



UNIVERSITY OF  
**TORONTO**

ACADEMIC APPEALS COMMITTEE  
SUMMARIES OF KEY PRINCIPLES

2000 – Present

**This document is updated on a monthly basis**

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Prepared by Governing Council's Office of Appeals, Discipline and Faculty Grievances

## **INSTRUCTIONS**

This document contains summaries of reports that highlight key principles. Each summary includes a bolded section, which is a snapshot of the key points, as well as certain keywords or principles that are underlined. The example below shows that the case is significant because of the Panel’s comments on “new evidence” and “petition submitted late”:

**UTM – extension on course work – new evidence – apprehensions regarding major criminal charges – increase in employment workload and assignment abroad – petition submitted late but before final mark could be known – appeal allowed – late withdrawal without academic penalty – non-grade notation of WDR substituted for failing grade in course**

A case can be unique for more than one reason. Thus, a summary may be duplicated and found in more than one section. For example, a late withdrawal case that results in the appeal being allowed may be found under: “Late Withdrawal Without Academic Penalty” and “Appeal Allowed.”

Finally, for ease of use, there is interlinking throughout this document, including to the reports.

If you have any questions or concerns, please do not hesitate to contact us (<https://governingcouncil.utoronto.ca/about-adfg-office/who-we-are>).

Christopher Lang  
Director, Appeals, Discipline and Faculty Grievances

**ACADEMIC APPEALS COMMITTEE REPORTS: 2000-PRESENT**

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## LATE WITHDRAWAL WITHOUT ACADEMIC PENALTY

Leading Cases:	<b>264, 275, 280, 302, 314, 317, 332, 365, 372, 373, 374, 375, 379, 380</b>
appeal allowed:	<b>275, 280, 302, 317 (<i>in part</i>), 365, 372</b>
appeal dismissed:	<b>264, 314, 373 (<i>in part</i>), 374, 375, 379, 380</b>
granted but not requested:	<b>332</b>
▪ <a href="#">Appeal of late withdrawal:</a>	<b>262</b>

## LATE WITHDRAWAL WITHOUT ACADEMIC PENALTY

FILE:	<a href="#">Report #264</a>	Secretary:	
DATE:	March 25, 2002	Mr. Paul Holmes, Judicial Affairs Officer	
PARTIES:	Ms. A.H., the Appellant (the Student) v. UTSC	In Attendance:	
Hearing Date(s):		For the Appellant:	
March 14th, 2002		Ms. A.H., the Appellant ("the Student")	
		Ms. E. Morton, counsel	
Committee Members:		For UTSC:	
Professor Emeritus Ralph Scane, Acting Chair		Associate Dean I. McDonald	
Professor Clare Beghtol		Ms. Sherylin Biason	
Professor Luigi Girolametto			
Ms. Wendy Swinton			
Ms. Geta Yadav			

**UTSC – late withdrawal without academic penalty – family pressures, financial circumstances and illness of family member – wrong to impose rules as rigorous as are imposed by appellate courts but Committee can refuse to consider new evidence – recommendation that all students are warned that full disclosure of all relevant facts is required at petition stage – nature of issue sufficiently disclosed in original petition – University policy on drop dates does not apply when unanticipated circumstances arise after the drop date, when then existing circumstances unexpectedly become significantly more severe, or when then existing circumstances were reasonably expected to abate, but did not – awareness of adverse circumstances and failing grades by drop date – late receipt of mark not grounds for relief because petition not filed promptly – difficulties associated with family member’s illness occurring around or after the drop date not exempted from drop date policy – appeal dismissed**

Request to withdrawal late without academic penalty from one course. The Student failed the course. The Student claimed that her stressful situation, derived from family pressures, financial circumstances and the illness of her mother, prevented her from performing adequately in the course. The Committee considered an objection by the Faculty to the Student’s introduction of new evidence and found that while it would be wrong to impose rules as rigorous as are imposed by appellate courts, the refusal to consider new evidence is an option open to the Committee. The Committee recommended that all students are clearly warned in writing, at the time that they are instituting the first steps of a petition process, that they must make full disclosure of all relevant facts upon which they rely, or be at risk of not being allowed to raise those facts at later stages of the process. The Committee found that the essential nature of the Student’s issue was sufficiently disclosed in her original petition such that the details should be allowed to be filled in at the Committee level. The Committee considered the University’s policy on drop dates and found that the policy does not apply when unanticipated circumstances arise after the drop date, when then existing circumstances unexpectedly become significantly more severe, or when then existing circumstances were reasonably expected to abate, but did not. The Committee found that by the drop date, the Student was aware of the burdens placed upon her by her circumstances and she knew that she had failing grades in her tests and her midterm examination. The Committee found that the Student’s receipt of a failing test after the drop date did not justify relief because she did not file her petition promptly after receipt of the mark. The Committee found that the difficulties the Student faced due to her mother’s medical condition occurred around or after the drop date but that the circumstances did not exempt her from the drop date policy. If her return to the family home as a caregiver was foreseen at the drop date, the caregiving burden should have been factored into her appraisal of her chances of completing all of her courses successfully and if it was not foreseen, the Student must have anticipated that her situation of living away from home and holding a job to support herself would continue. The Committee found that the Student gambled that she could succeed in the course, or, if she could not, that she could seek to withdraw from one or more of her courses near the end of term. Appeal dismissed.

FILE: [Report #275](#)  
DATE: March 17, 2003  
PARTIES: Ms. R. (the Appellant) v. the Faculty of  
Arts and Science

Hearing Date(s):  
March 11, 2003

Committee Members:  
Assistant Dean Bonnie Goldberg, Chair  
Professor Clare Beghtol  
Professor Sherwin Desser  
Professor Luigi Girolametto  
Mr. Sean Mullin

Judicial Affairs Officer:  
Mr. Paul Holmes

In Attendance:  
For the Student:  
Ms. R., the Appellant  
Mr. Shaun Laubman, Downtown Legal Services  
Ms. Nicole Redgate, Downtown Legal Services

For the Faculty of Arts and Science  
Vice-Dean Susan Howson, Faculty of Arts and Science,  
University of Toronto

**Faculty of Arts and Science – late withdrawal without academic penalty – bulimia – new evidence heard – stress from course exacerbated condition – reliance on advice of professor and mental health counselor – decision to choose mental health over studies only choice available – initiated attempts to get out of course within days of drop date, without final grade being assessed, and having obtained a respectable mark – assistance sought – condition considered despite not being raised in initial appeal – Divisional Appeals Board considered erroneous ground in its decision and did not consider professor’s advice – appeal allowed – grade of “F” in the course to be vacated and replaced with “WDR”**

Request for late withdrawal without academic penalty from one course. The Student requested the remedy on compassionate, medical and procedural grounds. The Student claimed that she suffered from bulimia, which was exacerbated when she was under stress. Student claimed that she experienced extreme stress as a result of the course, which was confirmed to her by her mental health counselor. While waiting for the outcome of her petition for late withdrawal, the Student sought the assistance of her professor who advised her that she faced insurmountable difficulty in the course, recommended that she drop it and offered to support her petition to do so. The Student claimed that her bulimia worsened and relying on the advice of her professor and mental health counselor, and in recognition of the state of her mental health, she chose not to complete any further course requirements. The Student subsequently failed the course. The Committee found that the Student’s decision to choose her mental health over her studies and not continue in the course was the only choice available to her and to penalize the Student for that decision would be to disregard the serious medical and compassionate grounds surrounding her situation. The Committee found that with the assistance of a professor and a counselor, the Student identified the severity of her situation and took steps to ameliorate it. Although the Student missed the drop date for the course, she initiated attempts to get out of the course within days of the drop date, without having been assessed a final grade in the course, and having already obtained a respectable mid-term mark. The Committee considered the Student’s bulimia and the fact that she did not raise the condition in her initial appeal, and found that the condition was at the root of the Student’s difficulties and should be considered in the Committee’s decision. The Committee also allowed the appeal on procedural grounds, finding that the Divisional Appeals Board considered an erroneous ground in its decision and that the Board should have considered the reliance that the Student placed on her professor’s advice in its decision. Appeal allowed. The Committee ordered that the grade in the course be vacated and replaced with the non-grade report WDR.

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FILE: [Report #280](#)  
DATE: June 11, 2003  
PARTIES: Ms. S. (The Student) v. the Faculty of  
Arts and Science

Hearing Date(s):  
June 2nd, 2003

Committee Members:  
Professor Emeritus Ralph Scane, Chair  
Professor Clare Beghtol  
Professor Sherwin Desser  
Mr. Chris Ramsaroop  
Mrs. Susan Scace

Secretary:  
Mr. Paul Holmes, Judicial Affairs Officer

In Attendance:  
For the Appellant: Ms S., the Appellant ("the Student")  
Ms Elee Scarlett, Counsel  
Mr. Jeremy Speight  
Professor Aurel Braun  
Professor David Wolfe  
For the Faculty of Arts and Science:  
Vice-Dean Susan Howson

**Faculty of Arts and Science – late withdrawal without academic penalty – physical and psychological effects of serious medical condition – no reasonable time to adjust and recover before drop date or before evaluations completed and submitted – appeal allowed – grade in the course vacated, and Student to be permitted to withdraw without academic penalty – recommendation that a warning be issued that University staff who undertake to advise students must not divulge information received or make any comment based upon it without the student's permission – concern with Divisional Appeal Board's decision – any advice from the Divisional Appeal Board should follow after the decision called for by the appeal, and not control the decision**

Request for late withdrawal without academic penalty from one course. The Student received a grade of "C" in the course. It was not in issue that the Student suffered physical and psychological effects of a serious medical condition, including stress awaiting the diagnosis of her condition, and further stress when the diagnosis was received. The Committee considered the Student's submissions and the University and Committee's approach to the policy on late withdrawal without academic penalty as described in Report #264 and found that between the receipt of her diagnosis and the drop date for the course, the Student was in a state of emotional upset from which she had no reasonable time to recover. The Committee found that advice to carry on with her courses had contributed to the Student's stress, and that due to the short period between the drop date and the end of the course the Student had no time to recover before the evaluations for the course were completed and submitted. Appeal allowed. The Committee ordered that the grade in the course be vacated, and that the Student be permitted to withdraw from that course without academic penalty. The Committee recommended that a warning be issued that staff of the University who undertake to advise or counsel students, and who receive a student's confidences, must not divulge the information received or make any comment based upon it, without the student's permission. The Committee stated that it was concerned about the reasons for judgment of the Divisional Appeals Board. The Committee observed that the exclusive concentration upon the better course of action to achieve the Student's goals in launching the appeal resulted in the Board failing to consider what the necessary conditions to permit late withdrawal were, and whether the Student had established those conditions. The Committee observed that if the Student had established the necessary conditions than she was entitled to the relief sought, whether it was wise to proceed to take it or not. Any advice from the Board should follow after the decision called for by the appeal and not control the decision.

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FILE: [Report #302](#)  
DATE: July 26, 2005  
PARTIES: Ms V. R. (the Appellant) v. UTSC

Hearing Date(s):  
July 5th, 2005

Committee Members:  
Assistant Dean Bonnie Goldberg, Chair  
Professor Clare Beghtol  
Ms Coralie D'Souza  
Professor Michael Marrus

Judicial Affairs Officer:  
Mr. Tony Gray

In Attendance:  
Ms V. R., the Appellant  
Associate Dean Nick Cheng, UTSC

Professor John Wedge

**UTSC – late withdrawal without academic penalty – mental and physical difficulties following accident – divisional remedy to re-write examination unreasonable as condition worsened – Committee opinion that monetary relief should not be provided – appeal allowed – late withdrawal without academic penalty granted**

Request to withdraw late without academic penalty from one course. The Student claimed that she suffered unforeseeable mental and physical difficulties following a car accident and was unable to participate in the course from mid-March until the end of term. The Division Appeal Committee granted permission to re-write the final examination. The Student rewrote the examination but also continued the appeal, seeking the original remedy. The Committee found that the divisional remedy to re-write the examination was unreasonable in light of the factors contributing to the Student's inability to participate in the course. The Committee accepted the Student's contention that already pre-existing circumstances became significantly more severe following the drop date and that it was not possible to foresee her worsening medical condition. Appeal allowed. Late withdrawal without academic penalty granted. The Committee observed that although it does not have jurisdiction to make such orders, it accepts that students should not be entitled to refunds of courses for which they are granted late withdrawal without academic penalty.

FILE: [Report #314](#)  
 DATE: March 9, 2007  
 PARTIES: The Student Appellant v. the Faculty of Arts and Sciences

Judicial Affairs Officer:  
 Dr. Anthony Gray

Hearing Date(s):  
 February 20, 2007

In Attendance:  
 the Student Appellant  
 For the Faculty of Arts and Science:  
 Ms Sari Springer (Counsel)  
 Ms Elaine Ishibashi, Associate Registrar  
 Professor Suzanne Stevenson, Acting Vice-Dean,  
 Undergraduate Education and Teaching

Committee Members:  
 Professor Emeritus Ralph Scane, Senior Chair  
 Professor Jan Angus  
 Mr. Kristofer Coward  
 Professor William Gough  
 Ms Maureen Somerville

**Faculty of Arts and Science – late withdrawal without academic penalty – litigation related to family and illness of family members – demands imposed by lawsuit known by drop date – date of Trial not sufficient excuse for default – increased stress from relatives' illness occurred after default – penalty imposed on assignment sufficiently clear and severe – consideration of general policy regarding approach to late withdrawal without academic penalty in light of University admitting younger students – Committee found that policy should not be revised as a result of this case – minority opinion that policy should be amended and appeal allowed – appeal dismissed – recommendation that University review policy with respect to academic support for younger students**

Request for late withdrawal without academic penalty from one course. The Student failed the course. The Student claimed that she was overwhelmed by time demands arising out of assistance to her father's litigation, and emotional stress as well as time demands arising from the serious illness of her aunt and grandmother. The Student claimed that if the course instructor had been more severe with the lateness penalty imposed on the first assignment handed in late then she would have dropped the course. The Committee considered the Student's submissions and the University and Committee's approach to the policy on late withdrawal without academic penalty as described in Report #264. The Committee found that the demands imposed by the lawsuit were known by the Student by the drop date and that the date of the Trial did not provided sufficient excuse for the Student's default with respect to the first three papers. The situation with regard to the aunt and grandmother was known, and while their health had deteriorated, increasing the stress upon the Student, the circumstances occurred after the Student had so severely defaulted in the course that her situation was almost certainly irreparable. The Committee found that the penalty imposed on the first assignment was sufficiently clear and severe so that no reasonable student could have been lulled into a sense of security with respect to the instructor's approach to time defaults. The Committee considered whether the general policy on late withdrawal without academic penalty should be revisited in order to allow relief to younger first year students. The Committee

found that it should not attempt to revise a policy that has been generally applied by so many Academic Appeals Committee panels and by the Divisions. The minority found that the policy should be amended and that relief should be granted. Appeal dismissed. The Committee recommended that the University undertake a review of its policies with respect to the admittance of younger students and to consider whether the University should be more proactive in reaching out to younger students.

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FILE: [Report #317](#)  
DATE: April 9, 2007  
PARTIES: Student Appellant v. UTM

Judicial Affairs Officer:  
Dr. Anthony Gray

Hearing Date(s):  
March 22, 2007

Appearances:  
the Student Appellant  
For UTM:  
Gordon Anderson, Chair, Academic Appeals Board,  
UTM

Committee Members:  
Assistant Dean Kaye Joachim, Chair  
Professor Jan Angus  
Ms. Coralie D'Souza  
Professor William Gough  
Dr. Joel Kirsh

**UTM – late withdrawal without academic penalty and leave to file late appeal – ongoing anxiety and depression – no evidence that medical condition prevented or hindered withdrawing from courses in timely fashion – impact on a Student's GPA not a reason for granting late withdrawal – unduly technical to deny leave to file a late appeal in the circumstances – medical evidence directly connected the student's medical state with missing the drop deadline for two other courses – Appeal allowed in part – withdrawal without academic penalty from two courses allowed – withdrawal without academic penalty from two other courses dismissed**

Request for late withdrawal from two courses due to the Student's ongoing anxiety and depression, and leave to file a late appeal of a subsequent decision of the Divisional Appeal Board denying late withdrawal from two other courses.

The Committee considered the medical evidence presented and found that it did not suggest that the Student's medical condition prevented or hindered her from withdrawing from two of the courses in a timely fashion. The Committee found that the Student's claim that the subsequent lowering of her GPA was disproportionate to the "wrong" of failing to withdraw in time was not a valid reason for granting late withdrawal.

The Committee also considered the Student's intention to file the notice of appeal to the Divisional Appeal Board decision denying her request for late withdrawal from two other courses and found that in the circumstances, combined with the lack of any prejudice to UTM, it would be unduly technical to deny her leave to file a late appeal. The Committee found that that the medical evidence directly connected the Student's medical state with missing the drop deadline for these courses. Appeal allowed in part. The Committee allowed leave to withdraw without academic penalty from two courses and denied leave to withdraw without academic penalty from two courses.

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FILE: [Report #332](#)  
DATE: April 14, 2009  
PARTIES: Mr. M. S. (the Student) v. UTM

Secretary:  
Ms Mette Mai

Hearing Date(s):  
March 27, 2009 and April 7, 2009

In Attendance:  
For the Student Appellant:  
Mr. M. S. (the Student)  
Mr. R. S.

Committee Members:  
Professor Emeritus Ralph Scane (Senior Chair)  
Professor Jan Angus  
Mr. Kenneth Davy  
Dr. Joel Kirsh

For the University of Toronto at Mississauga:  
Professor Gordon Anderson

Professor Elizabeth Smyth

**UTM – extension on course work – new evidence – apprehensions regarding major criminal charges – increase in employment workload and assignment abroad – petition submitted late but before final mark could be known – appeal allowed – late withdrawal without academic penalty – non-grade notation of WDR substituted for failing grade in course**

Request for an extension of time to complete term work for one course. The student failed the course having not submitted term work. Although the Student was late in seeking relief, the petition was filed before the final examination, and before the final course mark could be known. At the time, the Student experienced a major increase in his employment work load and was assigned abroad. The Committee agreed to hear a new ground of appeal, not placed before the divisional appeal levels below, that the Student had apprehensions of being charged with a major criminal offence, which affected his performance and his judgment. The Student had been instructed by his lawyer to refrain from discussing the case with anyone, which the student had interpreted as precluding him from raising the evidence in the original petition or in the divisional appeal. The Committee considered the new evidence, the Student’s employment circumstances, and the timing of the Student’s petition, and found that relief should be granted, although not the remedy requested. Permitting the Student to submit his paper for credit would be impractical considering the time that had lapsed and it would frustrate the academic goals of the course. The Committee granted late withdrawal without academic penalty. The stress from the potential criminal charges, in combination with the major increase in the work load of the Student’s job, the not reasonably foreseeable assignment abroad, and the timeliness of the petition, brought the case within the requirements for granting the remedy as set out in the Committee’s previous decisions. Appeal allowed. The non-grade notation of WDR was ordered substituted for the vacated failing grade and the status of the student in the University should be reassessed.

