

UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL

REPORT NUMBER 211 OF THE ACADEMIC APPEALS COMMITTEE

May 28, 1996

To the Academic Board,  
University of Toronto.

Your Committee reports that it held a hearing, *in camera*, on Tuesday, May 28, 1996, at which the following were present:

Before:           Professor Ralph Scane, Acting Chairman  
                  Professor Barry Brown  
                  Mr. Henry Kim  
                  Professor Ruth Pike  
                  Professor Kenneth Shulman

Ms Rosanne Lopers-Sweetman, Secretary

In attendance: the Appellant  
                  Ms Marie Gerrard, for Scarborough College

At the opening of the hearing, your Committee considered a request from the Appellant (**hereafter, "the Student"**) that the hearing be held in closed session. After considering the matters raised in the Notice of Appeal and supporting documentation, your Committee ruled that the requirements of the *Statutory Powers Procedure Act* for holding a hearing *in camera* had been met, and that the hearing should be closed to the public.

Your Committee considered an appeal by the Student from a decision of the Sub-committee on Academic Appeals of Scarborough College, dated December 18, 1995, which dismissed an appeal from the Sub-committee on Standing of that College, dated November 2, 1995. The latter decision denied a petition by the Student to be allowed to withdraw without academic penalty, after the deadline for such withdrawal, from the 1995 Summer Session course PSYB20F, and to rewrite the final examination in the 1995 Summer Session course PSYA01Y. In those courses, the Student received grades of E and D+ respectively, for a sessional GPA of .97. As the Student was already on academic probation, and these marks resulted in a cumulative GPA of .90, the Student received a suspension for one year.

The Student's academic record to date is poor. Following the 1992 Winter Session, the Student was placed upon academic probation, and after the 1993 Winter Session, a one-year suspension was imposed. The College Sub-committee on Standing refused a petition, made in June, 1994, to defer that suspension, and, after considering the grounds for that petition,

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recommended long-term counseling before attempting to re-enter academic studies. In December, 1994, the College Sub-committee on Academic Appeals allowed an appeal and deferred the suspension, permitting entry into the 1994 Winter Session. The Student obtained a sessional GPA of 1.90, but the cumulative GPA was insufficient to take the Student off academic probation. The results in the 1995 Summer Session, as mentioned, led to a further suspension.

Before this Committee, **the Student amended her original petition for relief to a request to be permitted late withdrawal from PSYA01Y, rather than being permitted to re-write the final examination therein.** Your Committee decided that, in view of the time elapsed before this appeal reached this level, if any relief were to be granted here with respect to PSYA01Y, re-writing was a significantly less practical and satisfactory solution than late withdrawal. **The amendment was granted.**

**Your Committee allows the appeal as amended. The student will accordingly be permitted late withdrawal, without academic penalty, from the two 1995 Summer Session courses referred to. This will remove the suspension, and permit further enrolment, on academic probation, with all of the usual consequences of that status.**

In arriving at this decision, your Committee considered certain evidence which was not made available to the two Scarborough College committees which dealt with the original petition and the appeal from it. This evidence dealt with the effects on the Student of what it will suffice to describe here as highly stressful familial relationships.

A second ground not brought before the College committees was a relationship with a friend suffering from some form of severe mental depression, who developed a dependence on the Student that the Student found mentally draining during the period relevant to this appeal.

Your Committee considered that, in combination with its view of the physical problems being suffered by the Student during the summer of 1995, which were considered by the Scarborough College committees, these two additional factors mean that the University cannot sufficiently rely upon the marks attained by the Student in the 1995 Summer session to allow them to stand. Your Committee arrived at this conclusion despite the marginal academic record of the Student.

