

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 170 OF THE ACADEMIC APPEALS COMMITTEE

February 4th, 1994

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Friday, February 4th, 1994 at 2:00 p.m. in the Flavelle Room, Faculty of Law, 78 Queen's Park Crescent at which the following were present:

Professor A. Weinrib (Vice-Chairman)
Professor Joan Brailey
Professor Barry Brown
Ms Peggy Haist
Mr. Hart Heller

In Attendance:

Mr. P.M., the appellant
Mr. R. Anand, counsel for the appellant
Acting Dean E. W. Stieb, for the Faculty
Ms H. Ditzend, Faculty Secretary and Business Manager, Faculty of Pharmacy
Mr. T. Pinos, counsel for the Faculty

This is an appeal to the Academic Appeals Committee of the Governing Council by Mr. P.M., a student in the Faculty of Pharmacy, against the decision of the Appeals Committee of the Faculty of Pharmacy in which Mr. P.M.'s appeal of his failure during the first year of the Pharmacy program was dismissed.

Mr. P.M. has a history of medical problems with his knees. These problems necessitated orthoscopic surgery in April 1993. He did not write any of the final examinations that month, and therefore failed the year. Mr. P.M. petitioned the Faculty for relief from his failure. The Board of Examiners and Examinations Committee decided to give Mr. P.M. the option of writing supplemental examinations during the usual examination period in August or repeating first year except for PHM 102Y. If Mr. P.M. chose the second option and successfully completed all of the relevant courses and attained a 60% overall weighted average, he would be allowed into the first Professional year of the new Pharmacy program. On the other hand if he chose the first option and was unsuccessful in the supplemental examinations, he would have to gain admission to the Faculty of Arts and Science in order to complete the required subjects and apply for admission to the first year of the new Pharmacy program in 1994. In this case, he would have to compete for a place in the program on the same basis as the other applicants. Mr. P.M. decided to write the supplementals in August 1993.

On August 9th, 1993, Mr. P.M. wrote PHM 102Y. The Faculty of Pharmacy arranged with the Faculty of Arts and Science for the remaining six examinations to be written on the same days that they were scheduled by the Faculty of Arts and Science but at different times. On Monday, August 16th, Mr. P.M. wrote BIO 150Y from noon to 3:00 p.m. and MAT 135Y from 5:00 p.m.

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to 8:00 p.m. The next day he wrote CSC 104S from noon to 3:00 p.m. and ECO 100Y from 5:00 to 7:00 p.m. On Wednesday, August 18th he wrote CHM 135Y from noon to 3:00 p.m. and PSY 100Y from 5:00 to 8:00 p.m.

On August 13th, the Faculty received a letter from Dr. Reason setting out Mr. P.M.'s medical condition. Dr. Reason wrote, in part, as follows:

This arthritis of his knees causes him a great deal of pain, so much that he will require time to lie down and rest during tests and examinations.

A reasonable approach, which is medically necessary, is to allow the above named to have a 15 minute break each hour for pain management.

It was common ground between counsel for the student and counsel for the Faculty that the Faculty was under duty to make reasonable accommodations due to the student's medical condition. Of course, counsel disagreed as to whether the accommodations which the Faculty made were sufficient. Mr. P.M. was permitted to write his examinations separately from other students; he was provided a couch on which to recline during the examinations; and he was provided an extra 15 minutes of time per hour of examination to rest and ice his knee during the examinations, as recommended by Dr. Reason.

The main point of contention was whether or not Mr. P.M. was not being reasonably accommodated due to the fact that he had to write two exams a day for the three day examination period. There was much argument as to whether or not Mr. P.M. had made it clear that he had asked to be accommodated in this way. There was also some argument concerning the circumstances in which students have to provide medical evidence to the University. On this latter point, we are all agreed that whenever a student asks for a dispensation from the ordinary rules due to medical circumstances, he or she must provide timely medical evidence of necessity for the dispensation. The necessity for the students to present whatever medical evidence is available is not restricted to the formal appeals process.