FILE: [Report #365](#)  
 DATE: January 31, 2013  
 PARTIES: Mr. C.B. (the Student) v. UTM

Secretary:  
 Ms. Natalie Ramtahal, Coordinator, Appeals,  
 Discipline and Faculty Grievances

Hearing Date(s):  
 November 19, 2012

Appearances:  
 For the Student Appellant:  
 Mr. C.B., the Appellant (“the Student”)

Committee Members:  
 Mr. Tad Brown, Chair  
 Professor Steven Thorpe  
 Mr. Andrew Girgis

For UTM:  
 Professor Kelly Hannah-Moffat, Vice Dean,  
 Undergraduate Programs, Teaching and Learning,  
 UTM  
 Ms. Michelle Daley, Assistant Registrar, UTM

**UTM – late withdrawal without academic penalty – Student’s medical disability and family challenges worsened unpredictably – lack of communication between the University’s accessibility centres on different campuses – incomplete options presented to the Student prior to the drop date – cumulative impact of the factors on the Student’s academic performance warranted granting the rare remedy – appeal allowed**

Request for late withdrawal without academic penalty for two courses. The Student appealed on medical and compassionate grounds. The Student first enrolled at UTSG on a letter of permission, where he was registered with the Accessibility Services office and provided with accommodations to compensate for disabilities relating to a serious head injury. The Student then enrolled as a visiting student at UTM, where he enrolled in the Courses at issue. The Student also experienced a number of family challenges at the relevant time. The previous decisions of UTM’s Committee on Standing and Academic Appeals Board denied the Student’s appeal, noting that the Student decided to withdraw from one course before the drop date and to remain in the two courses that were the subject of the appeal. The Student then appealed to the Academic Appeals Committee. He provided additional evidence to the Committee in relation to the worsening impact of his brain injury on his studies during the relevant period. The Committee also took into consideration evidence that the full background information and documentation of the Student’s accommodations needs with Accessibilities Services at UTSG was not properly forwarded to UTM’s AccessAbility Resource Centre, and the Student was not appropriately accommodated. The Committee also considered evidence that the options presented to the Student in relation to his academic and financial options were limited, leading the Student to feel that he had little

choice but to continue with the Courses despite his recognition of family and medical difficulties. The Committee emphasized that the remedy of late withdrawal without academic penalty is an extraordinary remedy, reserved for rare situations where unexpected and unforeseeable circumstances occur after the drop date, where already existing circumstances become unpredictably worse, or where already existing circumstances do not reasonably resolve. The Committee concluded that the cumulative impact of the Student’s unpredictably worsening disability and unpredictably increased volume of family responsibilities, the incomplete communication between the University’s accessibility centres, and the incomplete list of financial and academic options presented to the Student warranted granting the extraordinary remedy. Appeal allowed.

FILE: [Report #372](#)  
 DATE: April 25, 2014  
 PARTIES: Mr. M.K.A. (the Student) v. the Faculty of Applied Science and Engineering

Secretary:  
 Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
 March 18, 2014

Appearances:  
 For the Student Appellant:  
 Mr. M.K.A., the Appellant (“the Student”)

Committee Members:  
 Professor Hamish Stewart (Chair)  
 Professor Hugh Gunz  
 Ms. Alexandra Harris

For the Faculty of Applied Science and Engineering:  
 Professor Peter Herman, Chair of the Committee on Examinations  
 Mr. Khuong Doan, Associate Registrar, Student Services

**Faculty of Applied Science and Engineering – late withdrawal without academic penalty – medical issues caused the Student’s to miss his deferred examination on all of the scheduled dates – Faculty refused to allow further deferrals or withdrawal from the Course – Committee held that this situation was not one of a Student “cherry-picking” courses to improve his transcript, but rather one of trying to find an appropriate solution for a difficult situation brought on by medical problems – evaluating the Student on the basis of the examination that the Faculty had already recognized was not a proper test of his understanding of the Course material was not a fair application of the Faculty’s policies – appeal allowed**

Request for late withdrawal without academic penalty from one course. The Student became ill while writing the exam for the Course and he was granted a deferred exam. Further medical issues caused him to miss the deferred exam. The Student then petitioned the Committee on Examinations (CE) for late withdrawal from the entire term. That petition was granted. The Student subsequently petitioned the CE again, stating that he had intended to seek late withdrawal only from the Course, not from the entire term. The CE granted the petition in part, vacating the decision withdrawing the Student from the entire term but refusing withdrawal from the Course, instead reinstating the deferred examination. The Student missed that deferred examination. The Student then petitioned the CE for retroactive withdrawal from the Course, supported by a University Verification of Student Illness or Injury form stating that the Student was significantly impaired in ability to fulfil academic obligations on the date of the deferred exam. The CE dismissed the petition without reasons.

The Student then appealed to the Academic Appeals Board (AAB). The AAB dismissed the appeal, noting that no additional evidence was provided to support granting the exceptional request of late withdrawal without academic penalty (see Report #348).

The Student then appealed to the Academic Appeals Committee. The Committee noted that it was odd that the medical evidence placed before the CE was sufficient to justify the Student’s late withdrawal from the entire term, but not for one course taken during that term. Though the Committee agreed with the Faculty that students should not be able to improve their transcripts retroactively by “cherry-picking” courses from which to withdraw late, in this case the Student was not attempting to cherry-pick but rather to find an appropriate solution for a difficult situation brought on by a number of medical problems. The Committee did not agree with the AAB that there was no additional evidence before it, noting that the Student submitted a medical explanation. The Committee found that the Faculty’s decision to evaluate the Student’s performance on the basis of the examination originally written effectively unravelled the accommodation that the Faculty had granted him, as the Faculty had already recognized that that examination was not a proper test of the Student’s understanding of the course material. The Committee concluded that this was not a fair application of the

Faculty's policies and that late withdrawal without academic penalty was an appropriate remedy for the Student's situation. Appeal allowed.

The Committee denied the Faculty's request to redact the names of all of the Faculty's faculty and staff who were involved in the Student's case, noting that the fact that an individual was acting in an official or institutional capacity is not by itself a reason for redacting that person's name (see Report #367).

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FILE: [Report #373](#)  
DATE: June 5, 2014  
PARTIES: Ms. R.S. (the Student) v. the School of Graduate Studies

Secretary:  
Ms. Sinead Cutt, Administrative Assistant, Office of Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
March 19, 2014

Appearances:  
For the Student Appellant:  
Ms. Andrea Wobick, Counsel for the Student  
Ms. R.S., the Appellant ("the Student")

Committee Members:  
Ms. Emily Orchard (Chair)  
Professor Andrea Sass-Kortsak  
Mr. Adrian De Leon

For the School of Graduate Studies:  
Mr. Robert Centa, Lawyer for the Division  
Professor Jane Alderdice, Director, Quality Assessment and Governance  
Professor Alan Saks, Professor of Organizational Behaviour and HR Management, UTM  
Ms. Deborah Campbell, Access/Information Services Specialist, Robarts Library

**School of Graduate Studies – late withdrawal without academic penalty – reinstatement in program despite failure to meet program requirements – documented personal and medical issues – appeal of some of the courses five years after the Student's initial registration – Student's last-minute submission of documents not accepted – students have a duty to make themselves aware of their rights and responsibilities and the policies of the programs – late withdrawal without academic penalty granted when the Student's already-existing circumstances significantly and unpredictably worsen – the Student's successful performance in some courses cannot be relied on to suggest that she could properly perform in all of her courses – Student not entitled to monetary relief for the Course in which she was granted late withdrawal – late withdrawal and aegrotat standing not allowed for four courses on the merits and untimeliness of the appeal – administrative errors that led to the failure of Accessibility Services to assess the Student cannot be relied upon without a temporal limit – the University cannot be expected to accommodate a condition of which it was unaware – appeal dismissed in part**

Appeal from the School of Graduate Studies' (SGS) decision to terminate the Student's enrolment in her Program, and a request for late withdrawal without academic penalty from five courses. The Student relied on her uncontested serious personal and medical problems, together with the Faculty's alleged failure to sufficiently accommodate them, as the basis for her failure to perform satisfactorily in the courses. The Student was terminated from the Program as a result of her failure to maintain a mid-B average. At issue in this case was whether the Student's disabilities were sufficiently accommodated by the Faculty and whether any alleged failure to accommodate the Student's disabilities justified the extraordinary relief of late withdrawal without academic penalty and substitution of aegrotat standing five years after the earliest courses were undertaken.

The Committee denied the Student's request to admit additional documents on the eve of the Continuation Hearing, noting that the Student's failure to make this request in a timely fashion was unreasonable (especially given that the matter was adjourned for six months).

The Committee rejected the Student's assertion that she was unaware of her right to appeal grades in various courses and that the Faculty had a duty to personally inform her of this right, emphasizing that students have a duty to familiarize themselves with their rights and responsibilities and the policies of their respective programs and to act in a timely fashion to avail themselves thereof, and further that the Student was made aware of her right to appeal in the SGS Calendar.

With respect to the first Course, the Committee found that the extraordinary relief of late withdrawal without academic penalty was warranted because the Student’s already-existing circumstances became significantly more severe and could not have been reasonably anticipated by the Student. The Committee also noted that the Student’s ability to perform well in other courses and her decision to drop courses before the drop date cannot be relied upon to suggest that she was well enough to perform well in all of her courses or assess the severity of the impact of an FZ on her status in the program. The Committee stated that it did not aim to establish a precedent that would empower students to turn a wilfully blind eye to University policies only to later seek late withdrawal without academic penalty on the basis that they were unaware of such policies; students are not absolved of their obligations to familiarize themselves with relevant rights and responsibilities, even if they are entitled to special accommodation. The Committee also noted that students are not entitled to monetary refunds of courses for which they are granted late withdrawal without academic penalty.

With respect to the second, third, fourth, and fifth courses, the Committee dismissed the Student’s appeals for late withdrawal without academic penalty and aegrotat standing as untimely and without merit. [The courses were taken between Winter 2009 and Winter 2012, and though the exact circumstances differ in the reasoning for each course, the reasoning will be discussed together here.] The Committee noted its disappointment at the administrative error that led to the failure of Accessibility Services to assess the Student; however, such a failure must have a temporal limit. The Student cannot rely on that failure to explain away the FZs she received in courses taken months and years after her initial attempt to enlist the office’s support. The Student was aware of her tenuous academic and personal circumstances and ought to have sought relief in a timely fashion; there was no satisfactory explanation of her failure to inform Accessibility Services of her injuries and issues. The duty to accommodate students can only be imposed upon the University in circumstances in which it is made aware of a student’s disability. There was also no evidence to support the Student’s allegations that the Professors in one of her courses were biased against her.

The Committee concluded that the SGS’s decision to terminate the Student’s registration was entirely reasonable, particularly as the record indicated that this decision followed numerous accommodations and several clear written warnings to the Student that her academic standing was in jeopardy.

Appeal dismissed in part.

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FILE:	<a href="#">Report #374</a>	Secretary:
DATE:	June 19, 2014	Mr. Christopher Lang, Appeals, Discipline and Faculty Grievances
PARTIES:	Mr. D.H. (the Student) v. the Faculty of Arts and Science	
Hearing Date(s):	June 4, 2014	Appearances:
		For the Student Appellant:
		Mr. D.H., the Appellant (“the Student”)
Committee Members:		For the Faculty of Arts and Science:
Professor Andrew Green (Chair)		Professor Anne-Marie Brousseau, Associate Dean Undergraduate
Professor Edward Iacobucci		
Ms. Alexandra Harris		

**Faculty of Arts and Science – late withdrawal without academic penalty – preliminary issue of timeliness – Student requesting the remedy for courses taken 20 years earlier – Student did not have adequate documentation – extraordinary remedy of late withdrawal without academic penalty must be well-supported and warranted in the circumstances – appeal dismissed**

Request for late withdrawal without academic penalty for 14 courses taken by the Student between 1979 and 1986. In his petition, the Student indicated that both his lack of success in the courses and his inability to use the petition process in the 1980s stemmed from his anxiety and his unwillingness to admit that he had a problem or needed help. The Faculty denied the petition on the basis that it had been filed too late; the Faculty rules require a petition for late withdrawal to be made within six months of the end of the session. The Student then appealed to the Faculty’s Committee on Standing, which denied the petition for the same reasons. The Student then appealed to the Academic Appeals Board. The AAB denied the appeal, noting that it was unwilling to make selective modifications to the Student’s record.

The Student then appealed to the Academic Appeals Committee. The Student provided the Committee with two medical records from the previous year relating to his current anxiety treatments and successes, in addition to the undated records he had submitted in his previous petitions that purported to pertain directly to the time when he was taking the courses in question. The Committee stated that the Student’s undated medical records he alleged to be from the time when he was taking the courses in question were not sufficient, and that the current medical records did not provide an adequate link between the Student’s state of mind in the 1980s. The Committee emphasized that the extraordinary request of late withdrawal without academic penalty must be well-supported and rarely applied in fairness to other students and in order to maintain trust in the University’s transcripts as accurate representations of students’ records. The Committee found that it was not unreasonable for the AAB to find that graduate schools would take into account the Student’s progress over time as part of its reasons for denying the Student’s appeal. The Committee concluded that the Student’s circumstances and concerns about being accepted to graduate programs did not warrant granting the remedy. The Committee did not consider the timeliness issue as it denied the appeal on its merits. Appeal dismissed.

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FILE:	<a href="#">Report #375</a>	Secretary:
DATE:	September 5, 2014	Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances
PARTIES:	Mr. S.S. (the Student) v. University of Toronto Scarborough (UTSC)	Appearances:
Hearing Date(s):		For the Student Appellant:
June 4, 2014		Mr. S.S., the Appellant (“the Student”) Mr. Samuel Greene, Downtown Legal Services
Committee Members:		For UTSC:
Mr. Tad Brown, Chair		Professor Mark Schmuckler, Vice Dean of UTSC
Professor Salvatore Spadafora		
Mr. Rastko Cvekic		

**UTSC – late withdrawal without academic penalty – medical issues – insufficient documentation – circumstances did not justify granting the extraordinary remedy – appeal dismissed**

Request for late withdrawal without academic penalty from two courses or, in the alternative, removal of the Courses from the Student’s academic record. The Student submitted a petition requesting either to rewrite the final examinations or be granted late withdrawal from the courses after he learned that he had failed them. The petition included a medical note indicating that the Student had recurrent epistaxis throughout the period of his exams. UTSC denied the petition, noting that the medical form was not evidence that the Student was ill on the day of the examinations, and that the exam invigilators had no documentation of the Student’s illness during the exam. The Student then appealed to the Subcommittee on Standing at UTSC, which denied his request. He then appealed to the Subcommittee on Academic Appeals (SAA) of UTSC requesting late withdrawal from the courses. The SAA denied the appeal for the same reasons, namely the Student’s lack of sufficient documentation to justify granting the appeal.

The Student then appealed to the Academic Appeals Committee on medical and compassionate grounds. The Student provided additional medical documents to the Committee. The Committee denied the appeal, noting that the Student had the option to drop the courses right up to the day before the examination, and 24 hours after the exam with medical documentation. The Committee cited the lack of evidence to support the impact of the Student’s medical condition on his academic performance and the lack of evidence to demonstrate that the Student’s symptoms became unpredictably worse at the time of the examinations. The case did not justify granting the extraordinary remedy of late withdrawal without academic penalty. Appeal dismissed.

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FILE:	<a href="#">Report #379</a>	Secretary:
DATE:	July 27, 2015	Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances
PARTIES:	Ms. P.M. (the Student) v. the School of Graduate Studies (SGS)	Appearances:
Hearing Date(s):		For the Student Appellant:
June 29, 2015		Ms. P.M., the Appellant (“the Student”)

Committee Members:  
 Ms. Renu Mandhane, Chair  
 Professor Salvatore Spadafora  
 Mr. Ben Coleman

Ms. Nicole Wilkinson, Ms. Tegan O'Brien, and Ms. Sherice Annis, Downtown Legal Services

For the SGS:  
 Professor Luc de Nil and Ms. Kendra Hawke, SGS  
 Professor Brent Sleep, Department of Civil Engineering  
 Ms. Lily Harmer, Paliare Roland Rosenberg Rothstein LLP, Counsel for the SGS

**School of Graduate Studies – late withdrawal without academic penalty – personal and familial difficulties – Student's circumstances did not change after the drop date – insufficient documentation – appeal dismissed**

Request for late withdrawal without academic penalty from one Course. The Student faced a number of personal and familial difficulties while she was enrolled in the Course. The Student filed a petition with her Department's Graduate Departmental Academic Appeals Committee when she learned that her failures could result in termination from her program. The GDAAC denied the petition because the Student's distress was not documented by a medical certificate. The Student then appealed to the Graduate Academic Appeals Board. The GAAB also denied the Student's petition, noting that the Student's circumstances did not change after the drop date, and that the Student had not provided any documentation of any unanticipated circumstances that affected her performance in the Course.

The Student then appealed to the Academic Appeals Committee. The Committee accepted that the Student was distressed by her family situation and that her academic performance was likely affected, but concluded that the circumstances were insufficient to merit the extraordinary remedy of late withdrawal without academic penalty. The Committee emphasized that the remedy of late withdrawal without academic penalty is an extraordinary remedy, reserved for rare situations where unexpected circumstances arise after the drop date, where pre-existing circumstances significantly worsen or where pre-existing circumstances that were reasonably expected to abate do not. The Student did not file sufficient medical or psychological evidence to support the finding that her situation became unexpectedly more difficult after the drop date. The Committee also noted that even if it were to accept the Student's characterization of the events as a significant deterioration of existing circumstances, it would have expected her to reach out to someone within the University to discuss her situation well before the exam, or at least immediately afterwards. Appeal dismissed.

FILE: [Report #380](#)  
 DATE: August 31, 2015  
 PARTIES: Ms. H.K. (the Student) v. the University of Toronto Mississauga (UTM)

Secretary:  
 Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
 August 24, 2015

Appearances:  
 For the Student Appellant:  
 Ms. H.K., the Appellant ("the Student")

Committee Members:  
 Professor Andrew Green, Chair  
 Professor Elizabeth Smyth  
 Ms. Susan Froom

For UTM:  
 Professor Kelly Hannah-Moffat, Professor and Vice Dean Undergraduate, UTM  
 Ms. Michelle Kraus, Assistant Registrar, Academic Standards and Petitions

**UTM – late withdrawal without academic penalty – insufficient reasons to warrant granting the extraordinary remedy – appeal dismissed**

Request for late withdrawal without academic penalty from five courses. The Student submitted a petition for late withdrawal once she decided to apply for graduate school, citing health problems and her involvement in court cases at the time she was enrolled in the courses. The COS refused her petition, noting that late withdrawal without academic penalty could not be granted after a student shows his or her intent to complete a course by writing the final examination or assignment. The Student then appealed to the AAS, which found that the Student had not presented a compelling case for an exemption from UTM's policies on late withdrawal and dismissed the appeal.

The Student then appealed to the Academic Appeals Committee, arguing that her meeting with the Dean and waiting for the results of the re-grading process prevented her from pursuing withdrawal within the appropriate timelines. The Committee noted that the Student knew of her difficulties prior to the drop date and that she was aware of the drop date, but that she chose not to withdraw from her courses and in fact completed the final assignments in the courses. The Committee concluded that it was not unreasonable for the AAS to find that the Student's interactions with the Dean did not provide sufficient reason for the Student not pursuing late withdrawal within the appropriate timeline, and that it was not unreasonable for the AAS to find that the re-grading process was not unfair. Appeal dismissed.

