

UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL

REPORT NUMBER 138 OF THE ACADEMIC APPEALS COMMITTEE

December 7th, 1990

To the Academic Board,  
University of Toronto.

Your Committee reports that it held a hearing on Friday, December 7th, 1990 at 2:00 p.m. in the Board Room, Simcoe Hall at which the following were present:

Professor J. B. Dunlop (Chairman)  
Ms C. Gidney  
Dr. D. I. Murdy  
Professor D. Perrier  
Professor J. Wilkinson

Ms Irene Birrell, Secretary

In Attendance:

Ms *N.* the appellant  
Ms Laura Nash, Downtown Legal Services, counsel for the  
appellant  
Professor Eleanor Irwin, Associate Dean (Academic) Scarborough  
College for the College

At meetings on December 7th and 12th, 1990, the Academic Appeals Committee heard and decided the appeal of *MS N.* from a decision of the Subcommittee on Academic Appeals of Scarborough College refusing to grant her appeal for a deferral of her suspension. As a result, the appellant has been suspended since the end of the summer session in 1990. Her appeal to this Committee was based (1) on compassionate grounds relating to her uncle's death and her father's heart condition and (2) on the ground that the College's regulation raising the required cumulative Grade Point Average from 1.5 to 1.6 commencing in the summer of 1989 ought not to apply to her in respect of course work completed during the years before the new regulation was put into effect.

The decision of the Committee is that the appeal should be allowed on the second ground with the result that the appellant's status should change, immediately, from "suspended" to "on academic probation" and she should be free to enrol in courses commencing in January 1991. She will, of course, have to achieve a sessional GPA of 1.7 to avoid suspension at the end of the session just as any student on probation must.

The principle that regulations should not be given a retrospective effect, that is, not only affecting a right or interest from that point on but taking away something previously acquired as of right, is a well-established legal principle. It was first referred to by this Committee in 1976 in the case of a student who had passed an examination according to regulations in force during the academic year in which he took it but was treated as having failed because a regulation adopted at the end of that academic year changed the requirements. The Subcommittee on Academic Appeals, as this Committee was then known, decided that the student was entitled to credit for the course. It concluded that there had been no intention to make the regulation retrospective and doubted whether it could have been done so in any event.

**REPORT NUMBER 138 OF THE ACADEMIC APPEALS COMMITTEE - December 7th, 1990**

The appellant's case comes within this principle. In her case the regulation as applied rendered unsatisfactory work that had been satisfactory at the time it was performed. Having first registered at Scarborough in September 1987, she had taken four courses and done poorly, with a sessional and, because it was her first session, a cumulative GPA of 1.33. That put her on probation. She needed, according to regulations in force at the time, a cumulative 1.5 to remain in or return to good standing but could continue on probation if she obtained in subsequent sessions a sessional 1.7. Failing that as well, she would be suspended. In the summer session, taking one course, and again in the 1988 winter session taking four she achieved sessional GPA's of 1.7 and brought her cumulative GPA up to 1.54, enough to change her status to "in good standing".

After another single course in the summer of 1989 in which she achieved a sessional 1.7 her cumulative GPA had risen to 1.56 but her transcript showed, without explanation, that she was back "on academic probation". The reason, of course, was the new regulation, applied beginning with that session (but applied to the appellant's average in all courses taken up to that point as well as those taken from then on). Hence a satisfactory average on work already performed became an unsatisfactory average. Yet according to a policy of the College, having commenced her degree program when the requirement was 1.5 she could graduate under the 1.5 GPA rule if she fulfilled all other requirements of the regulations under which she first registered.

It is true that a grace period was given between the passing of the 1.6 regulation and its application. Nonetheless, it was retrospective in part of its application. It put a burden on the appellant in respect of a record that was, at the point of the change, satisfactory.

The College's argument was that the regulation had been approved by the appropriate committees of the Governing Council and that an administrative nightmare would ensue if records of all students suspended in 1989 had to be examined to see whether they were similarly affected. The Committee examined the relevant committee reports and found no explicit approval of retrospective application. The Committee's view is that anticipated "administrative nightmares" are not always realized. In any case, the College cannot escape the application of the principle on the basis, in effect, that the application of the regulation may have resulted in more than one unfair suspension.

Had the appellant not been put on probation in the summer of 1989 she would not have been suspended in the summer of 1990 following a poor performance which she said was the result of the interference with her concentration caused by the circumstances already noted as compassionate grounds. Instead, she would have been placed on probation. This, then, is what her status should now be. It puts a burden on her, as indicated earlier, and it may be that she will never get her cumulative GPA to 1.6. But if she maintains a 1.7 sessional GPA she will continue on probation and may eventually reach a 1.5 cumulative GPA which could be adequate for her to graduate, depending on other factors mentioned earlier.

The Committee need not go into the question of compassionate grounds as even a favourable decision would not give any further advantage to the appellant.

**The appeal is allowed.**

Secretary  
January 7th, 1991

Chairman