Your Committee considered anxiously whether it should consider the "family relationships" evidence, and the evidence respecting the troubled friend at all, in view of the fact that it was not presented to the Scarborough College committees. It certainly could have been, had the Student chosen to bring it forward there. It was made available to the College committees who considered the Student's appeal from the 1994 suspension. It is likely that, had this been an appeal in the regular court system, such evidence would have been ruled inadmissible had it been sought to be introduced for the first time at an appellate level. The policy reasons against admitting evidence for the first time at an appellate level are clear. Such admission tends to waste time and resources, as, with such evidence, the lower tribunals in the chain might have arrived at a different result than they did, obviating the need for the appeal. Your Committee concluded that it need not, and should not adopt quite so rigorous a position as the regular court system adopts, having regard to the fact that far fewer of the matters which proceed through the University's academic appeals system are undertaken with legal or quasi-legal assistance,

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particularly at the initial stage. Your Committee prefers a test which will reject such evidence unless the appellate body considers that the student appealing had reasonable grounds for failing to bring the evidence forward at the original hearing.

In this case, your Committee felt that the Student did have reasonable grounds. The Student's perception of the relationships involved, and of the likelihood of greatly exacerbating an already highly unfortunate situation, should word of the Student's story of the family relationships leak out to family members, affected the Student's judgment on this matter and led the Student to avoid reference to the perceived situation until faced with the "last chance" position which is involved in an appeal to this Committee. The decision was not an easy one for this Committee, and future appellants should not rely upon obtaining similar decisions by this or lower appellate tribunals in the University easily.

The Student also based this appeal on a debilitating illness suffered throughout the summer of 1995. It was this ground which was primarily relied upon before the Scarborough College committees. It was alleged that throughout June, July, and some of August, the Student suffered from a severe stomach ailment, involving vomiting, nausea and diarrhea.

With respect to PSYB20F, the Student missed a term examination due to this illness. The examination was written on June 5. The course instructor reported that she specially marked the examination on that day, and had the mark available that day. The Student states that the examination ended at 7:00 p.m., and that the Student was not informed that the result would be ready at any given time. In fact, the Student did not receive the results until June 12, three days after the last day to withdraw from the course without academic penalty. The Scarborough College committees considered that the Student had ample time to obtain the result (which was a failure) and make the consequential decision to drop the course. This is the decision the student would have made, had the drop date not passed. The Student continued on in the course, and attempted the final examination on June 28, but was unable to complete this examination due to the illness described.

With respect to PSYA01Y, the student achieved a B- on the first test on June 8, but missed a test on July 11 and a make-up test on July 18 due to that illness. A number of classes were also missed for the same reason. The Student did not drop the course by the deadline of July 21, but continued on to write a term test on August 10 (D-), and the final examination on August 17 (D+), for a final grade of D+. The Student alleges a severe recurrence of the ailment which had so affected her earlier in the summer, starting two days before the final examination. The Scarborough College committees noted that the medical certificate which was filed, although itself dated September 27, 1995, referred specifically only to visits made in June, and to a referral for examination by a specialist in early July. The student acknowledged that there was no attendance on a doctor at the time of the recurrence of the illness in mid-August. The only corroboration of the Student's own statement as to the illness is a letter from a friend, dated September 28, 1995, which stated that he had been in attendance upon the Student during the period August 15-17, during which time the Student was bedridden with severe stomach pains, diarrhea and nausea. (The letter also made a similar statement with respect to the period June 5 to June 18.)

The Scarborough College committees appear to have arrived at their decision to refuse relief on the basis of a combination of factors. As this Committee reads the decision of the

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Sub-committee on Academic Appeals, together with the formal submission to this Committee by Scarborough College, it appears that it considered that the Student had contributed to the difficulty for which relief was now sought by enrolling in PSYB20F without first having taken the pre-requisite course PSYA01Y, which she instead took concurrently. (The Student stated to us, and the College did not challenge, that this was done with permission of the instructor, as was the case with some courses in the 1994 Winter Session to which the College Sub-committee referred.) This Committee agrees that, given the precarious academic status of the Student, this was not a wise decision, as might be said for some of the other decisions as to course selection, and the resulting burden thereof, made by the Student previously. We agree that it is relevant to consider the fact that an appealing student has made the bed on which she or he now lies, but the weight of that factor very much depends on the circumstances of the individual case. In this case, the evidence as to family matters, which the Scarborough committees did not have before them on this appeal, leads us to give this little if any weight in determining this appeal.