## NOTES

The most thorough discussion of the Academic Appeals Committee’s interpretation of the University’s position with regard to late withdrawal without academic penalty is found in Report # 264, dated March 14, 2002<sup>1</sup>

*It is clear from previous decisions of your Committee, as well as from regulations of the various divisions of the University, that permission for late withdrawal without penalty may be granted, but such relief is far from a matter of course. The very existence of “drop dates” demonstrates that those charged with legislating University academic rules and regulations have adopted a policy that is far from paternal in this regard. Up to the “drop date”, the University leaves the matter entirely in the uncontrolled discretion of the student. The student’s reasons for dropping a course may range from merest whim to desperation. However, by that date the student is expected to have assessed his or her circumstances, and made an election. If the student elects to continue with the course, the consequences of that election must be accepted, and no allowance will be made for the effect of circumstances existing at the “drop date”, including the continuation of those circumstances after that date, if continuation should reasonably have been anticipated, however detrimental to the student’s performance they may be. In short, the University, by adopting “drop dates” which are set considerably before the end of the relevant terms, has set its face against a student, at the time the “drop date” forces a choice, from gambling, substantially risk free, that the situation with respect to a course can be repaired.*

*Without attempting to be exhaustive, the obvious circumstances where this policy does not apply are when unanticipated circumstances arise after the “drop date”, when then existing circumstances unexpectedly become significantly more severe, or when existing circumstances were reasonably expected to abate, but did not.*

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<sup>1</sup> As stated in Academic Appeals Committee Report #314, March 9, 2007

## APPEAL OF LATE WITHDRAWAL

FILE: [Report #262](#)  
DATE: February 11, 2002  
PARTIES: Ms. P.H., (the appellant) v the Faculty  
of Arts and Science

Hearing Date(s):  
December 3, 2001

Committee Members:  
Professor Ed Morgan, Acting Chair  
Dr. Alice Dong  
Professor Luigi Girolametto  
Professor Gretchen Kerr  
Ms. Heather Schramm

Secretary:  
Mr. Paul Holmes

In Attendance:  
For the Student:  
Ms. P.H., the appellant  
Ms. Emily Morton, Downtown Legal Services, counsel  
for the appellant

For the Faculty of Engineering:  
Ms. Sari Springer, Cassels Brock, counsel for the Faculty  
of Applied  
Science and Engineering  
Professor Raymond Kwong, for the Faculty of Applied  
Science and  
Engineering  
Professor Doug Lavers, for the Faculty of Applied  
Science and  
Engineering  
Ms. Ella Lund-Thomsen, Undergraduate Counselor,  
Faculty of Applied  
Science and Engineering  
Ms. Barbara McCann, Faculty Registrar, Faculty of  
Applied Science and  
Engineering

**Faculty of Applied Science and Engineering – appeal of late withdrawal without academic penalty and appeal of a course grade – no notification of Faculty relief until end of the subsequent term – purported agreement that Student be allowed to proceed with subsequent term, and, barring inadequate performance, retroactive withdrawal be revoked – Professor lacked authority to make purported agreement – no detrimental reliance on purported agreement – timely notice received and decisions valid despite postal mishap – agreement to retroactively adjust course mark – course instructor lacked authority to increase grade for medical reasons – course grade never properly appealed – appeal dismissed**

Appeal of late withdrawal without academic penalty granted for five courses taken in the term and an appeal of a course grade the appellant received in the previous term. The Student fell below the required sessional term average and was placed on repeat probation. The Student petitioned the grades on medical grounds and the Faculty granted her late withdrawal without academic penalty for the courses taken in the term. The Student claimed that she did not hear about the Faculty's relief until two weeks prior to the final exams in the subsequent term and that she believed she was properly registered in that term. The Student claimed that conversations with a Professor amounted to an agreement that she be allowed to proceed with the subsequent term, and, that if she performed adequately in the term, her retroactive withdrawal would be revoked. The Committee found that the Professor did not have the authority to make the purported agreement with the Student, that the Student was aware of this, having pursued the appropriate appeal procedures through the Faculty, and that the Student did not rely to her detriment on the conversations with the Professor. The Committee found that the Student received notice of the Faculty's decisions in a timely manner, and that the decisions were valid even if there was a postal mishap. The Student was advised orally that the written decisions would be forthcoming, and a tuition fee refund and the Student's status on ROSI had already effectively notified her of the decision. With respect to the appeal of the grade received in the previous term, the Student claimed that the course instructor agreed to retroactively adjust her mark in consideration of her medical problems. The increase in the grade would raise the Student's sessional average so as to eliminate her probation upon commencing in the subsequent year, which would, in turn, eliminate her repeat probation. The Committee found that the instructor did not have the authority to increase the Student's grade for medical reasons, and that the Student never properly appealed her grade for that course. Appeal dismissed.

## EXAMINATIONS

Leading Cases:	272, 276, 288, 324, 325, 329, 377,
appeal allowed:	254, 272, 276 ( <i>election</i> ), 325, 377
appeal dismissed:	288, 324, 329, 384
▪ <a href="#">Rewrite examination:</a>	272, 276, 329, 395
▪ <a href="#">Write deferred/supplemental examination:</a>	272, 288, 324, 325, 377, 385

## REWRITE EXAMINATION

FILE: [Report #272](#)  
DATE: November 28, 2002  
PARTIES: Ms. M.K. (the Student) v. UTSC

Hearing Date(s):  
November 19, 2002

Committee Members:  
Professor Ed Morgan, Chair  
Professor Sherwin Desser  
Professor Cheryl Misak  
Mr. Chris Ramsaroop  
Professor John Wedge

Secretary:  
Mr. Paul Holmes, Judicial Affairs Officer

In Attendance:  
For the Student:  
Ms. M.K. (the Student)  
Ms. Soma Choudhury, Downtown Legal Services  
Ms. Erica Toews (observing), Faculty of Law

For UTSC:  
Professor Ian McDonald, Associate Dean

**UTSC – request to write a deferred examination – student visited dying family member abroad – had family member died then conditions for special considerations would be met and petition granted – see Faculty’s policy on deferred exams – reasonable to consider visit to dying family member to be equally appropriate “special circumstance” – no position to predict course of family member’s fatal illness – need to travel abroad a factor beyond Student’s control – Divisional Appeals Committee did not have complete information before it – Divisional Appeals Committee was under mistaken impression that the Student was failing course – error sufficient to undermine fair process – appeal allowed – Student permitted to write deferred examination in course**

Request to write deferred examination. The Student claimed that she was unable to write the exam because she had left Canada to visit with her dying grandmother. The Faculty advised the Committee that had the Student’s grandmother died prior to the exam the conditions for special considerations, as described in the Faculty’s policy on deferred exams, would have been met and the Student’s petition would have been granted, but that the same conditions were not met for a visit to the grandmother in advance of her death. The Committee found that if a visit abroad in the event of a grandparent’s death constituted an appropriate “special circumstance” for a deferred exam, then it was reasonable to consider a visit to a dying grandparent to be an equally appropriate “special circumstance”. The Student was not in a position to predict the precise course of her grandmother’s fatal illness and her need to travel abroad just prior to the exam was a factor beyond her control. The Committee observed that if the Divisional Appeals Committee had had the complete medical diagnosis of the Student’s grandmother before it when it heard the appeal it may have come to a different conclusion. The Committee found that the Divisional Appeals Committee was under the mistaken impression that the Student was failing the course at the time of her departure from Canada and that the error was sufficient to undermine the fair process of the appeal. The Committee observed that the exercise of the Divisional Appeals Committee’s judgment would be tainted by misinformation about whether the petitioner is passing or failing the course for which special consideration is being requested, and found that the Student had a right to a hearing by the Divisional Appeals Committee with her accurate academic record before it. Appeal allowed. The Committee ordered that the Student be permitted to write a deferred examination in the course.

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FILE: [Report #276](#)  
DATE: March 20, 2003  
PARTIES: Ms N.K. (the Student) v. UTSC

Hearing Date(s):  
February 26, 2003

Committee Members:  
Professor Emeritus R. Scane (Chair)  
Professor C. Beghtol  
Mr. M. Braun  
Professor L. Girolametto

Secretary:  
Mr. P. Holmes, Judicial Affairs Officer

In Attendance:  
For the Student:  
Ms N.K. (the Student)  
Ms S. Choudhury  
Mr. G. Bazov

For UTSC:  
Associate Dean I. McDonald

Ms K. Lewis

**UTSC – late withdraw without academic penalty – alternative request to re-write final examination for 100% of course mark – request to re-write final examination in another course – illness during exam period – Student not unfairly advantaged over other students if allowed re-write of final examination for 100% of course mark – evidence did not establish finding that Student did "no work" – medical notes adequate despite Student not visiting doctor on date of examination – neither remedy requested so clearly indicated or excluded – minority opinion that evidence did not justify interfering with Divisional Appeals Committee decision – no evidence for negative finding that diagnosis was "inconsistent" – "actually prevent" suggests that a student acting in good faith should reasonably feel that she or he is not up to getting to the examination site and completing the examination – see Faculty's *Academic Regulations* – medical notes equivocal as to degree of incapacitation – onus on student to establish reasonable grounds for failing to attend an examination – appeal allowed in part – request for late withdrawal without academic penalty from one course or alternatively, to re-write the final examination for 100% of the course mark allowed – request to re-write the final examination in another course denied – Student to elect whether to withdraw from the course without academic penalty or write a final examination for 100% of the course mark**

Request for late withdraw without academic penalty in one course, or alternatively, to re-write the final examination for 100% of the course mark, and to re-write the final examination in another course. The Student did not write the final exams in either course. She claimed that she suffered illness during the exam period. With respect to the first course, the Committee considered the course grading scheme and found that the Student would not be unfairly advantaged over other students if she were to allowed re-write the final examination for her entire course grade. The Committee found that the evidence did not establish the Divisional Appeals Committee's finding that the Student did "no work", as distinct from having completed no assignments in the course. The Committee considered the medical notes prepared by the Student's family doctor and found that the medical documents, together with the Student's evidence, adequately covered the relevant time period, despite the fact that the Student did not visit a doctor on the date on the examination. On the Student's initial visit, the doctor anticipated that the Student's condition would be seriously debilitating over the subsequent days, and on a following visit, the doctor confirmed the earlier prognosis. A minority of the Committee found that the medical and other evidence did not justify relief. The Committee found that neither of the remedies requested was so clearly indicated or excluded, and that therefore the Student should be permitted to elect either remedy. With respect to the second course at appeal, the Committee considered the medical note from the doctor visited on the day of the missed exam and found that while the diagnosis was different from that given by the Student's family doctor, there was no evidence for the negative finding of the Divisional Appeals Committee that the diagnosis was "inconsistent." The Committee considered the Faculty's *Academic Regulations* and found that, while not an exhaustive definition, the term "actually prevent" suggests that a student acting in good faith should reasonably feel that she or he is not up to getting to the examination site and completing the examination. The Committee found that the medical notes were equivocal as to the degree of the Student's incapacitation at the time of the examination and that the onus of establishing that a student has reasonable grounds for failing to attend an examination rests on the student. Appeal allowed in part. Request for retroactive late withdrawal from one course or alternatively, to re-write the final examination for 100% of the course mark allowed. Request to re-write the final examination in another course denied. The Committee ordered that the Student could elect to withdraw from the course without academic penalty or write a final examination for 100% of the mark in the course. In default of timely notification, the Student was deemed to have elected late withdrawal.

FILE: [Report #329](#)  
 DATE: March 18, 2009  
 PARTIES: Mr. G. G (the Student) v. UTSC

Secretary:  
 Ms. Mette Mai, Assistant Judicial Affairs Officer

Hearing Date(s):  
 February 19, 2009

In Attendance:  
 For the Student: Mr. G. G (the "Student")  
 For UTSC: Professor John Scherk, Vice-Dean, UTSC

Committee Members:  
 Assistant Dean Kate Hilton, Chair  
 Professor Brian Corman  
 Professor Elizabeth Cowper

Mr. Kenneth Davy  
Professor Michael Marrus

**UTSC – request to re-write final examination for a second time – mental stress from attempted suicide of family member – no medical evidence of mental distress – student able to complete three other exams during same time period – petition to re-write examination filed after results had been received – minority opinion that proximity between incident and examination made the Student’s situation different – appeal dismissed**

Request to re-write a final examination for a second time. The Student was ill with gastroenteritis when writing the examination the first time and did poorly. The Registrar granted the Student a re-write, however he became ill with pneumonia. The Registrar allowed the Student to defer the examination. The day before the deferred examination date the Student’s uncle attempted suicide. The Student wrote the exam on the deferred date but did poorly. The Student petitioned to re-write the examination for a second time, on the grounds that he was unable to focus due to the suicide attempt. The petition was denied on the basis that the Student had been able to complete three other exams during the same time period and under the same circumstances. The Committee considered the fact that there was no medical evidence to support the Student’s claim that his mental distress was sufficiently acute to prevent him from concentrating on his examination and that the Student did not petition to re-write the examination until after he had received his results. The majority of the Committee found that there was insufficient evidence to grant another opportunity to re-write the examination. A minority of the Committee dissented, having found that the proximity in time between the uncle’s suicide attempt and the examination in the course made the Student’s situation different from that experienced in his other examinations. That member would have granted the Student’s petition to re-write the examination. Appeal dismissed.

FILE: [Report #395](#)  
DATE: May 23, 2018  
PARTIES: Mr. F.Z. (the “Student”) v. the Faculty of Arts and Science

Secretaries:  
Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances  
Ms. Tracey Gameiro, Associate Director Appeals, Discipline and Faculty Grievances

Hearing Date(s): April 12, 2018

Appearances:  
For the Student:  
The Student

Committee Members:  
Ms. Vanessa Laufer (Chair)  
Professor Avrum Gotlieb, Faculty Governor  
Ms. Mama Adobe Nii Owoo, Student Governor

For the Faculty of Arts and Science:  
Mr. Robert A. Centa, Counsel, Paliare Roland Rosenbert Rothstein LLP  
Ms. Emily Home, Counsel, Paliare Roland Rosenbert Rothstein LLP  
Professor Melanie Woodin, Associate Dean, Undergraduate Issues and Academic Planning, Faculty of Arts and Science

**Faculty of Arts and Science – timeliness – student has responsibility to inform themselves of procedures - Aegrotat Standing – insufficient impact of medical condition – insufficient coursework completed prior to final exam to grant Aegrotat standing - late withdrawal without penalty not appropriate absent extraordinary circumstances arising after drop date - re-write of deferred exam – adequate accommodations already provided by the Faculty – recommendation that Faculty establish policies concerning communication with students about progress of petitions - appeal dismissed**

Appeal by the Student of a decision from Academic Appeals Board for the Faculty of Arts and Science (AAB) that denied the Student aegrotat standing, late withdrawal without academic penalty, and the opportunity to rewrite the deferred exam on the basis of medical, procedural and compassionate grounds. The Student had completed the coursework and had written two and a half hours of the three-hour final exam because he was experiencing abdominal pains. The Student received a grade of 48% on the final exam. The Faculty granted the Student’s request to receive a

re-read of the final exam and re-check of the final course mark, which resulted in the final exam mark being confirmed and a re-weighting of the Student's course work so that it comprised a larger portion of the course mark. The Student passed the course and graduated with honours from the University in 2014.

Both sides had waived issues of timeliness. However, the Committee noted that it was reasonable for the AAB to determine that the Student had not met all of these requirements to file a petition set out in the Faculty's rules and regulations when he had originally filed the petition on September 27, 2011. The petition was accompanied only by the signed medical certificate and the Student's email to the Registrar, which the Committee found was reasonable for the AAB to conclude was not sufficient to be an 'accompanying statement' within the meaning of the Faculty's rules concerning petitions. The Committee recommended that it would be helpful for faculties to establish clear policies to communicate to students when a petition has been received, whether or not the petition received is complete; and that makes the deadline for completion of a petition explicit.

In dismissing the Student's request for aegrotat standing (AEG), the Committee referred to the *University Assessment and Grading Practices Policy*, January 26, 2012, which provides that aegrotat standing may be granted "on the basis of term work and medical or similar evidence where the student was not able to write the final examination in the course. AEG is assigned by a division upon approval of a student's petition. It carries credit for the course but is not considered for averaging purposes." The *Faculty of Arts and Sciences Rules & Regulations 2011-12 Academic Calendar*, provides that aegrotat standing "... may be authorized only by petition..." and that "... The claim of illness ... is not sufficient grounds in itself to guarantee approval of the request." The Committee found that the Student's medical circumstances were not severe enough to grant aegrotat standing and that even if they were, the policy states that experiencing an illness does not in itself guarantee approval. The Committee found that it was reasonable for the AAB to have concluded that the Student had completed, and not abandoned, the exam. Further, the Committee supported the AAB's finding that prior to the exam the Student had only completed 35% of the course work, which was not sufficient coursework to grant aegrotat standing.

The Committee went on to dismiss the Student's request for late withdrawal without academic penalty (WDR) on the basis of the Faculty's *Petition Guide* which provides that WDR after the end of classes is a remedy reserved where circumstances beyond the student's control arose after the last date for course cancellation, and is not appropriate where a student has completed all the course work. The Committee supported the AAB's finding that the Student did not abandon the exam and had finished the course, especially since he had received a regrade and had been accommodated by his instructor in re-weighting the coursework and receiving a deferral of the final exam.

The Committee dismissed the Student's request to rewrite the final exam on the basis of the finding of fact that the Student had not abandoned the exam, as well, the Committee felt that too much time had passed since the exam was written (close to six years ago) that it would place an undue burden on the Student and on the instructor to recreate an appropriate exam. In these circumstances, the Committee found an exam rewrite would be neither fair nor reasonable. The Student's allegations of bias and insufficient reasons were dismissed on the basis of insufficient evidence supporting the submissions.

Appeal dismissed.

## WRITE DEFERRED EXAMINATION

FILE: [Report #272](#)  
DATE: November 28, 2002  
PARTIES: Ms. M.K. (the Student) v. UTSC

Secretary:  
Mr. Paul Holmes, Judicial Affairs Officer

Hearing Date(s):  
November 19, 2002

In Attendance:  
For the Student:  
Ms. M.K. (the Student)  
Ms. Soma Choudhury, Downtown Legal Services  
Ms. Erica Toews (observing), Faculty of Law

Committee Members:  
Professor Ed Morgan, Chair  
Professor Sherwin Desser  
Professor Cheryl Misak  
Mr. Chris Ramsaroop  
Professor John Wedge

For UTSC:  
Professor Ian McDonald, Associate Dean

**UTSC – request to write a deferred examination – student visited dying family member abroad – had family member died then conditions for special considerations would be met and petition granted – see Faculty’s policy on deferred exams – reasonable to consider visit to dying family member to be equally appropriate “special circumstance” – no position to predict course of family member’s fatal illness – need to travel abroad a factor beyond Student’s control – Divisional Appeals Committee did not have complete information before it – Divisional Appeals Committee was under mistaken impression that the Student was failing course – error sufficient to undermine fair process – appeal allowed – Student permitted to write deferred examination in course**

Request to write deferred examination. The Student claimed that she was unable to write the exam because she had left Canada to visit with her dying grandmother. The Faculty advised the Committee that had the Student’s grandmother died prior to the exam the conditions for special considerations, as described in the Faculty’s policy on deferred exams, would have been met and the Student’s petition would be granted, but that the same conditions were not met for a visit to the grandmother in advance of her death. The Committee found that if a visit abroad in the event of a grandparent’s death constituted an appropriate “special circumstance” for a deferred exam, then it was reasonable to consider a visit to a dying grandparent to be an equally appropriate “special circumstance”. The Student was not in a position to predict the precise course of her grandmother’s fatal illness and her need to travel abroad just prior to the exam was a factor beyond her control. The Committee observed that if the Divisional Appeals Committee had had the complete medical diagnosis of the Student’s grandmother before it when it heard the appeal it may have come to a different conclusion. The Committee found that the Divisional Appeals Committee was under the mistaken impression that the Student was failing the course at the time of her departure from Canada and that the error was sufficient to undermine the fair process of the appeal. The Committee observed that the exercise of the Divisional Appeals Committee’s judgment would be tainted by misinformation about whether the petitioner is passing or failing the course for which special consideration is being requested, and found that the Student had a right to a hearing by the Divisional Appeals Committee with her accurate academic record before it. Appeal allowed. The Committee ordered that the Student be permitted to write a deferred examination in the course.

