

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 221 OF THE ACADEMIC APPEALS COMMITTEE

August 25, 1997

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Monday, August 25, 1997, at which the following were present:

Before: Professor Alan Mewett, Acting Chair
 Professor Ethel Auster
 Professor John Mayhall
 Professor Emmet Robbins
 Ms Sally Safa

 Ms Rosanne Lopers-Sweetman, Secretary
 Academic Appeals Committee

In attendance: Mr. R.K., the Appellant
 Associate Dean Catherine Valcke, Faculty of Law

The Student appeals from a decision of the Internal Appeals Committee of the Faculty of Law dismissing his appeal from a decision of the Marks Meeting of the Faculty of Law that he fail First Year and that he be required to repeat First Year. The student requests that he be given the opportunity to write supplemental examinations in the two courses in which he received failing grades.

There is no dispute over the facts and the issue is simply whether, on compassionate grounds, the appeal should be allowed. The Committee acknowledges the assistance it received from both parties in this appeal and acknowledges the fair and courteous manner in which the conflicting views were presented.

The student is a member of the Saugeen First Nation Band and was admitted to the Faculty as part of its programme for Native Students. As such, he was required successfully to complete the Program of Legal Studies for Native Peoples at the University of Saskatchewan, which he did in July, 1996. His grandmother, to whom he was very close, had died in March of that year, but while the Committee accepts that this was a sad and traumatic event for him, we cannot give it undue emphasis in assessing his performance on examinations that were taken over a year later.

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It was during the school year that the events the student relies upon for the exercise of compassionate discretion in his favour arose. The student's wife was pregnant during the winter term and went through periods of false labour during the writing of the Christmas practice examinations. This disrupted the student's study and as a result he missed two of the scheduled examinations but received permission to write them at a later date, which he did. More will be said of these practice examinations later. The weeks following the birth of the child brought new problems. The child developed jaundice and stomach problems, and was in hospital for some weeks. This was followed by a period of anxiety and disruption until finally the matter was resolved satisfactorily. As a result of this, the student missed, in total, some six weeks of class attendance.

Since March of this year, the student has been deeply involved in the conflict and turmoil that have developed within his native community and this has had a deep emotional effect both on the student and on his family.

The student also raised, as grounds for exercising our discretion in his favour, his financial position. The student is, at the moment, funded by the Band, and it is by no means certain that this funding would continue for what would then be a four-year programme of study were he required to repeat a year. The student would, in consequence, be required to assume an additional debt-load. We sympathize with him but in all honesty, his position is probably no worse than -- and, indeed, is rather better than -- that of the majority of law students. This ground played no part in our deliberations.

The Faculty members directly involved with the student were kept informed of his problems and did their best to assist him. His small-group instructor supplied him with class notes and encouraged him in every way possible. Professor Craig Scott, who has been involved in the community in the past, also counseled him.

The student wrote the final examinations but received failing grades in Contracts (33%) and Torts (45%). He was given permission to hand in the required assignment in Criminal Law late, but in this and in the other required courses he received satisfactory marks. His weighted average for the year, including the two failures was 55.48. The Faculty of Law Rules (which are published to all students) require that a student in First Year pass all required courses with a weighted average of 60% or better, but that a student who has a weighted average of 62% or better and only one failure with a mark of 40% or better will be deemed to have passed the year. A student not meeting that standard automatically fails the year, but the Faculty retains the discretion to grant relief from the automatic failure in any case where it feels such action is justified.

At the Marks Meeting of the Faculty, this student's case was discussed thoroughly and all the facts given above were presented to the meeting on the student's behalf by the Associate Dean. The Meeting decided not to exercise its discretion and ruled that the student must fail the year. The student appealed to the Internal Appeals Committee and presented his case to it in person. That Committee concluded:

Most of us are of the view that the two events which transpired [i.e. the problems with his son and the political disturbances on his reserve] so

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significantly affected Mr. R.K.'s academic year that it is in his best interests, and in the best interests of the institution, that he repeat first year. One of us is of the view that supplementals could address the issues in this case. (emphasis added)

Both the Marks Committee and the Internal Review Committee "reviewed Mr. R.K.'s academic record throughout the year" and it is this aspect of the case that troubles this Committee. It is not a question of this Committee second-guessing the Faculty or substituting its discretion for that of the Faculty but of determining whether complete justice has been observed. The Associate Dean stated to us that three items, among others, had influenced the decision appealed from, namely, the student's performance on the Christmas practice examinations, the student's ranking at the bottom of the class, and the student's absence from class for some six weeks. We would make the following observations. The Associate Dean explained that these had influenced the decision in the sense that the Faculty and the Internal Review Committee had diligently sought some basis upon which they could exercise their discretion in favour of the student, but his performance on the practice examinations was extremely poor, he was ranked bottom of the ranked students in his class (i.e. omitting part-time students and special students and the like) and he had missed six weeks of classroom instruction. This Committee does not dispute that it is both proper and indeed laudable for a Faculty to try to find some basis for the exercise of its discretion in favour of a student and that the absence of any such basis constitutes a valid reason not to exercise its discretion in the student's favour. What troubles this Committee is that not a word of this is said in either the Faculty Calendar or the Faculty Syllabus.

The Statement as to Practice Examination reads:

First year students are required to take one-hour tests in each subject at the conclusion of the first term. The results of the tests are not generally included in the student's final grade but the tests are nonetheless mandatory. Some instructors may make the first year tests count in the grading scheme where it is to the students' advantage to do so.

The Statement as to class attendance reads:

Students are expected to attend class on a regular basis. Students who are absent for a lengthy period due to illness or personal circumstances should inform [the] Assistant Dean. First year students who are ill or absent for any of the Bridge weeks should inform the Associate Dean. Any student whose attendance at lectures or whose work is, in the opinion of the Faculty, deemed unsatisfactory, may, at any time, have his or her registration cancelled and be refused admission to lectures and examinations.

The ranking of students is nowhere mentioned at all.

It is the opinion of this Committee, and one that we have expressed before, that all students have the right to know the ground rules. In our view, these statements, or lack of them, do not adequately put the student on notice what the rules in the Faculty of Law are and this should be amended accordingly. The precise wording is better left to the Faculty to decide

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but we would suggest that the statement on practice examinations should include something along the lines of: *Students should be aware that the results of these tests may be considered by the Faculty in deciding whether or not to exercise its discretion in granting relief to a student from the automatic application of the rules relating to failing the year.* The statement as to class attendance should also include something along the same lines.

If law students are in fact ranked, they should be told this and they should also be told for what purposes ranking is used. This Committee recognizes that some form of ranking is unavoidable -- e.g. for the purpose of honours or the awarding of prizes. If it is also a factor that the Faculty may consider in determining whether to exercise its discretion favourably, some statement to this effect should be included.

The result we reach is that this appeal should be allowed. The student is to be permitted to write two supplemental examinations, in the courses in which he received a failing grade, at a time and place to be agreed upon, as soon as convenient. If the student successfully passes those examinations and brings his weighted average, including the results of the two supplemental examinations, up to the required 60%, he shall pass the first-year programme. We reach this result, not because we are substituting our discretion for that of the Faculty which we fully believe was arrived at after all due consideration and in the best interests of the student and the institution, but because we are not persuaded that the student was fully aware, or made fully aware, of the consequences of his marks in the practice examinations, of his absence from class or of his low ranking.

Rosanne Lopers-Sweetman
Secretary

Alan Mewett
Acting Chairperson

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