The crucial point in this appeal involves the question of whether the Faculty sufficiently accommodated Mr. P.M. in the circumstances even though it did not accede to his request, as his counsel puts it, not to write more than one examination per day. The Committee notes that the Faculty of Pharmacy was in an awkward position in relation to the scheduling of the examinations. The six examinations written the week of August 16th were all Faculty of Arts and Science examinations. The Faculty obviously attempted to accommodate Mr. P.M. due to his medical problem. However, a majority of the Committee believes that Mr. P.M., in the circumstances, ought not to have been forced to write more than one examination a day. We do not attribute fault to the Faculty of Pharmacy. The Faculty was obviously conscious of its duty to accommodate Mr. P.M. due to his medical problem, and we do not know how the Faculty would have reacted to the scheduling request had it had sole control over the examination timetable. Whatever the problems were over which the Faculty of Pharmacy had no control, the University has a duty to accommodate, and it is this duty which we are addressing.

As a result of the August examinations, Mr. P.M. failed his year. He failed PSY 100Y and he did not attain a weighted average of 60%. His weighted average was 54.4%.

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In CHM 135Y, Mr. P.M. argued that his mark ought to have been 60% and not 50% because his term mark was miscalculated. His argument was that he missed several quizzes due to his medical problem and that those quizzes ought not to have been computed into his average. Leaving those quizzes out of the average would result in a grade of 60% rather than 50%. The Committee dismisses this part of the appeal. Evidence was lacking that the Chemistry mark was not calculated in accordance with the usual procedures in the Department of Chemistry. The request to change the Chemistry mark has not been before the relevant Faculty appeals committee. The issue cannot be raised at this appeal for the first time.

Mr. P.M. appealed his failure for the year to the Faculty of Pharmacy Appeals Committee. That appeal was dismissed. In the course of his reasons Judge Main, the Chair of the Committee wrote:

The powers of this Committee do not extend to undercutting the academic standards of the University.

With this statement we fully agree. However, the University must give the student a fair chance to meet its academic standards. As noted earlier, the majority of this Committee feels that in the circumstances, the student ought not to have been asked to write more than one examination a day.

The question then arises as to what relief we should give the appellant. The appellant's counsel asked that Mr. P.M. be allowed to officially register in second year for 1993-94. Mr. P.M. testified that he has been auditing the courses for this year. All of the suggested measures of relief requested by Mr. Anand for the appellant involve raising the mark in CHM 135Y to 60%. As noted earlier we declined to raise this mark. Some of Mr. Anand's other suggestions involve replacing various marks in courses taken last year with marks in courses which Mr. P.M. took at McMaster University between 1978 and 1984. This we also decline to order. Having in mind Judge Main's admonition that the academic standards of the University ought not to be undercut, we will give the appellant the following relief:

- (i) Mr. P.M. should write the examinations in April, 1994, in as many of BIO 150Y, CHM 135Y and MAT 135Y as he wishes in order to facilitate the raising of his average to 60%. The results of the examinations Mr. P.M. chooses to write should be fitted in with the term marks which Mr. P.M. obtained last year in order to produce new final grades in those courses.
- (ii) Mr. P.M. must take one of ECO 100Y, PSY 100Y and SOC 101Y, or any reasonable substitute to which the Faculty of Pharmacy agrees, during the summer session of 1994. He must receive a passing mark for the course chosen. The weighted average of this first year program, including this course, the courses in which he rewrites examinations and the other first year courses must be 60%.
- (iii) Mr. P.M. is allowed to register in the second year of Pharmacy for 1993-94 and write the examinations in April, 1994. The Committee understands that Mr. P.M. has not done the assessments which the Faculty's program calls for before this date. We leave it to the Faculty to exercise its judgment as to how this work can best be made up.

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The purpose of this decision is to allow Mr. P.M. to enter into the third year in Pharmacy in the fall of 1994 if he is able, in effect, to pass both his first and second years in the program prior to the commencement of the third year. The Committee notes that there may be a problem arising out of the fact that the Faculty's examination timetable and that of the Faculty of Arts and Science may not mesh. We also leave this problem to the Faculty to work out.

In conclusion, the Committee wishes to thank counsel for both the appellant and the Faculty for the way in which this difficult case was ably and helpfully argued.

Secretary

Professor A. Weinrib
Chairman

February 14th, 1994