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FILE: [Report #288](#)  
DATE: December 16, 2003  
PARTIES: Mr. Y. (the Student) v. UTSC

Secretary:  
Mr. Paul Holmes, Judicial Affairs Officer

Hearing Date(s):  
November 28, 2003

Appearances:  
For the Student  
Mr. Y. (the “Student”)  
Ms. Erica Toews, Downtown Legal Services  
Ms. Marisa Wyse, Downtown Legal Services

Committee Members:  
Professor Ed Morgan, Chair  
Mr. Sachin Aggarwal  
Dr. Alice Dong  
Professor John Furedy

For UTSC:  
Professor Ian McDonald, Associate Dean, UTSC

Professor Jake Thiessen

**UTSC – request to write deferred examination – illness – fourteen prior medical petitions – history of complaints used to assess credibility of claim of illness – claim of illness not credible – no evidence of chronic ailment – medical certificates from different doctors – University health facilities not visited – minor ailment – could have attended and written exam – de minimis type of illness not sufficient to be considered a disability within Ontario Human Rights Code – appeal dismissed**

Request for a deferred examination. The Student missed both term tests. The final exam was reweighted to constitute 100% of the course grade. The Student did not attend the examination and failed the course. The Student claimed that allergic rhinitis suffered the day of the final examination prevented him from attending and writing the exam. The Student had submitted fourteen prior medical petitions during the course of his four years at UTSC. The Faculty claimed that the Student's recurrent pattern of behaviour should be taken into account by the Committee. The Committee found that, while each petition must be evaluated on its own merits, the Student's history of complaints could be looked at in order to help assess the credibility of his claim of illness. The Committee found that the Student's record of complaints showed no evidence of a single, chronic ailment, that the medical certificates supporting the different petitions came from a variety of doctors, and that the Student had never visited the UTSC Health Centre or the University's *AccessAbility* Services. The Committee considered the Student's medical certificates and the Faculty regulations on deferred examinations and found that the Student suffered from symptoms of a relatively minor ailment and that he could have attended at and should have written the exam on the scheduled date. The Student claimed that his medical condition was a "disability" as defined in the Ontario Human Rights Code, and that the failure of the Faculty to agree to a deferred examination represented a failure to accommodate a person with a disability as required by the Code. The Committee found that there was no evidence that the Student suffered anything beyond a *de minimis* type of illness and that the ailment was not sufficient to be a disability within the meaning of the Code. Appeal dismissed.

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FILE: [Report #324](#)  
DATE: March 30, 2008  
PARTIES: Mr. D. V. (the Student) v. UTSC

Secretary:  
Ms. Nancy Smart, Judicial Affairs Officer

Hearing Date(s):  
March 14, 2008

In Attendance:  
For the Student: Mr. D. V., the Student  
For UTSC: Professor John Scherk, Vice Dean, UTSC

Committee Members:  
Assistant Dean Bonnie Goldberg, Chair  
Professor Ellen Hodnett  
Professor Yuki Johnson  
Mr Alex Kenjeev  
Professor Arthur Ripstein

**UTSC – request to defer 12 month academic suspension, write two deferred examinations and re-write a final exam – monetary and personal destabilization – deliberations confined to the remedies that formed part of the decisions under appeal – little evidence provided to support claim that personal circumstances had become worse or did not resolve themselves at time of the petition – little evidence academically that the opportunity to write the finals would have lifted the 12 month suspension – minority opinion that appeal should be allowed based on evidence submitted by Student or alternatively that the Faculty should have given more weight to surrounding circumstances – appeal dismissed**

Request to defer 12 month academic suspension, write two "deferred" examinations and re-write a final examination. The death of the Student's uncle and aunt, and the requirement that he move out of his aunt's house, had monetarily and personally destabilized his life. Although not registered, the Student had re-attended classes he had failed, in the hopes that the Committee would retroactively overturn his suspension. The Student submitted several petitions and re-petitions, however the Committee confined its deliberations to the remedies that formed part of the decisions under appeal. The Committee found that it was beyond its jurisdiction to consider retroactively allowing the Student to write the final exams for the courses he was re-attending as a non-registered student and have them count as his grades in the courses. The Committee considered the Student's personal circumstances and the conflict of these circumstances with

the University’s course selection policies, and its method of applying these policies. The Committee found that there was little evidence to support that the Student’s personal circumstances had become worse or did not resolve themselves at the time of the petition to the Divisional Appeal Committee and there was little evidence academically that the opportunity to write the finals would have lifted the Student’s 12 month suspension given how poorly he had performed and given how little work he had done in the courses. The majority of the Committee found that the appeal should be denied. A minority of the Committee would have allowed the appeal on the grounds of the evidence submitted by the Student or, alternatively, that the Faculty’s decision should have given more weight to the surrounding circumstances affecting the Student. Appeal dismissed.

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FILE: [Report #325](#)  
DATE: April 18, 2008  
PARTIES: Mr. F. Z. (the Student) v. UTSC

Secretary:  
Ms. Nancy Smart, Judicial Affairs Officer

Hearing Date(s):  
February 25, 2008

In Attendance:  
For the Student:  
Mr. F. Z. (the “Student”)

Committee Members:  
Ms. Kate Hilton, Chair  
Mr. Arya Ghadimi  
Professor Glen Jones  
Dr. Louise Lemieux-Charles  
Professor Michael Marrus

For UTSC:  
Mr. Steven Frankel (Representative for the Student)  
Professor John Scherk, Interim Vice-Dean, UTSC  
Ms. Sherylin Biason, Registrar, UTSC

**UTSC – request to write deferred examination – alternative remedies proposed by Student – best efforts to acquire medical evidence in support of illness – no basis for insisting that a student has greater responsibility to provide “solid documents to justify the event” for a missed examination worth 100% of the final grade than a student who misses an examination worth less than 100% – appeal allowed – Student permitted to write deferred examination**

Request to write a deferred examination, worth 100% of the final mark in the course. The Student proposed two alternative remedies for the Committee’s consideration: that he be allowed to write a deferred exam with a 15% grade reduction; and that he be allowed to withdraw from the course without academic penalty on the basis of non-attendance. The Student claimed that was ill with a fever on the day of the examination. The Student attempted to see a doctor at the UTSC Health Centre but it was closed. The Student then attempted to seek medical attention off-campus, but as an international student, he could not access free medical care without the University Health Insurance Plan (UHIP) card issued by the University. The Divisional Appeal Committee found that the Student had not made best efforts to acquire medical evidence. The Committee found that the Student had a reasonable expectation that he would have access to the Health Centre, and that the Student discharged his responsibility to obtain medical documentation to the extent possible. The Committee found that since UTSC permits students to concentrate the full weight of their grade on a final examination, there is no basis for insisting that a student who misses an examination worth 100% of his grade has a greater responsibility to provide “solid documents to justify the event” than a student who misses an examination worth less than 100% of the final grade. The Committee allowed the appeal and ordered that the Student be permitted to write a deferred examination in the course. Having granted the original remedy requested, it was not necessary for the Committee to consider the alternative remedies. Appeal allowed.

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FILE: [Report #377](#)  
DATE: December 11, 2014  
PARTIES: Mr. F.Z. (the Student) v. the University of Toronto

Secretary:  
Ms. Sinead Cutt, Office of Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
October 30, 2014

Appearances:  
For the Student Appellant:  
Mr. F.Z., the Appellant (“the Student”)  
Mr. Patrick Hartford, Downtown Legal Services

Committee Members:  
Ms. Sara Faherty, Chair  
Ms. Caitlin Campisi  
Professor William Gough

For the Faculty of Arts and Science:  
Professor Anne-Marie Brousseau, Associate Dean, Undergraduate Programs, Faculty of Arts and Science  
Professor Adrienne Hood, Associate Dean, Undergraduate Programs, Victoria College, History  
Dr. Helen Slade, Student Life Coordinator, Student Retention Services at University of Toronto  
Ms. Cheryl Shook, Registrar, Woodsworth College

**Faculty of Arts and Science– request for an examination deferral – Student was more than thirty minutes late for his deferred exam – Student’s failure to contact the Registrar once he realized he was late was not unreasonable given the missing instructions in the Academic Calendar – appeal allowed**

Request for a second deferral of an examination. The Student was more than 30 minutes late for his deferred exam. The Student appealed to the Academic Appeals Board (AAB), citing five separate reasons for his lateness (his need to eat between his two exams, his right to contest an adverse decision made by an invigilator at his morning exam, extremely inclement weather, and public transportation timing). The AAB accepted the Student’s explanation for his lateness, but concluded that the Student’s decision not to seek any immediate remedy was unreasonable and denied the appeal.

The Student then appealed to the Academic Appeals Committee. The Committee noted that the Student had a long history of petitions and problems in the Faculty. The Committee noted the onus on the Student to behave responsibly and with good judgment. The Committee stated that the most reasonable step for the Student to have taken would have been to go to the Registrar’s office once he realized that he was late for the examination; however, given the missing instructions addressing what steps students should take if more than fifteen minutes late for an exam from the Academic Calendar, that was not the only reasonable step the Student could have taken (especially given the general rules for petitions for examinations, which set the deadline for petitions as being within one week of the end of the examination period). The Committee concluded that strictly following the written policy as it appeared in the Calendar, the Student should be permitted to sit for his exam. Appeal allowed.

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FILE: [Report #385](#)  
DATE: July 26, 2016  
PARTIES: Ms. V.T. (the Student) v. the Faculty of Arts and Science

Secretary:  
Krista Osbourne, Administrative Assistant, Office of Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
May 27, 2016

Appearances:  
For the Student Appellant:  
Ms. V.T.

Committee Members:  
Ms. Sara Faherty, Chair  
Professor Jan Mahrt- Smith  
Mr. Alex Ivovic

For the Faculty of Arts and Science:  
Professor Anne-Marie Brousseau, Assistant Dean, Undergraduate

**Faculty of Arts and Science – deferred examination – Student missed five term evaluations for various medical, legal, and personal problems – Faculty’s refusal to accept the Student’s Verification of Student Illness of Injury form was reasonable given the gaps between the doctor’s examination and the completion of the form – appeal dismissed**

Appeal from the decision of the Academic Appeals Board of the Faculty of Arts and Science refusing the Student’s request for a deferral of three examinations and the completion of two missed term tests. The Student cited multiple

legal, personal, and health issues to explain her failure to write the evaluations. The Faculty refused to accept the Student's Verification of Student Illness or Injury form due to the gap in time between the date of the doctor's examination of the Student and the dates of the missed exam; the form was completed by the examining physician nine months after the Student's illness and amended again eight months later. The Student first appealed the Faculty's refusal to grant her deferrals for the five examinations to the Committee on Standing, then to the Academic Appeals Board, and then to the Academic Appeals Committee.

The Committee found that the Faculty's rule that a medical visit must be close in time to the missed exam to be reasonable. The doctor's examination occurred on March 18<sup>th</sup>, and the missed exams took place between April 3<sup>rd</sup> and 24<sup>th</sup>, leaving a 23-day gap between the Student's verified illness and missed exam. The comments regarding the Student's inability to write the test on her exam days were added to the form one year and five months after the medical examination. The Faculty's Calendar set forth its policies on deferred examinations and medical documentation in great detail, and it emphasizes that the physician's report must establish that the patient was examined and diagnosed at the time of the illness, not after the fact.

The Committee noted that the Student did not try to register with Accessibility Services until the day of her first missed term test, and emphasized that Accessibility Services did not support the Student's petition. The Committee also took into account the Student's apparent confusion regarding the instructions given to her by Accessibility Services, and the lack of a clear Faculty rule regarding an acceptable amount of time between the date of a doctor's examination and the date of the missed exam. The Committee concluded that though the Faculty's complex and nuanced rules and policies around accommodations places a burden on students, ultimately the Student's failure to provide reliable evidence, coupled with the fact that Accessibility Services did not support her petition, made it difficult to accept her arguments.

The Committee also noted that the Student's legal problems began at the beginning of the term in question, and though it expressed sympathy for the Student's personal difficulties, the Committee concluded that the Student's difficulties were not unforeseen and did not significantly worsen at the time of her missed exams.

The Committee stated that it believed the Student and the doctor had acted in good faith, but noted the problems inherent in the Student's Verification of Student Illness or Injury form made the form insufficient to establish the Student's right to a deferral. The Committee concluded that the decision of the Academic Appeals Board was reasonable. Noting the Faculty's tailored approach to cases and its lack of a rigid timeframe, the Committee recommended that the Faculty provide clearer reasons with respect to the criteria considered in determining whether a medical visit is sufficiently close in time to the relevant exam date in different cases. Appeal dismissed.

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## SUSPENSIONS

Leading Cases:	<b>261, 270, 330, 408</b>
appeal allowed:	<b>270</b> (in part)
appeal dismissed:	<b>261, 330, 408</b>
▪ <a href="#">Defer suspension:</a>	<b>261, 270</b>
▪ <a href="#">Early return from suspension:</a>	<b>330</b>
▪ <a href="#">Remove suspension notation from transcript:</a>	<b>270</b>
▪ <a href="#">Lift suspension:</a>	<b>408</b>

## REQUEST TO DEFER SUSPENSION

FILE: [Report #261](#)  
DATE: January 15, 2002  
PARTIES: Ms J.L., the Appellant v. UTSC

Secretary:  
Mr. Paul Holmes

Hearing Date(s):  
January 8, 2002

In Attendance:  
For the Student:  
Ms Emily Morton, for the appellant, Downtown Legal Services  
Ms J.L., the Appellant

Committee Members:  
Assistant Dean Bonnie Goldberg, Acting Chairperson  
Professor Brian Corman  
Professor Gretchen Kerr  
Professor Donna Wells  
Ms Geeta Yadav

For UTSC:  
Associate Dean Ian McDonald for the respondent,  
UTSC

**UTSC – request to defer one–year suspension – previous suspension deferred – psychological disorder diagnosed post-facto – assistance offered but not sought until second suspension – treatment not progressed because access to services restricted as a suspended student and because of reluctance to seek help from external sources – due to timing of request granting remedy could further alienate Student – appeal dismissed**

Request to defer a one–year suspension. The Student was suspended for failing to maintain a minimum GPA. The Student had a previous one–year suspension deferred. The Student’s first petition was based on, and granted as a result of, the psychological effects of a congenital condition. Following the filing of her appeal of the second petition, the Student claimed that she had been diagnosed with an anxiety disorder, learned about the correlation between the disorder and her poor performance on exams, begun to receive treatment, and made arrangements for exam accommodations. The Student claimed that until she was diagnosed with the anxiety disorder, she was not aware of the severity of her problem, nor of its impact on examinations and that, as a result, her suspension should be deferred. The Committee considered the Student’s attempts to deal with the psychological and emotional effects of her illness, and the programs and services offered by the Faculty to assist her to improve her academic performance, and found that although the Student continued to experience academic difficulties following her first suspension, she did not seek further help until her second suspension. The Committee observed that it had more information before it than the Divisional Appeals Committee, but only because the Student had sought help, which was what was expected of a student on suspension. The Committee found that the Student had not sufficiently progressed in her treatment since she could not access services as a suspended student and because she was reluctant to seek help from external sources. The Committee also considered the effect of granting the deferral part way through the term and found that if the Student had been allowed to return to school immediately, she would have missed most of her introductory lectures and could have felt further alienated. Appeal dismissed.

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FILE: [Report #270](#)  
DATE: November 7, 2002  
PARTIES: Ms M.S. (The Student) v. UTSC

Secretary:  
Mr. Paul Holmes

Hearing Date(s):  
October 10th, 2002

In Attendance:  
For the Student: Ms M.S. (The Student)  
For UTSC: Associate Dean Ian McDonald

Committee Members:  
Professor Emeritus Ralph Scane (Senior Chair)  
Mr. Brian Davis  
Professor David Jenkins  
Professor Gretchen Kerr  
Mr. Sean Mullin

**UTSC – request to defer a one–year suspension – suspension served – request that notation of suspension be removed from transcript – personal and medical factors – most factors present prior to drop dates – parents' divorce could not have been foreseen – disadvantaged position exacerbated by news of parents' divorce – request for deferred examination not easily granted – situation faced by the Student in short time between receipt of news and beginning of examinations militated against denying relief – Divisional Appeals Committee not able to weigh credibility – appeal allowed in part – suspension to be treated as deferred – no basis for removing notice of deferred suspension from transcript**

Request to defer a one–year suspension imposed for failure to attain a required minimum GPA. The Student had served the suspension. The Student requested that the notation of the suspension be removed from her transcript. Due to visa difficulties, the Student could not start her courses until a month into the term. The Student claimed that marital difficulties between her aunt and uncle, whom she was living with, created a difficult study situation, that she had a long commute to UTSC, that she suffered from migraine headaches and that just prior to her examinations, she learned that her parents were proposing to divorce, and shortly thereafter, that her father had been hospitalized. The Committee found that the news concerning her parents' situation was not something she could have foreseen prior to the drop date. While the other factors did not justify relief in themselves, they exacerbated the Student's already disadvantaged position when she received the news about her parents. The Committee found that the Student could have applied to defer all of her examinations and that that relief should not be denied on the ground that the Student's situation arose in the short period between receipt of the news and the beginning of examinations and the fact that deferred examinations would not have been easily granted by the Faculty. The Committee observed that it had the advantage of seeing and weighing the credibility of the Student during her oral testimony, where the Divisional Appeals Committee did not have the opportunity because the University's notice of the forthcoming hearing did not reach the Student. Appeal allowed in part. The Committee ordered that the one year suspension be treated as deferred, and the Student's academic status in future years established accordingly. The Committee found no basis for removing the notice of the deferred suspension from the official transcript, and the request to do so was denied.

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## REQUEST FOR EARLY RETURN FROM SUSPENSION

FILE: [Report #330](#)  
DATE: March 30, 2009  
PARTIES: Mr. S. M (the Student) v. UTSC

Secretary:  
Ms. Mette Mai

Hearing Date(s):  
March 18, 2009

In Attendance:  
For the Student: Mr. S. M, the Student

Committee Members:  
Assistant Dean Renu Mandhane, Chair  
Professor Ronald Kluger  
Professor Louise Lemieux-Charles  
Professor Rhonda Love  
Mr. Olivier Sorin (Student)

For UTSC: Vice-Dean John Scherk, University of  
Toronto Scarborough, the Respondent

### **UTSC – request for early return from 36–month suspension – poor academic performance – no information submitted to demonstrate change of circumstances – appeal dismissed**

Request for early return from a 36–month suspension due to poor academic performance. The Student claimed that he performed poorly due to his medical and financial circumstances. The Divisional Appeals Committee rejected the Student’s submission that his circumstances had changed sufficiently to justify early return. There was no information before the Academic Appeals Committee to suggest that the Student has maintained steady employment, consulted with an academic counselor, or taken courses at a community college to upgrade his academic skills and study habits. As a result, there was no further information before the Committee to demonstrate a change in circumstances that could justify early return from suspension. Appeal dismissed.

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## REMOVE SUSPENSION NOTATION FROM TRANSCRIPT

FILE: [Report #270](#) Secretary:  
DATE: November 7, 2002 Mr. Paul Holmes  
PARTIES: Ms M.S. (The Student) v. UTSC

Hearing Date(s): In Attendance:  
October 10th, 2002 For the Student: Ms M.S. (The Student)  
For UTSC: Associate Dean Ian McDonald

Committee Members:  
Professor Emeritus Ralph Scane (Senior Chair)  
Mr. Brian Davis  
Professor David Jenkins  
Professor Gretchen Kerr  
Mr. Sean Mullin

**UTSC – request to defer a one–year suspension – suspension served – request that notation of suspension be removed from transcript – personal and medical factors – most factors present prior to drop dates – parents' divorce could not have been foreseen – disadvantaged position exacerbated by news of parents' divorce – request for deferred examination not easily granted – situation faced by the Student in short time between receipt of news and beginning of examinations militated against denying relief – Divisional Appeals Committee not able to weigh credibility – appeal allowed in part – suspension to be treated as deferred – no basis for removing notice of deferred suspension from transcript**

Request to defer a one–year suspension imposed for failure to attain a required minimum GPA. The Student had served the suspension. The Student requested that the notation of the suspension be removed from her transcript. Due to visa difficulties, the Student could not start her courses until a month into the term. The Student claimed that marital difficulties between her aunt and uncle, whom she was living with, created a difficult study situation, that she had a long commute to UTSC, that she suffered from migraine headaches and that just prior to her examinations, she learned that her parents were proposing to divorce, and shortly thereafter, that her father had been hospitalized. The Committee found that the news concerning her parents' situation was not something she could have foreseen prior to the drop date. While the other factors did not justify relief in themselves, they exacerbated the Student's already disadvantaged position when she received the news about her parents. The Committee found that the Student could have applied to defer all of her examinations and that that relief should not be denied on the ground that the Student's situation arose in the short period between receipt of the news and the beginning of examinations and the fact that deferred examinations would not have been easily granted by the Faculty. The Committee observed that it had the advantage of seeing and weighing the credibility of the Student during her oral testimony, where the Divisional Appeals Committee did not have the opportunity because the University's notice of the forthcoming hearing did not reach the Student. Appeal allowed in part. The Committee ordered that the one year suspension be treated as deferred, and the Student's academic status in future years established accordingly. The Committee found no basis for removing the notice of the deferred suspension from the official transcript, and the request to do so was denied.

