prescribed. Of course, in the event of extenuating circumstances it is a well established University practice to extend or waive a time limit. However, while there may have been circumstances justifying the appellant's delay beyond the end of the examination period, the Board was unprepared to conclude that these circumstances could justify a delay of four and a half years. For most of that time the appellant, by her own candid admission, simply did not feel that the matter was important enough to be pursued. To waive or extend the time limit to the extent requested on this basis would tend to render the rule virtually nugatory. It would not be proper for the Board to nullify a valid regulation because in a particular case its application created a problem for the individual. This is the frequent effect of rules.

Two members of the Board who disagree with this decision have written dissenting reasons which are appended to this Report.

The appeal is dismissed.

Secretary
October 17th, 1985

Chairman

REASONS FOR DISSENT

We wish to record our dissent from the decision of the Academic Appeals Board in the case of *MS N.*

In our opinion, the most important reason for having a rule that a student must petition before the end of the examination period in the case of failure to do well in, or an inability to write, a final examination is to prevent a student "having the cake and eating it", that is, writing the exam, finding that the results were not satisfactory, and then petitioning. Clearly this is not the case here, where the exam was not written at all.

Despite the fact that the regulation says "and no later than the last day of the relevant examination period", the Decision notes that "in the event of extenuating circumstances it is a well-established University practice to extend or waive a time limit". We would go further, and say it is a laudatory practice, which enables matters to be judged on their merits rather than there being a refusal to judge based on a rigid cut-off.

There is in fact no relevant regulation as to the time within which an appeal to extend or waive the time limit must be made. Naturally most such appeals will come quickly, as the student involved will wish to get the record straight as soon as possible. But there may be cases, as in this one, where the student with a legitimate case does not realise until much later how important an appeal might be. Obviously in every case it is the student who (with registrarial advice if sought) decides on the importance and urgency of the appeal. We have good reason to believe that if this appeal had been made within a few months, or a year or so, it would have been accepted by the Committee on Standing. The time of such an appeal would have however depended solely on the perception of the student of the importance of the situation.

Although for this type of petition there is no stated time limit, in general time limits may properly occur for two reasons. In a case which involves the rereading or remarking of exam books, or essays or tests, the University may set a time limit of, say, 6 months. This means that the University must keep intact all relevant papers for the 6 month period. However, if there has been no appeal in that time, the books etc. may be destroyed; all the evidence then has disappeared and no action based on the evidence is possible. In another case the evidence may gradually evaporate without deliberate action - witnesses may no longer be available, papers may quite legitimately have been lost. In this case again an appeal is not possible once the evidence ceases to exist, but there is no clear-cut time when this happens.

In the case of *MSA*, neither situation obtains. There was no exam book to destroy, and medical evidence is still extant.

The Board, in my opinion, is trying to set time limits based on its own feelings of how quickly appeals should come forward rather than realising that such appeals only come forward when the student realises the potential importance of the outcome. In our opinion, the questions to be asked are: 1) Is this a prima facie case for presentation? 2) Is there a valid reason why the student could not have met the stated deadline? If the answers are yes, the case should be judged. We would like cases to be decided on their merits, subject to there being available evidence on which proper decisions can be made.

Kenneth G. McNeill
Michelle Meyer

KGM/MM:md
October 17th, 1985