Secondly, as to PSYB20F, The Scarborough committees considered that, as the instructor stated that she had marked the make-up exam written on June 5, and that her grade was "made available" on that day, the Student had ample opportunity to discover her poor grade and make an informed decision as to whether to drop or continue the course prior to the June 9 deadline, particularly as the Student had been in College on June 8 to write a test in the other course taken that summer. We have no information as to what the instructor meant by "made available." The Student testified that the June 5 test ended at 7:00 p.m., and that the Student was not aware that the instructor, who was teaching a course immediately thereafter, was grading the paper that night. Apart from writing the June 8 test, the Student states that the Student was away from the University due to the described illness until June 12, when the grade was ascertained. This Committee will comment on this issue in conjunction with the next two.

Thirdly, although it appears in the College submission to this Committee rather than in the Reasons of the College committees, it seems that there was a credibility issue at the College level. In addition to the fact that the medical evidence did not refer to the August 17 examination, the corroborating evidence tendered in the letter of the Student's friend, which referred to the Student being "bedridden" during two critical periods, seems to have been regarded with suspicion, in that the Student did during these periods attend at the College to write two tests or examinations, i.e., on June 5 and August 17.

Finally, the Sub-committee on Academic Appeals states that it was "concerned that the appellant had waited until September 28, 1995 to file her petition...." The Sub-Committee did not elaborate upon the relevance it assigned to this factor. It appears to this Committee that any delay in petitioning, if the petition is not out of time or if the ability to make adequate response to the petition is not shown to be impaired by the delay, can only be relevant to the merits of the petition as a factor in assessing the credibility of the appellant's evidence. There was no argument before this Committee that the College was prejudiced in any way by the delay.

We agree that it is most important that, in fairness to other students and in the safeguarding of the University's standards, relief from compliance with the academic rules of the University or its divisions should be granted with great caution. The Student should have gone back to the

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doctor immediately before or after the August 17 examination, in order to have that episode covered in the medical evidence, but, having failed to do so, that was spilled milk in the appeals process. There was medical evidence of a severe illness in the early summer, and the doctor treating her, writing in September, 1995, considered that her illness continued "into the month of August". There was corroboration, although of a lay nature, in the letter of the friend as to her bedridden condition during relevant periods. This Committee does not see an inconsistency between this statement and the fact that the Student made it to the College during these periods to write some examinations. That is the course of conduct urged upon students, if it is at all possible for them to follow it.

In summary, it appears to this Committee that, during the Summer term of 1995, the Student was simply overwhelmed by the combination of the family situation, the additional stress imposed by the depressed friend (neither of which factors were before the Scarborough College committees), and a serious debilitating illness. If there was a credibility issue before the College tribunals as to the seriousness of the illness, this Committee does not share such doubts. This Committee believes that this combination of factors not only seriously affected the ability to perform in the courses in question, but also contributed significantly to the Student's poor judgment in failing to press for a result of the June 5 test in PSYB20F during the narrow window of opportunity left prior to the withdrawal deadline, and in failing to attend upon a doctor at the time of the August 17 examination. The evidence as to family factors also provides substantial extenuation for the Student's taking on a greater academic load than could be handled under the circumstances.

This Committee considers that it should advise the Student again that, in the Committee's admittedly inexpert opinion, the Student needs significant counseling support of a medical or expert psychological nature, in supplement of the counseling already received from the University's Counseling and Learning Skills Service (which the Student has found very helpful), and urges that it be sought at the University Health Service or elsewhere. The student should also heed earlier advice to make full use of academic counseling services made available by the University. Despite the relief received here, the Student will remain on academic probation, and has a long and precarious climb to achieve a degree. The circumstances of the Student's family relationships, however powerful in extenuation of the record achieved so far they may be, can only be effective so far, and for so long. The University has given effect to them here, and probably in the 1994 appeal. There is a risk that, should these circumstances be adduced again in a petition for academic relief, an appropriate tribunal may consider their force largely spent. The Student needs all the skilled support and guidance available to come to grips with the situation effectively, but come to grips with it the Student must, and soon.

Rosanne Lopers-Sweetman  
Secretary

Ralph Scane  
Acting Chairman

May 28, 1996