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## LIFT SUSPENSION

FILE: [Report #408](#) (2019-2020)

DATE: December 16, 2019

PARTIES: Ms. J.P. (“the Student”) v. UTM

Appearances:

For the Student:

The Student, by Skype

Hearing Date(s):

December 12, 2019

For UTM:

Professor Andreas Bendlin, Acting-Dean, Academic Experience, UTM

Ms. Michelle Kraus, Assistant Registrar, Academic Standards and Petitions, UTM

Committee Members:

Professor Stephen Waddams, Chair

Professor Paul Kingston, Faculty Governor

Mr. Laurent-Philippe Veilleux, Student Governor

Hearing Secretary:

Ms. Krista Kennedy, Administrative Clerk and Hearing Secretary, Office of Appeals, Discipline and Faculty Grievances

**UTM – Academic Appeals Subcommittee - petition for the lifting of a one-year suspension imposed for failing to maintain a required cumulative grade point average - it is neither possible nor desirable to lay down precise rules to govern the various special circumstances that may be in issue - it is not unreasonable for a University officer to expect a substantial degree of precision both in establishing the existence of special circumstances and in establishing a link between the special circumstances and the student’s failure to meet the requirements of the underlying regulations supported by such evidence as the nature of the particular case allows - appeal dismissed**

Student expedited appeal from a decision of the Academic Appeals Subcommittee of the University of Toronto, Mississauga, dismissing an appeal from a decision of the Committee on Standing, which refused to grant the Student’s petition for the lifting of a one-year suspension imposed for failing to maintain a required cumulative grade point average. The committees had refused the Student’s petition because she had not established special circumstances sufficient to justify an exception from the suspension, and that the petition was not supported by documentary evidence.

In dismissing the appeal, the Academic Appeals Committee (AAC) considered the application of the written rules governing suspensions but also the unwritten principle that an exception to a University rule may be justified where compelling circumstances show that strict application of the rule would result in undue hardship. It accepted that it is neither possible nor desirable to lay down precise rules to govern the various special circumstances that may be in issue. It further commented it is not unreasonable for a University officer to expect a substantial degree of precision both in establishing the existence of special circumstances and in establishing a link between the special circumstances and the student’s failure to meet the requirements of the underlying regulations supported by such evidence as the nature of the particular case allows.

According to the AAC, the committees’ decisions could not be said to be unfair, unreasonable or inconsistent. Appeal dismissed.

## GRADE APPEAL

Leading Cases: 277, 290, 291, 305, 321, 368, 371, 388, 393

appeal allowed: 283 (*in part*), 291, 393 (*in part*)

appeal dismissed: 277, 290, 305, 321, 368, 371, 399

- [course work](#): 277, 291, 393, 396
- [examinations](#): 290,
- [course/term grades](#): 305, 321, 368, 371, 388
- [aegrotat standing](#): 283, 291,
- [practicum evaluation](#): 292,

## COURSE WORK

FILE: [Report #277](#)  
DATE: March 27, 2003  
PARTIES: Mr. G.S. (the Student) v. the School of  
Graduate Studies

Hearing Date(s):  
February 24, 2002

Committee Members:  
Professor Ed Morgan, Chair  
Dr. Alice Dong  
Ms. Durré Hanif  
Professor Ellen Hodnett  
Professor John Furedy

Secretary:  
Mr. Paul Holmes, Judicial Affairs Officer

In Attendance:  
For the Student:  
Mr. G.S., the Student

For SGS:  
Professor Rashmi Desai, Associate Dean, School of  
Graduate Studies  
Professor J.D. Lavers, Associate Chair, Graduate Studies,  
Department of  
Electrical and Computer Engineering

**School of Graduate Studies – grade appeal – Student’s performance re-evaluated by new examiner – external assessment of academic work – any possible flaws from previous evaluations cured by reevaluation – no basis for claim that the new examiner lacked qualifications – strength or fairness of the reevaluation not undermined by lower grade – new examiner acted properly in conducting independent reevaluation – no jurisdiction to re-evaluate course work and no reason to do so given new evaluator’s expertise and fairness of reevaluation process – appeal dismissed – observation that recording a conversation with a member of the university community without consent is contrary to the university’s atmosphere of good faith**

Request to change a failing course grade. The Student’s projects for the course were reevaluated twice by his course instructor. The Divisional Appeals Committee ordered that the Student’s performance be re-evaluated by a new examiner. On the reevaluation the Student received a failing mark. The Committee found that any possible flaws from the previous evaluations were cured once the reevaluation by the new examiner took place. The Committee found no basis for the Student’s claim that the new examiner lacked the qualifications to conduct the reevaluation. The Committee considered the Student’s objections to the procedures pursued by the examiner and found that the Student had not made out any case of unfairness. The Student’s lower grade in the reevaluation did not undermine the strength or fairness of the reevaluation; the new examiner was not obliged to consult with the course instructor in regards to the reevaluation; and the new examiner acted properly in conducting the reevaluation independently. The Committee considered the Student’s objection to the substance of the grade and found that it did not have the jurisdiction to reevaluate the Student’s course work, and that there was no reason to do so, given the new evaluator’s expertise and the fairness of the reevaluation process. Appeal dismissed. The Committee noted that the Student had tape recorded one of his conversations with the new examiner. The Committee observed that recording a conversation with a member of the university community without that person’s consent is contrary to the atmosphere of good faith in which the business of the university is conducted.

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FILE: [Report #291](#)  
DATE: June 14, 2004  
PARTIES: Ms T., the Appellant v. Faculty of Law

Hearing Date(s):  
May 22, 2004

Committee Members:  
Assistant Dean Bonnie Goldberg, Chair  
Professor Clare Beghtol  
Dr. Pamela Catton  
Ms Françoise Ko  
Professor Jake Thiessen

Secretary:  
Mr. Paul Holmes

In Attendance:  
For the Student:  
Ms T., the Appellant  
Mr. T., brother of the appellant

For the Faculty of Law:  
Associate Dean Tony Duggan, Faculty of Law,  
University of Toronto

**Faculty of Law – grade appeal – *aegrotat* standing, “pass” standing, or increase from grade requested – *aegrotate* standing – external assessment of academic work – delay, frustration, late instructions and lack of guidance – delay and frustration met definition of exceptional circumstances – more time to complete the assignment without delay and frustration – better performance with earlier instructions – grade inconsistent with other grades – appeal allowed – grade of "D" vacated and replaced with a grade of AEG – recommendation that the Faculty provide its faculty with information regarding orientation, evaluation methods, and the obligations of its teaching staff – unfairness related to the third party reader process – violation of procedure for a third party reader to receive extraneous comments**

Appeal from a grade of “D” in the course. The Student requested one of three remedies: “*Aegrotat*” standing; “pass” standing; or an increase from the grade of “D”. The Student elected to write an essay worth 100% of the final grade. The Student sought review of the grade through a third party reader before applying to the Faculty’s Academic Standing Committee for *aegrotat* standing in the course. The Student claimed relief based on the excessive time she devoted to preliminary research while seeking topic approval, her frustrations in obtaining topic approval, the lack of guidance provided by the instructor in topic development and on the final topic, and the very late start date on which she had to begin writing the paper. The Committee considered the grounds upon which the Faculty awards *aegrotat* standing and found that the delay and frustration that the Student experienced met the definition of exceptional circumstances, despite no illness or a traumatic personal experience being suffered. The Committee found that due to the circumstances, the Student was unable to satisfactorily complete the requirements of a course where otherwise she would have performed successfully. Without the delay and frustration the student experienced researching topics she would have had more time to complete the assignment; with earlier instructions regarding the professor’s expectations for the paper and greater supervision once the topic was approved, she would have performed better; and the grade was inconsistent with the Student’s other grades awarded at the Faculty. Appeal allowed. The Committee ordered that the grade of "D" be vacated and replaced with a grade of AEG. The Committee recommended that the Faculty provide its faculty, and particularly adjunct professors, with information regarding orientation, evaluation methods, and the obligations of its teaching staff. The student also alleged unfairness related to the processes for appealing grades at the Faculty. The Student claimed that the third party reader received written information from the course professor regarding the circumstances relating to topic approval while she was not allowed to submit similar material. The Committee stated that the third party reader receiving extraneous comments was a violation of the procedure by which third party readers are meant to evaluate only the paper.

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FILE: [Report #393](#) (2017-2018)  
DATE: December 14, 2017  
PARTIES: R.S. (“the Student”) v. the Faculty of  
Kinesiology and Physical Education

Secretary:  
Ms. Tracey Gameiro, Associate Director, Appeals,  
Discipline and Faculty Grievances

Hearing Date(s): November 9, 2017

Appearances:  
For the Student Appellant:  
Mr. R.S. (“the Student”)

Committee Members:  
Professor Malcolm Thorburn (Chair)  
Professor Paul Kingston, Faculty Governor  
Ms. Amanda Harvey-Sanchez, Student Governor

For the Faculty of Kinesiology and Physical  
Education:  
Professor Gretchen Kerr, Vice-Dean of Academic  
Affairs  
Mr. Timothy Linden, Assistant Registrar, Office of  
the Registrar

**Faculty of Kinesiology and Physical Education – grade appeal – exemption from program requirements – deference given to course instructors absent evidence of unfairness – justifications for course policies concerning late assignments – no significant evidence of unfairness – student was an exemplary member of the faculty community – faculty support for student to be able to take a different course to fulfill program requirements – adequacy of reasons - appeal allowed in part**

The Student appeals a decision made by the Dean of the Faculty of Kinesiology and Physical Education and asked the Committee for the following relief: (1) review the grades for a number of small assignments for KPE440H; (2) give the Student the opportunity to produce another assignment in satisfaction of a video assignment that he had handed in late; (3) *aequitas* standing in KPE440H; (4) removal of KPE440H as a degree requirement for the Bachelor of Education degree; or (5) the option to take a course other than KPE440H in order to fulfil the specified degree requirement.

The Committee dismissed the Student’s request for all of these grounds of relief except for the opportunity to take a course other than KPE440H in fulfillment of his degree requirements. The Committee gave the course instructor considerable deference in the marks that had been allocated for the small assignments that formed part of the course, as there was no evidence of unfairness. One of the grade appeals related to an assignment that was handed in well past its due date, contrary to a course policy that set out that assignments were deducted marks for lateness and given a grade of zero if more than a week late. The Committee held that there were good reasons for policies like this one, specifically, that instructors should be able to grade assignments together to ensure that they are all subject to the same standard and cannot be expected to ascertain whether each assignment was actually completed by the deadline if it was not in their possession at that point. The Committee further found that students needed to be in the habit of actually providing deliverables when they are expected. In this case, the instructor had taken additional steps to assist students with the assignments and had provided the Student with an additional opportunity to submit a replacement assignment. The Student failed to provide adequate documentation of alleged mental health problems that prevented him from completing this substitute assignment. The Student’s request for remedies 1 – 4 was denied.

However, the Student’s request that he be allowed to take an alternative course to fulfill his degree requirements was granted based on evidence given by a professor who attested that the Student was an exemplary member of the Faculty community, and that the Faculty would do whatever they could to make sure that the Student would be able to graduate from the program. In particular, the professor would personally write Victoria College requesting that the Student be admitted to their comparable course so that he could substitute it for KPE440H.

The Committee closed by recommending that the Faculty of Kinesiology and Physical Education put in place more robust measures to instruct and assist students with the academic appeals process, including providing more information about expectations around materials and appearing before any panels. The Committee also commented that the Dean may have provided inadequate reasons for his decision in this case. The Committee found it to be a duty incumbent upon all public decision-makers to justify their decisions in a way that provides meaningful guidance to those who are subject to those decisions. Appeal allowed in part.

FILE: [Report #396](#)  
 DATE: June 5, 2018  
 PARTIES: Mr. N.C. (the “Student”) v. the Faculty of  
 Architecture, Landscape and Design

Hearing Secretary:  
 Ms. Tracey Gameiro, Associate Director Appeals,  
 Discipline and Faculty Grievances

Hearing Date(s): May 29, 2018

Appearances:  
 For the Student:  
 The Student

Committee Members:  
 Professor Andrew Green (Chair)  
 Professor Mohan Matthen, Faculty Governor  
 Ms. Mala Kashyap, Student Governor

For the Faculty of Architecture, Landscape and  
 Design:  
 Dean Richard Sommer  
 Ms. Andrea McGee, Registrar & Assistant Dean,  
 Students

**Faculty of Architecture, Landscape and Design – grade appeal – timeliness – exceptional circumstances included the delay returning test and lack of response to a number of emails directly asking about the grade – department did not deal with substance of student’s appeal – appeal allowed – test remitted to the Department to consider the substance of the Student’s appeal**

Appeal from a grade of 84% in a course. The uncontested evidence at the hearing was that the Student had been promised a 2% increase in the first test of the course. There was a delay in returning the test to the Student, so she was

unable to ensure that she had received the grade increase within two weeks of the time the test had been returned to the rest of the class. Once she did receive her mark, she immediately contacted her professor to confirm that her mark reflected the grade increase that she had been promised. The professor did not return her email. Her appeal was denied at the departmental level because it had not been made within two-weeks from the time the test had been returned to the rest of the class, as such the time limit provided for in section 5.14 of the *Academic Handbook* had expired. The Committee found that in these exceptional circumstances, where the Student had contacted her professor within two weeks of receiving her work back and had been misled into thinking a particular mark had been given only to find out that it had not, it was unfair to find that the Student could not appeal the grade. The Student's appeal was allowed, but she did not receive the grade increase requested. Rather, the Committee ordered that the appeal be remitted back to the Department to consider the substance of the Student's appeal on the test. Appeal allowed.

## EXAMINATIONS

FILE: [Report #290](#)  
DATE: February 2, 2004  
PARTIES: Ms. L. (the Student) v. The School of  
Graduate Studies

Hearing Date(s):  
December 3, 2003

Committee Members:  
Assistant Dean Jane Kidner, Chair  
Professor Phil Byer  
Professor John Furedy  
Professor David Jenkins  
Mr. Adam Watson

Secretary:  
Mr. Paul Holmes, Judicial Affairs Officer

Appearances:  
For the Student:  
Ms. L. (the “Student”)

For SGS:  
Professor Joan Cherry, Associate Dean, Division II  
(Social Sciences), SGS  
Ms. Jane Alderdice, Coordinator, Policy, Program and  
Liaison, SGS  
Professor Anne Jordon, Associate Chair, Department of  
Curriculum, Teaching and Learning (the “Graduate  
Department”), OISE/UT

**School of Graduate Studies – request for examination to be remarked by external examiner – *Procedural Guide for Externally Rereading an Examination* – capacity of examiners challenged – allegations of personal and generalized bias – no jurisdiction to assess correctness of exam marks or competence of examiners unless reasonable apprehension of bias – no evidence of personal bias – examiners did not know Student’s identity or status – no evidence of generalized bias – collective mindset against acceptance of Student’s theoretical approach improbable – minority opinion that discrepancy between prior marks and failure on exam, and potential lack of specific math expertise of faculty cause for concern – minority opinion that letter from Faculty to Chair of Graduate Department Student Appeals Committee attempted to intimidate Student – appeal dismissed**

Request to have a comprehensive examination remarked by an external examiner in accordance with the Faculty’s *Procedural Guide for Externally Rereading an Examination*. The Student challenged the capacity of the examiners to properly evaluate her approach to the questions, asserted that her answers had not been read fully and carefully, claimed that the examiners displayed an incomplete and distorted knowledge of the literature, and had distorted what she said in her answers. She also asserted that there was a generalized bias against her “scientific” approach, and a personal bias against her on the part of one or more examiners, both of which were operating against her and which contributed to the result on the exam. On the issues of the substantive correctness of the assessments of the exam, the Committee found that it was not the job of the Committee to assess the correctness of exam marks or the competence of the University’s examiners. The Committee agreed with the reasons of the Graduate Academic Appeals Board that “[u]nless there is something, such as a reasonable apprehension of bias, to cause a failure of confidence in what has been done, the assessment process must come to an end.” On the issue of personal bias, the Committee found no evidence to suggest that the faculty who marked the Student’s exam knew her identity, and found no evidence to substantiate an allegation of bias based on the Student’s status. On the issue of general bias, the Committee found it improbable that the faculty possessed a collective mindset against the acceptance of the Student’s theoretical approach, and no evidence was presented to support the claim. A minority of the Committee stated that it was concerned with the discrepancy between the Student’s prior marks on her coursework and her failure on the comprehensive exam, and with the potential lack of specific math expertise of the faculty who marked the Student’s exam. The minority observed that a letter from the Faculty to the Chair of the Graduate Department’s Student Appeals Committee appeared to be an attempt to intimidate the Student. Appeal dismissed.

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## COURSE/TERM GRADE

FILE: [Report #305](#)  
DATE: December 8, 2005  
PARTIES: Mr. A.Z. (the Student) v. the Faculty of Applied Science and Engineering

Committee Members:  
Professor Emeritus Ralph Scane, Senior Chair  
Professor Clare Beghtol  
Professor Pamela Catton  
Professor Ian McDonald  
Mr. Mahadeo Sukhai

Secretary:  
Mr. Anthony Gray, Judicial Affairs Officer.

In Attendance:  
For the Student Appellant:  
Mr. A.Z. (the Student)  
For the Faculty of Applied Science and Engineering:  
Professor Kim Pressnail  
Ms Ella Lund-Thomsen

### **Faculty of Applied Science and Engineering – request to increase term sessional average – grade appeal – illness affected exam preparation and performance – medical and oral evidence insufficient – weakness in term work played role in poor results – appeal dismissed**

Request to increase the sessional average for the term, from 51.8% to 54.8%, in order to enable the Student to proceed to the third year of his programme without repeating the failed term. The Student claimed that illness seriously affected his preparation for and performance in three examinations. In the subjects in which the examinations were written, the Student received two grades of F, and a grade of C-. The Committee considered medical evidence, the Student's oral evidence and the student's academic performance in the term and found that the condition of the Student was not such that, but for the existence of the medical condition, the Student would have passed the term. The Committee found that the Student's attending physician did not consider that prescription medication or stronger non-prescription medications was called for in treating the illness, and that the Student's weakness in term work also played a role in his poor results. The Committee observed that not every illness suffered during the examination period will excuse inadequate academic performance, particularly performance at the level demonstrated in the academic term in question, where weakness in term work also played a significant role in the poor results. Appeal dismissed.

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FILE: [Report #321](#)  
DATE: February 19, 2008  
PARTIES: Mr. J.V. (the Student) v. Graduate Department of Architecture, Landscape and Design

Hearing Date(s):  
Monday December 10, 2007

Committee Members:  
Professor L. Sossin (Chair)  
Mr. Ken Davy (Student)  
Professor Ellen Hodnett  
Professor Joel Kirsh  
Professor Louise Lemieux-Charles

Secretary:  
Ms. Nancy Smart, Judicial Affairs Officer

Appearances:  
For the Student Appellant:  
Mr. J.V. (the Student)

For the Graduate Department of Architecture, Landscape and Design:  
Professor J. Danahy  
Professor E. Kesik

### **Graduate Department of Architecture, Landscape and Design – course grade appeal – instructor bias – no basis to question instructor's overall assessment of the Student's participation – no unfairness where same grading scheme was applied to all students, and not contrary to any information provided to students – no credible basis in the evidence presented for allegation of bias – appeal dismissed**

Appeal from a grade of B- in a course and from a grade of B in another course. The grounds of the appeal related to alleged bias of the courses' instructor. The Student disputed a failing grade of 50% which had been assigned to the class participation mark, worth 5% of the total course mark, and a B grade in the fourth assignment worth 40% of the of the total course mark. The Student believed that his grade in one of the courses was not calculated properly. The Committee upheld the majority of the Divisional Appeal Board's finding that the instructor's recollection was sufficient for the

purposes of the participation grade. The Committee found that there was no basis to question the instructor’s overall assessment of the Student’s participation. The Committee agreed with the majority of the Divisional Appeal Board that the issue regarding the calculation of the grade was one of consistency and equity to all students. The Committee found that if the same grading scheme was applied to all students, and was not contrary to any information provided to students, then no unfairness could arise in relation to the Student. The Committee accepted the Divisional Appeals Board finding of no evidence of bias on the part of the instructor, finding that there was no credible basis in the evidence presented for the Student’s view that he had been treated unfairly. Appeal dismissed.

FILE:	<a href="#">Report #368</a>	Secretary:
DATE:	October 15, 2013	Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances
PARTIES:	Mr. J.B. (the Student) v. the Faculty of Law	
Hearing Date(s):	June 4, 2013	Appearances:
Committee Members:		For the Student Appellant:
Mr. Tad Brown, Chair		Mr. J.B., the Appellant (“the Student”)
Dr. Sarita Verma		For the Faculty of Law:
Mr. Chirag Variawa		Professor Ian Lee, Associate Dean, Faculty of Law

**Faculty of Law – course grade appeal – request to change grade on transcript from “B” to “Credit” and to be issued an apology from the Faculty – Student disputed the Faculty’s policy disallowing the appeal of interim grades – no basis for the Student to appeal the Faculty’s policy – role of the Committee is to review the application of Faculty policies, not to change the policies – appeal dismissed**

Request to change a grade on the Student’s transcript from “B” to “Credit.” In particular, the Student disputed whether the issuance of a Statement of Grades – an unofficial transcript which is used extensively by prospective employers looking to hire students for summer positions – was appropriate when combined with the application of the Faculty of Law’s policy which does not allow an appeal of those grades until the end of the academic year. Student originally sought to appeal his C+ assignment grade from the first term, but was denied because of the Faculty’s policy that an appeal can only be brought against a final grade in a course and not against an individual assignment grade. The Student’s final grade in the Course was a B. The Student asked the professor to re-assess his grade in the Course by re-assessing his grade on the first assignment. The professor confirmed the original grade.

Student then submitted a petition to the Academic Standing Committee seeking a change in his final grade from B to CR, accompanied by a notation explaining that the Faculty of Law failed to adhere to its administrative duties and that this failure had a negative effect on the Student’s performance, along with a letter of Apology from the Faculty. The ASC denied the petition, stating that it was not satisfied that the actions complained about actually prejudiced the Student’s performance.

Student then appealed to the Appeals Committee of the Faculty of Law. The Appeals Committee dismissed the appeal, noting that the Faculty’s policies permit the invocation of the appeal process for final grades only, and not for partial evaluations, reflecting the Faculty’s position on a number of important considerations. The Appeals Committee noted that by objecting to the absence of a “timely” appeal, the Student was not merely appealing a grade, but rather appealing the Faculty’s policy as not providing a timely process. The Appeals Committee concluded that there was no unfairness or unreasonableness in the manner in which the policy was applied to the Student, and noted that to change Faculty policy would be inappropriate and undesirable given the narrow scope of this single complaint.

Student then appealed to the Academic Appeals Committee. In dispute was whether the application of the Faculty’s policy to only allow an appeal from a final course grade and not directly from an individual assignment grade caused the Student prejudice which warranted granting one or more of the remedies requested by the Student. The Committee noted that its role is to review the application of Faculty policies and to ensure that they are applied fairly, reasonably and consistently, and not to change Faculty policy. The Committee found that the Faculty of Law’s policy on appeals was applied fairly and reasonably, and also that the Faculty’s policy of not allowing appeals until the final grade has been issued is not inconsistent with the policies of the University. The Committee concluded that there was no justification

for the requested remedy of replacing the mark for the Course on the Student's transcript or for requiring a letter of apology from the Faculty. Appeal dismissed.

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FILE: [Report #371](#)  
DATE: March 27, 2014  
PARTIES: Mr. C.D. (the Student) v. the School of  
Graduate Studies

Hearing Date(s):  
N/A (appeal conducted on the basis of written submissions to  
determine jurisdiction)

Committee Members:  
Professor Hamish Stewart (Chair)

**School of Graduate Studies – grade appeal – jurisdiction – Student contested the policy applied to convert his grade from a University study abroad program – Student's petition was about the fairness of the Faculty's procedure itself, not about the fairness of the procedure's application – Committee has no jurisdiction over the fairness of Faculty policy – appeal dismissed**

Request to remove or change a grade assignment, involving a jurisdiction determination. The Student participated in the Summer Abroad France program, for which students receive a University of Toronto undergraduate credit (not a transfer credit). The Student's mark was graded out of 20; it was multiplied by five to convert it into a mark out of 100 to make it consistent with the University's grading scale. Student was dissatisfied with the conversion of his grade. The Student petitioned the Faculty, arguing that the conversion formula did not adequately reflect the difference between French and U of T grading methods and, moreover, that the conversion formula was inconsistent with the agreement that he and other students had consented to by participating in the program. The Faculty dismissed the Student's petition, rejecting the Student's contention of inconsistency between the conversion formula used and that outlined in the course description, and noting that that the discrepancy between French and U of T methods did not apply to language courses aimed at international students. The Student then appealed to the Academic Appeals Committee (AAC), requesting a change or removal of the numerical grade assignment. The Faculty submitted that the AAC lacked jurisdiction over the appeal. The Committee cannot assess academic work and assign a grade; it can only determine if a policy was applied fairly and consistently. The Committee found that the Student's appeal was about the fairness of the procedure, not about the fairness of the procedure's application to the Student. The Student was arguing that the conversion formula was a bad policy, and Committee emphasized that it has no jurisdiction over the fairness of the Faculty policy itself. The Committee also found that the Faculty's reasons for dismissing the Student's petition adequately addressed the Student's concerns, both procedurally and substantively, and noted that the Faculty is entitled to rely on earlier responses sent to the Student. Appeal dismissed.

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FILE: [Report #388](#)  
DATE: May 8, 2017  
PARTIES: Mr. F.Z. (the “Student”) v. the Faculty of  
Arts and Science/Woodsworth College

Secretary:  
Ms. Krista Osbourne, Administrative Clerk and  
Hearing Secretary, Appeals,  
Discipline and Faculty Grievances

Hearing Date(s): March 28, 2017

Committee Members:  
Ms. Sara Faherty, Chair  
Professor Hugh Gunz, Faculty Panel Member  
Mr. Mohammad Amin, Student Panel Member

Appearances:  
For the Student:  
Mr. Cormac Donovan, Student Lawyer, Downtown  
Legal Services  
Ms. Jennifer Fehr, Staff Lawyer, Downtown Legal  
Services  
The Student

For the Faculty of Arts and Science/Woodsworth  
College:  
Professor Anne-Marie Brousseau, Associate Dean,  
Undergraduate Programs  
Mr. Rob Centa, Paliare Roland  
Ms. Emily Home, Paliare Roland, Articling Student

**Faculty of Arts and Science/Woodsworth College – grade appeal – valid reasons to miss exam – course conflict – commuting between campuses – no accommodation required for regular travelling obligation – Committee has jurisdiction to hear whether the reasons for an absence are valid – appeal dismissed**

Request to change a course grade from 70% to 80%. Student had enrolled in two courses which did not directly overlap in terms of timing, but occurred on two different campuses, so attending both would have been virtually impossible given the commute. At issue was whether this type of scheduling conflict was a valid reason for the Student missing his mid-term exam. If so, the Student requested that the weight of the mid-term exam be reallocated to his final exam so that his final grade could improve.

The Faculty of Arts and Science challenged the jurisdiction of the Committee to grant the relief sought, citing section 11.1 of the Faculty of Arts and Science *Academic Handbook*, which states that academic appeals involving marking concludes “with the Dean’s Office being the final level of appeal.” The Committee agreed that this policy limited their jurisdiction to review the academic merit of a Student’s work, but since the Student’s issues concerned the rules for determining whether the reasons for an absence were valid it had jurisdiction to decide this appeal. Its role was to determine whether the Division’s policies were applied fairly, and the standard for their application is reasonableness.

The Committee found that what constitutes a valid reason for missing an exam is at the discretion of the course instructor, and referred to the course syllabus in their analysis. Nothing in the syllabus language suggested a specific process the instructor would follow to determine whether an absence was valid and so under these circumstances, the process was followed (consulting with officials) was reasonable. The Committee did not distinguish between course conflicts that involved a direct overlap and courses that do not overlap directly but are located so far away from each other that a commute makes it either unlikely or impossible for a student to attend both. A regular travelling obligation that made it impossible for a student to attend a course on a consistent basis would not be one that instructors are expected to accommodate.

The Student submitted documentation of his Narcissistic Personality Disorder, however, the Committee declined to give it weight since he had not asked for any academic accommodations related to a disability before or during the course. The Committee found that together, the course syllabus and the Faculty of Arts and Science policy on course conflicts led to the conclusion that the Student’s absence was reasonably found to be invalid, and there was no basis for moving the weight of his midterm exam to the final exam. Appeal dismissed.

## AEGROTAT STANDING

FILE: [Report #283](#)  
DATE: October 16, 2003  
PARTIES: Mr. M.N. (the Student) v. UTSC

Secretary:  
Mr. P. Holmes, Judicial Affairs Officer

Hearing Date(s):  
September 16, 2003

Appearances:  
For The Student:  
Mr. M.N. (the Student)  
Mrs. N.

Committee Members:  
Professor Emeritus R. Scane (Chair)  
Mr. M. Ahmad  
Professor R. Elliott  
Mrs. S. Scace  
Professor J. Thiessen

For UTSC:  
Associate Dean I. McDonald

**UTSC – late withdrawal without academic penalty – alternative request for *aegrotat* standing – illness effecting exam performance – deficient medical evidence – oral submissions established illness – not debarred from acting on finding of fact due to deficient medical evidence – unfair negative conclusions regarding “the problem of selectivity” – not unreasonable for a student adversely affected by illness to accept favourable examination results nor inconsistent to appeal other unfavourable examination results – requirement for granting *aegrotat* standing met – appeal allowed – grade of “F” vacated and replaced with grade of AEG – recommendation that the University take a more proactive role in reviewing the submission of medical documentation when accepting petitions**

Request for late withdrawal without academic penalty from one course. Alternatively, the Student requested that *aegrotat* standing be considered. The Student failed the course after receiving less than 40% of the marks available on the final examination. The Student had passed the examinations in three other courses during the examination period. The Student successfully repeated the course in a subsequent term and requested the remedy in order to improve his GPA and remove the failure from the transcript. The Student claimed that he was suffering from a sore throat and shortness of breath which affected his performance on the examination. The Committee found that while the Student’s medical evidence was deficient, his *viva voce* submissions did establish that he was ill at the time he was writing his examination, and that the illness had an impact on his abilities during the examination period. The Committee considered whether the deficiencies in the medical evidence should prevent the Committee from acting on its own finding of fact. The Committee found that it would not debar itself from acting on its own finding of fact, because a student may not be successful in persuading the doctor to prepare the evaluation that University regulations contemplate, or may feel reluctant to challenge the sufficiency of what is proffered. The Committee found the Divisional Appeals Committee’s negative conclusions regarding “the problem of selectivity” to be unfair. The Committee stated that it does not believe that a student who was adversely affected by illness during an examination period is unreasonable in accepting a favourable examination result, nor does it believe that such a student is being inconsistent or unreasonable in appealing other examination results which were unfavourable. The Committee found that the requirement for granting *aegrotat* standing was met. The Student was unable to complete course requirements within a reasonable time because the illness affected the final examination, he could not complete that examination requirement until he was successful on a petition and, once successful, events had made completion of the course unnecessary. Appeal allowed. The Committee ordered that the grade of “F” be vacated and replaced with a grade of AEG. The Committee recommended that the University take a more proactive role in reviewing the submission of medical documentation when accepting petitions.

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FILE: [Report #291](#)  
DATE: June 14, 2004  
PARTIES: Ms T., the Appellant v. Faculty of Law

Secretary:  
Mr. Paul Holmes

Hearing Date(s):  
May 22, 2004

In Attendance:  
For the Student:  
Ms T., the Appellant  
Mr. T., brother of the appellant

Committee Members:

Assistant Dean Bonnie Goldberg, Chair  
Professor Clare Beghtol  
Dr. Pamela Catton  
Ms Françoise Ko  
Professor Jake Thiessen

For the Faculty of Law:  
Associate Dean Tony Duggan, Faculty of Law,  
University of Toronto

**Faculty of Law – grade appeal – *aegrotat* standing, “pass” standing, or increase from grade requested – aegrotate standing – external assessment of academic work – delay, frustration, late instructions and lack of guidance – delay and frustration met definition of exceptional circumstances – more time to complete the assignment without delay and frustration – better performance with earlier instructions – grade inconsistent with other grades – appeal allowed – grade of "D" vacated and replaced with a grade of AEG – recommendation that the Faculty provide its faculty with information regarding orientation, evaluation methods, and the obligations of its teaching staff – unfairness related to the third party reader process – violation of procedure for a third party reader to receive extraneous comments**

Appeal from a grade of “D” in the course. The Student requested one of three remedies: “*Aegrotat*” standing; “pass” standing; or an increase from the grade of “D”. The Student elected to write an essay worth 100% of the final grade. The Student sought review of the grade through a third party reader before applying to the Faculty’s Academic Standing Committee for *aegrotat* standing in the course. The Student claimed relief based on the excessive time she devoted to preliminary research while seeking topic approval, her frustrations in obtaining topic approval, the lack of guidance provided by the instructor in topic development and on the final topic, and the very late start date on which she had to begin writing the paper. The Committee considered the grounds upon which the Faculty awards *aegrotat* standing and found that the delay and frustration that the Student experienced met the definition of exceptional circumstances, despite no illness or a traumatic personal experience being suffered. The Committee found that due to the circumstances, the Student was unable to satisfactorily complete the requirements of a course where otherwise she would have performed successfully. Without the delay and frustration the student experienced researching topics she would have had more time to complete the assignment; with earlier instructions regarding the professor’s expectations for the paper and greater supervision once the topic was approved, she would have performed better; and the grade was inconsistent with the Student’s other grades awarded at the Faculty. Appeal allowed. The Committee ordered that the grade of "D" be vacated and replaced with a grade of AEG. The Committee recommended that the Faculty provide its faculty, and particularly adjunct professors, with information regarding orientation, evaluation methods, and the obligations of its teaching staff. The student also alleged unfairness related to the processes for appealing grades at the Faculty. The Student claimed that the third party reader received written information from the course professor regarding the circumstances relating to topic approval while she was not allowed to submit similar material. The Committee stated that the third party reader receiving extraneous comments was a violation of the procedure by which third party readers are meant to evaluate only the paper.

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## PRACTICUM EVALUATION

FILE: [Report #292](#)  
DATE: October 29, 2004  
PARTIES: Mr. L. (the Student) v. Woodsworth  
College

Hearing Date(s):  
October 7, 2004

Committee Members:  
Professor Emeritus R. Scane (Chair)  
Professor M. Beattie  
Professor C. Beghtol  
Dr. G. Halbert  
Mr. S. Neata

Secretary:  
Mr. P. Holmes, Judicial Affairs Officer

Appearances:  
For the Student:  
Mr. L. (the Student)  
Mr. L. (the Student's father)  
For Woodsworth College:  
Ms Y. Ali  
Ms S. Isbister  
Principal M. O'Neill-Karch

**Woodsworth – grade appeal – flaws in the training and “feedback” processes of the *practicum* – the position of the Student was not significantly different from that of other students in similar placements – teacher trainers not required to submit interim reports – recommendation that teacher trainers be required to submit an interim report to the Faculty, with a copy being given to the student – weight of required instruction unclear – recommendation that the weight of the instruction must be determined and published in advance if it is to be evaluated in determining final results – not probable that the Student would have passed the *practicum* had the procedural matters not existed – appeal dismissed – Faculty advised that the Student could retake the *practicum*, while retaining credit for other courses taken – recommendation that fees be waived should Student repeat the *practicum***

Appeal from a grade of “fail” in the *practicum* for the Certificate Program in Teaching English as a Second Language. The Student claimed that there were flaws in the training and “feedback” processes of the *practicum*, which adversely affected his performance, and deprived him of an opportunity to correct the faults identified. The Student claimed that the teacher trainer had rushed him through the programme and did not permit him to develop and use his own materials in his teaching. The Student also claimed that the teacher trainer did not give him current appraisals and that the Academic Coordinator had never visited his classroom. With respect to the training process, the Committee found that the time frame of the teaching period of the *practicum* was limited by the contract with the School Board and the teacher trainer’s own plans for the class, and that the development of lesson plans was not an objective of the *practicum*. The Committee found no basis for finding that the position of the Student was significantly different from that of other students in similar placements. With respect to “feedback”, the Committee found that the Faculty did not require teacher trainers to submit interim reports. The Committee recommended that teacher trainers be required to submit an interim report to the Faculty, with a copy being given to the student. The Committee found that while it was not feasible for the Academic Coordinator to visit every student’s classroom, a written interim report on each student would allow the Academic Coordinator to attend classes of the relatively few students who appeared to be in trouble. The Committee stated that it was unclear as to the weight, if any, of the four hours of instruction outside the teacher trainers’ classrooms, but that if the instruction was to be evaluated in determining the final result of the *practicum*, the weight must be determined and published in advance. The Committee found that it was not probable that the Student would have passed the *practicum* had the noted procedural matters not existed. Appeal dismissed. The Faculty had advised the Committee that the Student could retake the *practicum*, while retaining credit for the other courses taken in the program. The Committee recommended that if the Student repeats the *practicum*, the course fees should be waived.

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## **EXTENSION ON COURSE WORK**

Leading Cases:	<b>289, 301, 332,</b>
appeal allowed:	<b>301</b>
appeal dismissed:	<b>289, 332,</b>

FILE: [Report #289](#)  
DATE: January 30, 2004  
PARTIES: Mr. M. v. UTM

Secretary:  
Mr. P. Holmes, Judicial Affairs Officer

Hearing Date(s):  
October 31, 2003

Appearances:  
For The Student: Mr. M.  
For UTM: Professor Gordon Anderson

Committee Members:  
Professor Ed Morgan (Chair)  
Mr. Sachin Aggarwal  
Professor Mary Beattie  
Professor Clare Beghtol  
Dr. Alice Dong

**UTM – extension on course work – due date extended twice – failure to submit work a result of leaving insufficient time to complete it – Faculty not at fault for Student’s complaints – appeal dismissed – recommendation that Faculty specify a firm time and date on which an assignment is due when granting extensions**

Request for a second extension of time to have term work graded in the course. The Faculty had granted the Student an extension to complete two term essays. The Student was first given a vague date as to the extended due date but the Faculty followed-up with a firm date soon after. The due date was re-extended twice to accommodate the Student. The Student claimed that he had automotive problems on his drive back from a vacation weekend, and that he encountered lengthy lines at the library computer terminals when he went to use the library’s facilities. One of the two term essays was not delivered by the final revised deadline. The Student claimed that he submitted the second essay electronically before the revised deadline and later realized that it had not been received. Only the one term essay was graded and the Student failed the course. The Committee observed that the Student was given numerous extensions and had ample time to complete the assigned work, and that his failure to submit the second term paper by the extended deadline was a result of having left himself insufficient time to complete it. The Committee stated that the Faculty was not at fault for the Student’s complaints. Appeal dismissed. The Committee recommended that the Faculty specify a firm time and date on which an assignment is due when granting extensions.

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FILE: [Report #301](#)  
DATE: July 8, 2005  
PARTIES: Ms. G. S. (the Student) v. UTSC

Secretary:  
Mr. Tony Gray

Hearing Date(s):  
June 24, 2005

In Attendance:  
For the Student: Ms. G. S. (the “Student”)  
For UTSC: Associate Dean Nick Cheng, UTSC

Committee Members:  
Assistant Dean Kate Hilton, Chair  
Dr. Pamela Catton  
Professor Clare Beghtol  
Professor Yuki Johnson  
Mr. Ari Kopolovic

**UTSC – extension on course work – subsequent request of late withdrawal without academic penalty – illness and back injury – medical evidence incomplete – credible testimony – significant accommodation provided – situation not sufficiently serious by drop date to withdraw from courses – late withdrawal without academic penalty not appropriate – appeal allowed in part – Student permitted to submit late work – completed assignment to be submitted within twenty business days – not completed work to be submitted within twenty business days of receiving assignment**

Request to submit late work in three courses. The Student filed a subsequent request for late withdrawal without academic penalty, due to the fact that two years had passed since the original petition was filed. The Student claimed that

she experienced periods of illness during the term and suffered a back injury. The Student did not complete her course work in the three courses and received a failing grade in each course. The Committee agreed with the Faculty and Divisional Appeals Committee that the medical evidence offered by the Student was incomplete, but found that the Student's testimony was credible and thus the content of the Medical Certificate was adequate. The Committee found that the University afforded accommodation to the Student but that the Student's situation was not sufficiently serious by the drop date that she should have known to withdraw from one or more courses. The Committee found that it was not appropriate to allow the Student to withdraw without academic penalty. Appeal allowed in part. The Committee ordered that the Student be permitted to submit late work for the three courses. The already completed assignment was to be submitted to the Faculty within twenty business days of the date of release of the decision. For the assignments that the Student had not completed, the University had ten business days from the Student's notification to provide her with a new assignment. The Student then had twenty business days to submit the completed work. If reasonably feasible, the new assignments were to be set, and all assignment were to be marked, by the instructor who offered the courses, based on the content of the courses as they then existed. If not feasible, then the Faculty was to request the assistance of other instructors in the area who could set the new assignments and provide fair assessments of the work.

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FILE: [Report #332](#)  
DATE: April 14, 2009  
PARTIES: Mr. M. S. (the Student) v. UTM

Secretary:  
Ms. Mette Mai

Hearing Date(s):  
March 27, 2009 and April 7, 2009

In Attendance:  
For the Student Appellant:  
Mr. M. S. (the Student)  
Mr. R. S.

Committee Members:  
Professor Emeritus Ralph Scane (Senior Chair)  
Professor Jan Angus  
Mr. Kenneth Davy  
Dr. Joel Kirsh  
Professor Elizabeth Smyth

For the University of Toronto at Mississauga:  
Professor Gordon Anderson

**UTM – extension on course work – new evidence – apprehensions regarding major criminal charges – increase in employment workload and assignment abroad – petition submitted late but before final mark could be known – appeal allowed – late withdrawal without academic penalty – non-grade notation of WDR substituted for failing grade in course**

Request for an extension of time to complete term work for one course. The student failed the course having not submitted term work. Although the Student was late in seeking relief, the petition was filed before the final examination, and before the final course mark could be known. At the time, the Student experienced a major increase in his employment work load and was assigned abroad. The Committee agreed to hear a new ground of appeal, not placed before the divisional appeal levels below, that the Student had apprehensions of being charged with a major criminal offence, which affected his performance and his judgment. The Student had been instructed by his lawyer to refrain from discussing the case with anyone, which the student had interpreted as precluding him from raising the evidence in the original petition or in the divisional appeal. The Committee considered the new evidence, the Student's employment circumstances, and the timing of the Student's petition, and found that relief should be granted, although not the remedy requested. Permitting the Student to submit his paper for credit would be impractical considering the time that had lapsed and it would frustrate the academic goals of the course. The Committee granted late withdrawal without academic penalty. The stress from the potential criminal charges, in combination with the major increase in the work load of the Student's job, the not reasonably foreseeable assignment abroad, and the timeliness of the petition, brought the case within the requirements for granting the remedy as set out in the Committee's previous decisions. Appeal allowed. The non-grade notation of WDR was ordered substituted for the vacated failing grade and the status of the student in the University should be reassessed.

## PROGRAM/GRADUATION REQUIREMENTS

Leading Cases:	269, 293, 313, 323, 367, 369, 370, 373, 376, 378, 381, 382, 383, 386, 387, 393
appeal allowed:	269, 393 ( <i>in part</i> )
appeal dismissed:	293, 313, 323, 367, 370, 373 ( <i>in part</i> ), 378, 381, 382, 383, 387
▪ <a href="#">termination from program/ reinstatement to program</a> :	269, 323, 367, 369, 370, 373, 376, 381, 383, 386, 387,
▪ <a href="#">exemption from program requirements</a> :	293, 313, 378, 382, 393

## TERMINATION FROM PROGRAM/REINSTATEMENT

FILE: [Report #269](#)  
DATE: October 25, 2002  
PARTIES: Ms. Z.S., (“the Student”) v. the School  
of Graduate Studies

Hearing Date(s):  
September 26, 2002

Committee Members:  
Assistant Dean Jane Kidner, Chair  
Professor Clare Beghtol  
Professor Sherwin Desser  
Professor Luigi Girolametto  
Mr. Mark Braun

Secretary:  
Mr. Paul Holmes, Judicial Affairs Officer

In attendance:  
For the Appellant:  
Ms. Z.S., (“the Student”)  
Mr. Shaun Laubman, representative (Downtown Legal  
Services)

For the School of Graduate Studies:  
Associate Dean (Physical Sciences) Rashmi Desai  
Professor Shamim Sheikh, Graduate Coordinator,  
Graduate Department of  
Civil Engineering  
Professor Kim Pressnail, Graduate Department of Civil  
Engineering

**School of Graduate Studies – request that a course failure not constitute a failure for the purposes of invoking the two-failure rule – request to have an exam re-read – request to re-write a make-up exam and use an exam already written as the make-up exam – request that a grade be removed from the transcript and replaced by the mark received when the course was retaken – exemption from program requirements – illness of child and family responsibilities – permission to re-write exam rescinded – allegation of bias – reasonable apprehension of bias regarding objectivity of mark given – Faculty promise relied upon – irregularities and ambiguities in wording and application of two-failure rule – minority opinion that two-failure rule was clearly stated and Student was made aware of rule – appeal allowed – Student permitted to re-write exam and use exam mark already obtained as make-up exam – Student granted rereading of final exam in accordance with the *SGS Procedural Guide for Externally Rereading an Examination Written by a Graduate Student* and grade to be substituted for grade of FZ – grade of FZ in course not to be counted as a failure for purpose of invoking two-failure rule**

Request for a finding that the failure in one course did not constitute a failure for the purposes of invoking the Department’s two-failure rule requiring the Student to withdraw from the program; request to have the exam in a second course re-read in accordance with the *SGS Procedural Guide for Externally Rereading an Examination Written by a Graduate Student*; request to re-write the make-up exam in a third course and use the exam she had already written in a subsequent term as the make-up exam; and a request that the original grade of FZ assigned to the Student in the third course be removed from her transcript and be replaced by the mark she received when she retook the course in a subsequent term. On her first attempt the Student failed the first course at issue. She reenrolled in the course and passed the course. The Student failed the second course at issue. The Student claimed that due to her child’s illness and her family responsibilities she was unable to concentrate and properly study for the final exam. The Student petitioned her FZ grade in the second course and was granted the opportunity to re-write the final exam. The Student claimed that, based on the Faculty’s promise that she would be permitted to re-write the exam in the second course, she prepared and studied for the exam up until one week prior to the exam. The Student failed the final exam for the third course at issue. The Student claimed that when she met the course Professor to discuss the failed exam he was unhelpful, that he refused to give her a copy of her exam or answer her questions, and that he told her that she was not a good student based on her other course marks. The Student wrote a supplemental exam and received a grade of FZ. With three grades of FZ on her transcript and one week prior to the date of the re-write exam for the second course at issue, the offer to re-write was withdrawn and the Student was asked to withdraw from the program. Although not enrolled, the Student re-attended the second course at issue in a subsequent term. She claimed that she received permission from the Professor to write the exam even though it would not be marked and she would not receive an official grade. The Student wrote the exam but claimed that she did not know how she did on it. The Committee found that the Student was under pressure due to family circumstances and her situation as a new immigrant to the country. With respect to the request that the Student be permitted a re-read of her final exam in the third course at issue, the Committee found that there was a reasonable apprehension of bias on the part of the Student such as to question the objectivity of the mark given to the Student in course. The Committee stated that it did not want to make any finding that the Professor was biased in his marking, but rather that it is reasonable that the Student may have believed there to be bias on the part of the

Professor. The Committee granted the Student's request to have her mark in the course re-read subject to the *SGS Procedural Guide for Externally Rereading an Examination Written by a Graduate Student*. With respect to the request to re-write the make-up exam in the second course at issue, and to use the exam which she has already written for that same course as the make-up exam, the Committee found that the Faculty made the Student a promise, which the Student relied upon by studying for the exam, and therefore the Student ought to be permitted to write that exam. The Committee found that since the Student had already re-written the exam, she ought to be permitted to have that grade reported on her transcript, in addition to the original grade of FZ. With respect to the request for a finding that the FZ grade in the first course at issue did not constitute a failure for the purposes of invoking the two-failure rule, the Committee found that due to irregularities and ambiguities in both the wording and the application of the rule, the Student's original grade of FZ in the course ought not to count toward the rule such as to trigger her removal from the program. The two-failure rule as written did not clearly state that it would apply to a course which was failed and subsequently taken and passed; the policy as it had been applied to the Student had not been consistent, creating the potential for misunderstanding; the Student was told by the Faculty that the policy did not apply in her situation; and the Faculty was uncertain and confused as to the proper application of the policy in the situation. A minority of the committee found that the Faculty stated the two-failure rule to all students and the Student was made aware of the rule when she was asked to withdraw from the program prior to her third failed course. Appeal allowed. The Committee ordered that the Student be permitted to re-write the exam in the second course at issue, and use the mark she obtained in the exam she had already written in the course in the subsequent term as that make-up exam. The Student was granted a rereading of her final exam in the third course at issue in accordance with the *SGS Procedural Guide for Externally Rereading an Examination Written by a Graduate Student*. The FZ grade in the first course at issue was not be counted as a failure for the purpose of invoking the two-failure rule to remove the Student from the program.

FILE: [Report #323](#)  
 DATE: March 13, 2008  
 PARTIES: Dr. C.B. (the Student) v. the Faculty of  
 Medicine

Secretaries:  
 Ms. Nancy Smart, Judicial Affairs Officer  
 Ms. Mette Mai

Hearing Date(s):  
 February 15, 2008

Appearances:  
 For the Student:  
 Dr. C.B. (the Student)  
 For the Faculty of Medicine:  
 Ms. Sari Springer (Counsel)  
 Dr. David Tannenbaum  
 Dr. K. Iglar

Committee Members:  
 Professor Emeritus Ralph Scane (Chair)  
 Professor Jan Angus  
 Professor Douglas Reeve  
 Ms. Lorenza Sisca  
 Ms. Maureen Somerville

**Faculty of Medicine – reinstatement in program – dismissal from Family and Community Medicine Residency Training Program – policy that the Academic Appeals Committee cannot remark examinations or papers evaluated by examiners appointed by University also applies for clinical assessments – Academic Appeals Committee cannot interfere with the judgment of the Faculty on the grounds that the judgment was wrong if fairly arrived at – no evidence of bias or lack of objectivity – stress not considered a mitigating factor to poor academic performance when arising from awareness of adverse evaluations putting the student's future at the University in jeopardy – family problems could not excuse performance difficulties noted – Breach of s.5.2.5 of the Guidelines for the Evaluation of Postgraduate Trainees of the Faculty of Medicine at the University of Toronto not sufficient ground to reinstate the Student in the program – Appeal dismissed – recommendation that the Faculty establish a formal mechanism for dealing with situations when the Board of Examiners is not scheduled to meet in the immediate future**

Appeal from a recommendation of the Residency Program Committee of the Department of Family and Community Medicine that the Student be dismissed from the Family and Community Medicine Residency Training Program. Student received adverse evaluations indicating he fell below the expected level of first year residents and that he had confrontational problems with staff and a lack of insight as to his problems. The Committee stated that the policy that it cannot remark examinations or papers that have been evaluated by the examiners appointed by the University also applies for clinical assessments that are part of the evaluation process and the Committee cannot interfere with the judgment of the Faculty on the grounds that the judgment was wrong, if it had been fairly arrived at. The Committee

found no evidence of bias or lack of objectivity which might make the evaluations of the Student unreliable. The Committee stated that it will not consider stress and its secondary manifestations as mitigating factors to poor academic performance when the stress arises from a student’s awareness that she or he is receiving adverse evaluations which are putting the student’s future at the University in jeopardy. The Committee considered the stressful and distracting effects of family problems which afflicted the Student during the residency periods and found that they could not excuse the types of performance difficulties noted by the Faculty’s evaluators. The Faculty breached s.5.2.5 of the *Guidelines for the Evaluation of Postgraduate Trainees of the Faculty of Medicine at the University of Toronto* requiring that all periods of remediation must include a written mid-point evaluation. The Committee found that while deviation from a Board of Examiners stipulation as to a particular student is a grave matter, serious breaches do not necessarily warrant overturning an academic verdict. The Committee considered the other evidence submitted and found that the effect of the procedural breach by the Faculty was not a sufficient ground to reinstate the Student in the program. Appeal dismissed. The Committee recommended that if the Board of Examiners is to meet only at fairly distant intervals, the Faculty should establish a formal mechanism for dealing with situations, ordinarily dealt with by the full Board, which may arise when the Board is not scheduled to meet in the immediate future.

FILE:	<a href="#">Report #367</a>	Secretary:	
DATE:	October 7, 2013	Ms. Natalie Ramtahal, Coordinator, Appeals,	
PARTIES:	Mr. A.K.D. (the Student) v. the Faculty of Applied Science and Engineering	Discipline and Faculty Grievances	
Hearing Date(s):	September 11, 2013	Appearances:	
		For the Student Appellant:	
		Mr. A.K.D., the Appellant (“the Student”)	
Committee Members:		For the Faculty of Applied Science and Engineering:	
Professor Hamish Stewart, Chair		Professor Thomas Coyle, Chair of the Committee on Examinations	
Professor Elizabeth Cowper		Mr. Khuong Doan, Associate Registrar, Student Services	
Mr. Andrew Girgis			

**Faculty of Applied Science and Engineering – reinstatement to program – Student was refused further registration due to poor academic performance – Faculty allowed appeal in part, but did not provide reasons for its decision to not allow reinstatement – Committee noted that the Faculty should have provided written reasons for its decision, but the absence of reasons did not change the outcome of the Student’s petition – Student attended classes and completed some coursework for the courses he would have taken had he been reinstated – Student argued that the Faculty erred procedurally by not instructing him on which documentation to submit – AAB dismissed the appeal – reinstatement not appropriate given the Student’s poor assessment in the courses thus far and the timeline of the evidence submitted – divisions of the University should encourage students to support their appeals with suitable documentation, but it remains the Student’s responsibility to submit suitable documentation – Committee agreed with the AAB and concluded that its decision was reasonable – to grant a remedy that would give the Student credit for the courses would be highly unusual given that he wasn’t enrolled in them and the basis for assessing his performance in them was very thin – Faculty staff names need not be redacted, especially when the matter does not affect them in a personal capacity – appeal dismissed**

Appeal from an academic status of “Refused Further Registration.” Student performed so poorly in his program that he had been refused registration for the following term. Student petitioned the Faculty for special consideration on the ground that he might have been suffering from ADHD. Student sought reinstatement into the program or, in the alternative, a waiver of the rule that had resulted in his being refused further registration. This petition was dismissed for want of adequate documentation. The Student then submitted a revised petition with additional documentation concerning his ADHD diagnosis and the course of treatment he was pursuing. The Faculty allowed the petition in part, effectively granting the Student his alternative remedy. The Faculty changed the Student’s academic status from “Refused Further Registration” to “Academic Repeat Probation – Withdraw for eight months,” which would allow the Student to re-enroll two semesters later than he requested. The Faculty did not give any reasons for refusing to reinstate the Student, or for granting the alternative remedy. The Student then submitted another petition to the Faculty, with

supporting documentation indicating that he had been attending classes throughout the semester in the hope of being reinstated.

Student then appealed from the Faculty’s decision to the Academic Appeals Board, claiming that his condition had stabilized and drawing the AAB’s attention to his immigration and financial difficulties as well as alleged procedural irregularities in the Faculty’s process. Student sought credit for two of the courses he had been attending, and an opportunity to obtain credit for the remaining three courses through deferred examinations. The AAB obtained term work reports from the instructors in the courses that the Student had attended, which mostly indicated poor performance. The AAB concluded that the Faculty’s decision was fair and reasonable; reinstatement in the requested term was not appropriate given the timeline of the evidence submitted.

Student then appealed to the Academic Appeals Committee. The Committee concluded that the Faculty erred in failing to provide written reasons for its decision, but stated that this error did not affect the outcome of the appeal as the AAB provided reasons, which were the basis of the appeal to the Committee. The Committee also noted that it is the Student’s responsibility to make his or her case for a remedy in the appeal process; the Faculty cannot direct students as to what information to provide given the confidential nature of such information. The Committee agreed with the AAB that the Student’s situation fell well outside the circumstances in which a deferred examination, aegrotat standing, or assessment of grades would be given. To grant one of these remedies in this situation would have been highly unusual given that the Student was not enrolled in the courses and the basis for assessing his performance was very thin. The Committee also noted that the medical evidence did not strongly support the Student’s assertion that his treatment had been successful. The Committee concluded that the AAB’s decision was reasonable. Appeal dismissed.

The Committee also denied the Faculty’s request to redact the names of all of the Faculty’s faculty and staff who were involved in the Student’s case, noting that the fact that an individual was acting in an official or institutional capacity is not by itself a reason for redacting that person’s name. The Committee noted that it might look more favourably on such a motion where there was some allegation concerning personal misconduct by a member of the faculty or staff, particularly if the Committee found that allegation to be unfounded.

FILE: [Report #369](#)  
 DATE: November 7, 2013  
 PARTIES: Ms. S.M. (the Student) v. the Faculty of Applied Science and Engineering

Secretaries:  
 Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances  
 Ms. Sinead Cutt, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
 October 31, 2013

Appearances:  
 For the Student Appellant:  
 Ms. S.M., the Appellant (“the Student”)  
 Selwyn Pieters, Counsel for the Student

Committee Members:  
 Professor Andrew Green (Chair)  
 Professor Hugh Gunz  
 Mr. Rastko Cvekic

For the Faculty of Applied Science and Engineering:  
 Professor Thomas Coyle, Chair of the Examinations Committee  
 Professor Peter Herman, Chair of the Examinations Committee  
 Ms. Barbara McCann, Faculty Registrar

**Faculty of Applied Science and Engineering – reinstatement to program – Student was refused further registration due to an average below the Faculty’s requirements – Student argued that her heavy workload and anxiety/stress issues warranted a remedy – Committee noted the high bar set to obtain relief in order to maintain the integrity of the Faculty – Committee took into account evidence of the Student’s positive mental health progression – Committee took into account the fact that the Faculty had previously provided relief to the Student based on the same events at issue in this appeal – Faculty staff names can be redacted when the nature of the case is sensitive and the staff are directly involved – appeal allowed**

Request to re-register after not meeting the Faculty’s required sessional average. The Student’s average fell below the required average of 60% three times. The first time the Student was put on probationary status (“PRO2”). The second time, the 60% rule was waived given the fact that the Student’s average was very close to the cut off and that the timing of her exam (which she had deferred for medical/psychological reasons) that contributed to the low average was during a week in which midterms were held and school was ongoing. The next semester the Student’s average again fell below 60% and the Faculty refused further registration. The Student petitioned to be placed on PRO2 status again, citing her heavy workload (which she had been advised against taking) and anxiety/stress issues. The Faculty Committee denied the Student’s petition because of its insufficient reasons to warrant a remedy.

The Student then appealed the Faculty’s decision to the Academic Appeals Board, providing a further description of the illness of her family member and her own struggles with anxiety and stress. The AAB dismissed the Student’s appeal, finding that no rule, regulation, policy or principle was applied to the Student unfairly.

The Student then appealed to the Academic Appeals Committee, asking that the 60% rule be waived and that she be reinstated in the program. The Committee allowed the appeal. It emphasized that the Faculty’s progressive probationary program provides students with the opportunity to recover from a poor academic performance, and noted that a high bar is set to obtain such relief in order to maintain the integrity and standards of the Faculty. The Committee noted that the Student had admittedly taken on a full course load despite some advice otherwise, and had provided evidence of anxiety issues but had not sought accommodation through Accessibility Services. The Committee took into account the fact that the Faculty had provided relief from the 60% rule for the Student in the previous semester, noting that the events that made up the basis for relief then were the same events that were the basis for this appeal (the scheduling of the deferred exam during the academic year). The Committee also took into account evidence of the Student’s severe anxiety issues and evidence from the Student’s psychologist that she was progressing well, and the Student’s willingness and financial ability to take a lighter course load. The Committee therefore found that it would have been reasonable for the AAB to grant relief from the 60% rule. Appeal allowed.

The Committee recommended that the Faculty consider whether there are further steps it could take to aid students in the context of mental health concerns, especially relating to placing a statement on each examination relating to what to do in the event of illness or distress during the exam.

The Committee granted the Faculty’s motion to redact the names of Faculty staff who acted on behalf of the Faculty in the case, noting that though there was no direct allegation against a particular individual in this appeal, the sensitive nature of the appeal and the references to advice provided by staff to the Student warranted redaction (see Report #367 for an earlier decision regarding redacting the names of Faculty staff).

FILE: [Report #370](#)  
 DATE: March 27, 2014  
 PARTIES: Ms. V.M. (the Student) v. the School of Graduate Studies

Secretary:  
 Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
 March 25, 2014

Appearances:  
 For the Student Appellant:  
 Ms. V.M., the Appellant (“the Student”)

Committee Members:  
 Ms. Andrea Russell (Chair)  
 Professor Elizabeth Cowper  
 Ms. Mainawati Rambali

For the School of Graduate Studies:  
 Mr. Robert Centa, Lawyer for the Division  
 Ms. Jane Alderdice, Director, Quality Assessment and Governance  
 Professor Luc De Nil, Dean’s Designate  
 Professor Harry Elsholtz (LMP)

**School of Graduate Studies (SGS) – reinstatement to program – Faculty’s policy reasonable and applied fairly – GAAB decision reasonable and substantiated by evidence – no new evidence raised in the hearing before the Committee – appeal dismissed**

Appeal from the SGS's decision to terminate the Student's registration in the Ph.D program in the Department of Laboratory Medicine and Pathobiology. The Student appealed the termination to the Graduate Academic Appeals Board (GAAB), which dismissed the appeal. The Student then appealed to the Academic Appeals Committee. The Committee dismissed the appeal. The Committee noted that the Student raised no new evidence in her oral or written submissions that was either persuasive or relevant to the Appeal; all of the evidence raised at the hearing had either been addressed in the GAAB's decision, or was irrelevant to the question of the reasonableness of the GAAB decision and of the SGS's decision to terminate the Student's registration. The Committee found that the Student's allegation that the GAAB was biased against her was completely unsubstantiated, noting that the GAAB decision was thoroughly argued, reasonable, and substantiated by the evidence. The Committee noted that it found the decision of the SGS to terminate the Student's registration to be entirely reasonable, particularly as the record indicated that this decision came only after numerous clear written and verbal warnings to the Student that her academic standing in her program was in jeopardy. The Committee also noted that the SGS's policy at issue in this appeal was reasonable and its application of the policy was justified in this case. Appeal dismissed.

FILE: [Report #373](#)  
 DATE: June 5, 2014  
 PARTIES: Ms. R.S. (the Student) v. the School of Graduate Studies

Secretary:  
 Ms. Sinead Cutt, Administrative Assistant, Office of Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
 March 19, 2014

Appearances:  
 For the Student Appellant:  
 Ms. Andrea Wobick, Counsel for the Student  
 Ms. R.S., the Appellant ("the Student")

Committee Members:  
 Ms. Emily Orchard (Chair)  
 Professor Andrea Sass-Kortsak  
 Mr. Adrian De Leon

For the School of Graduate Studies:  
 Mr. Robert Centa, Lawyer for the Division  
 Professor Jane Alderdice, Director, Quality Assessment and Governance  
 Professor Alan Saks, Professor of Organizational Behaviour and HR Management, UTM  
 Ms. Deborah Campbell, Access/Information Services Specialist, Robarts Library

**School of Graduate Studies – late withdrawal without academic penalty – reinstatement in program despite failure to meet program requirements – documented personal and medical issues – appeal of some of the courses five years after the Student's initial registration – Student's last-minute submission of documents not accepted – students have a duty to make themselves aware of their rights and responsibilities and the policies of the programs – late withdrawal without academic penalty granted when the Student's already-existing circumstances significantly and unpredictably worsen – the Student's successful performance in some courses cannot be relied on to suggest that she could properly perform in all of her courses – Student not entitled to monetary relief for the Course in which she was granted late withdrawal – late withdrawal and aegrotat standing not allowed for four courses on the merits and untimeliness of the appeal – administrative errors that led to the failure of Accessibility Services to assess the Student cannot be relied upon without a temporal limit – the University cannot be expected to accommodate a condition of which it was unaware – appeal dismissed in part**

Appeal from the School of Graduate Studies' (SGS) decision to terminate the Student's enrolment in her Program, and a request for late withdrawal without academic penalty from five courses. The Student relied on her uncontested serious personal and medical problems, together with the Faculty's alleged failure to sufficiently accommodate them, as the basis for her failure to perform satisfactorily in the courses. The Student was terminated from the Program as a result of her failure to maintain a mid-B average. At issue in this case was whether the Student's disabilities were sufficiently accommodated by the Faculty and whether any alleged failure to accommodate the Student's disabilities justified the extraordinary relief of late withdrawal without academic penalty and substitution of aegrotat standing five years after the earliest courses were undertaken.

The Committee denied the Student’s request to admit additional documents on the eve of the Continuation Hearing, noting that the Student’s failure to make this request in a timely fashion was unreasonable (especially given that the matter was adjourned for six months).

The Committee rejected the Student’s assertion that she was unaware of her right to appeal grades in various courses and that the Faculty had a duty to personally inform her of this right, emphasizing that students have a duty to familiarize themselves with their rights and responsibilities and the policies of their respective programs and to act in a timely fashion to avail themselves thereof, and further that the Student was made aware of her right to appeal in the SGS Calendar.

With respect to the first Course, the Committee found that the extraordinary relief of late withdrawal without academic penalty was warranted because the Student’s already-existing circumstances became significantly more severe and could not have been reasonably anticipated by the Student. The Committee also noted that the Student’s ability to perform well in other courses and her decision to drop courses before the drop date cannot be relied upon to suggest that she was well enough to perform well in all of her courses or assess the severity of the impact of an FZ on her status in the program. The Committee stated that it did not aim to establish a precedent that would empower students to turn a wilfully blind eye to University policies only to later seek late withdrawal without academic penalty on the basis that they were unaware of such policies; students are not absolved of their obligations to familiarize themselves with relevant rights and responsibilities, even if they are entitled to special accommodation. The Committee also noted that students are not entitled to monetary refunds of courses for which they are granted late withdrawal without academic penalty.

With respect to the second, third, fourth, and fifth courses, the Committee dismissed the Student’s appeals for late withdrawal without academic penalty and aegrotat standing as untimely and without merit. [The courses were taken between Winter 2009 and Winter 2012, and though the exact circumstances differ in the reasoning for each course, the reasoning will be discussed together here.] The Committee noted its disappointment at the administrative error that led to the failure of Accessibility Services to assess the Student; however, such a failure must have a temporal limit. The Student cannot rely on that failure to explain away the FZs she received in courses taken months and years after her initial attempt to enlist the office’s support. The Student was aware of her tenuous academic and personal circumstances and ought to have sought relief in a timely fashion; there was no satisfactory explanation of her failure to inform Accessibility Services of her injuries and issues. The duty to accommodate students can only be imposed upon the University in circumstances in which it is made aware of a student’s disability. There was also no evidence to support the Student’s allegations that the Professors in one of her courses were biased against her.

The Committee concluded that the SGS’s decision to terminate the Student’s registration was entirely reasonable, particularly as the record indicated that this decision followed numerous accommodations and several clear written warnings to the Student that her academic standing was in jeopardy.

Appeal dismissed in part.

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FILE: [Report #376](#)  
DATE: October 14, 2014  
PARTIES: Ms. M.B. (the Student) v. the Department of Leadership, Adult and Higher Education, OISE, and School of Graduate Studies

Secretary:  
Mr. Christopher Lang, Appeals, Discipline and Faculty Grievances

Appearances:  
For the Student Appellant:  
Ms. M.B., the Appellant (“the Student”)

Hearing Date(s):  
September 22, 2014

For the Department of Leadership, Adult and Higher Education, OISE, and School of Graduate Studies:  
Mr. Robert Centa, Counsel  
Professor A. Hildyard  
Professor T. Chambers  
Professor Luc de Nil, SGS

Committee Members:  
Professor Andrew Green, Chair  
Professor Avrum Gotlieb  
Mr. Andrew Girgis

**OISE and School of Graduate Studies – reinstatement to program – jurisdiction – Student failed her comprehensive PhD examination three times – Student made a range of requests for relief including personal remedies and departmental policy changes – Committee’s powers do not extend beyond orders of an academic nature – departmental policies enacted after a decision may be relevant in an appeal in some circumstances, but here the changes did not demonstrate any unfairness to the Student – appeal dismissed**

Request for re-instatement to the program, along with personal remedies and Departmental policy changes. The Student failed her comprehensive PhD examination three times, and her registration was subsequently terminated. The Student appealed the termination to the Graduate Academic Appeals Board (GAAB), requesting a range of relief including development of policies at OISE, training of staff and faculty, revision to her status as a student, reinstatement to the program or transfer to another program, and waiver of accrued penalties and fines. The GAAB found that it lacked jurisdiction to grant many of the remedies requested, and concluded that the only issues within its jurisdiction were whether the decision to terminate the Student should be upheld and whether any recommendations should be made regarding student fees. The GAAB allowed the Student to continue the appeal through the Graduate Department Academic Appeals Committee (GDAAC) pursuant to SGS policies. The GDAAC dismissed the appeal. The Student then appealed again to the GAAB, which dismissed the appeal. The GAAB rejected the Student’s assertion that the Department had not adequately supervised and prepared the Student for the exams.

The Student then appealed to the Academic Appeals Committee. The Student requested personal remedies (including reinstatement to the program, reactivation of funding, a recommendation to expedite convocation, consideration for awards and grants, a declaration that she was suitable for candidacy, expedited ethical review, removal of adverse notations from her transcript, and a written apology from the advisory committee), departmental remedies (including that the Department establish a committee on equity and accessibility, the creation of a post-doctoral fellowship, and that she be the first recipient of the fellowship), and SGS remedies (involving the creation of a staff and incoming student training program).

The Committee dismissed the appeal on its merits and lack of jurisdiction. With respect to the Committee’s jurisdiction, its powers to grant a remedy encompassed only the request by the Student for reinstatement to the program and to remove notations about the termination from the Student’s transcript. The Committee’s powers did not extend to any of the other remedies requested by the Student; the Committee is limited to making orders of an academic nature and considering whether academic regulations have been applied correctly, consistently, and fairly. The Committee agreed with the GAAB that the Student was provided with adequate supervision and preparation by the Department, noting that the only inconsistency in the application of the Department’s policies was the provision of a third attempt at the comprehensive exam instead of the usual two, which was to the Student’s benefit. With respect to the Student’s request to have the advantage of any new policies put in place after her termination, the Committee stated that its function is to examine the application of policies existing at the time of the initial decision, also noting that new policies may shed light on any unfairness in the application of the existing policies and therefore in some circumstances may be relevant to an appeal. The Committee found that the Department’s policies did not change in a manner that demonstrated any unfairness to the Student or that would have led to any benefit to the Student. Appeal dismissed.

The Committee recommended that the SGS and the Department make processes around decisions such as termination and related appeals as clear as possible.

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FILE: [Report #381](#)  
DATE: April 28, 2016  
PARTIES: Dr. R.E. (the Student) v. the Faculty of  
Medicine

Secretaries:  
Mr. Christopher Lang, Director, and Ms. Tracey  
Gameiro, Associate Director, Office of Appeals,  
Discipline and Faculty Grievances

Hearing Date(s):  
February 10, 2016

Appearances:  
For the Student Appellant:  
Dr. R.E., the Appellant (“the Student”)  
Mr. Jordan Goldblatt, Adair Barristers, Counsel

Committee Members:  
Ms. Sara Faherty, Chair  
Professor Paul Kingston  
Mr. Raiyyan Khan

For the Faculty of Medicine:  
Dr. Glen Bandiera, Faculty of Medicine  
Dr. Lisa Bahrey, Department of Anesthesia  
Dr. Mark Levine, Department of Anesthesia  
Ms. Sari Springer, Littler LLP, Counsel

**Faculty of Medicine – reinstatement to program – Student did not meet the standards of his Remediation Plan – Committee does not have the power to order a further period of Remediation – despite unfortunate miscommunications, changes made to the Plan were reasonable to maintain patient safety and did not prejudice the Student – appeal dismissed**

Appeal from the decision of the Faculty of Medicine Faculty Appeals Committee and the PGME Board of Examiners to dismiss the Student from his Residency Program. The Student failed to meet the standards of his Remediation with Probation period. The terms of the Remediation Plan were set out in a document that set forth numerous elements of remediation, which was subsequently modified at the request of the Board of Examiners. The Faculty of Medicine determined that the Student failed on the first two required measures, and therefore did not administer the third measure. The Board of Examiners accepted the Faculty’s conclusions and dismissed the Student.

The Student appealed to the Academic Appeals Committee. The Student identified six points in which the implementation of the Plan differed from the written agreement. The issue on appeal was whether aspects of the actual Remediation process were unjust and constituted substantial changes to the Remediation Plan, or whether they constituted changes at all. The Student asked for three remedies; namely, that the Committee determine that the Plan was not complied with, that he was entitled to a proper Remediation Program, and that he was entitled to a further period of Remediation. The Committee noted at the outset that the Student’s request to be granted a further period of Remediation fell outside the purview of the AAC, which can determine whether the Faculty’s policies were applied fairly and whether the Student was entitled to reinstatement in the program, but not whether he was entitled to a further period of Remediation. The Committee noted that despite some administrative errors and miscommunications from the Faculty surrounding the Remediation Plan, the miscommunication was insignificant and the Plan’s substantive goals were met. The Committee emphasized that modifications based on patient safety were well advised and could not form a basis for invalidating the Plan. Further, the Student did not demonstrate that the changes made to the Plan prejudiced him. The Committee also noted that though the miscommunication surrounding the Plan was unfortunate, the Student should have made an effort to resolve it, especially since the stakes were so high for him. The Committee concluded that the Student failed to achieve the medical expert grades and the necessary level of communication skills as set out in the Plan, and therefore that the Faculty’s Appeals Committee’s decision was reasonable. Appeal dismissed.

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FILE:	<a href="#">Report #383</a>	Secretaries:
DATE:	June 1, 2016	Mr. Christopher Lang, Director, and Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances
PARTIES:	Ms. P.M. (the Student) v. the School of Graduate Studies (SGS)	
Hearing Date(s):	May 25, 2016	Appearances:
Committee Members:	Professor Andrew Green, Chair Professor Hugh Gunz Mr. Ridwan Olow	For the Student Appellant: Ms. P.M., the Appellant (“the Student”)  For SGS: Mr. Robert A. Centa, Counsel Professor Luc De Nil, Vice Dean, SGS Ms. Emma Thatcher, Associate Director, Graduate Affairs, SGS

**School of Graduate Studies – reinstatement to program – Student failed two courses – personal and familial difficulties – Departmental policy recommends expulsion when students fail two courses – new medical evidence was of too limited a nature to support a finding that the GAAB had been unreasonable – in some cases, it is appropriate for the Committee to take the Student’s actions following the events central to the appeal into account, but here taking the Student’s later successes into account did not affect the reasonability of the GAAB decision – Student’s unsuccessful appeal of one of the failed courses contributed to the reasonability of the GAAB’s decision – appeal dismissed**

Appeal from the SGS’s decision to terminate the Student’s registration in her Program. The Student failed two courses in the Department of Civil Engineering, and pursuant to the Department’s policies, the Department recommended that the Student withdraw from the Program and the SGS terminated her registration. The Student appealed the termination to the Graduate Academic Appeals Board. The GAAB dismissed the appeal, noting that despite its sympathy for the Student’s personal and familial difficulties, her failed courses (one of which had been appealed at three levels; see Report #379) justified the Department’s recommendation for termination.

The Student then appealed to the Academic Appeals Committee. The Committee emphasized that its role was to decide whether the GAAB decision upholding the termination was reasonable, and not to revisit the failures of the courses themselves. The Student adduced new medical evidence that had not been before the GAAB, but the Committee concluded that neither the SGS nor the GAAB would have come to a different conclusion if they had had this information; because of its limited nature, the new medical evidence did not support a finding that the GAAB decision was unreasonable. The Committee noted that it may, in some cases, be appropriate for the SGS to take into account the performance of a student in courses taken subsequent to the events central to the appeal; a complete exclusion of such information would be unfair to the students and may in some cases lead to an unreasonable termination decision. However, in this case, the Committee concluded that even taking into account the Student’s academic success following her failures the GAAB decision was not unreasonable.

The Committee concluded that the SGS followed a fair process in making its decision, citing the warnings provided to the Student and opportunities she had to provide information to the SGS and to appeal the underlying marks. It was reasonable for the GAAB to uphold the SGS decision based on the fact that the Student was unsuccessful in her appeals related to one of the failed courses and that she did not appeal the second course. Appeal dismissed.

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FILE: [Report # 386](#)  
DATE: August 10, 2016  
PARTIES: V.S. (“the Student”) v. the School of  
Graduate Studies (“SGS”)

Hearing Date(s): Wednesday, May 25, 2016 and Thursday,  
June 16, 2016

Committee Members:  
Emily Orchard (Chair)  
Professor Paul Kingston, Faculty Governor  
Ms. Susan Froom, Student Governor

Secretary:  
Mr. Chris Lang, Director, Appeals, Discipline and  
Faculty Grievances (May 25, 2016)  
Ms. Tracey Gameiro, Associate Director, Appeals,  
Discipline and Faculty Grievances (June 16, 2016)

Appearances:  
For the Student Appellant:  
Mr. V.S. (“the Student”) (via Skype)  
Ms. Ejona Xega, Law Student, Downtown Legal  
Services  
Ms. Rabiya Mansoor, Observer, Downtown Legal  
Services (June 16, 2016)

For School of Graduate Studies:  
Mr. Rob Centa, Counsel  
Professor Jay Malcolm Graduate Coordinator, Faculty  
of Forestry (May 25, 2016)  
Professor Mohini Sain, Dean, Faculty of Forestry,  
(May 25, 2016 – in person; June 16, 2016 - via Skype)  
Professor Sanjay Nayak, Director-General, CIPET  
(June 16, 2016 – via teleconference)  
Ms. Deborah Paes Graduate Administrator, Faculty  
of Forestry (May 25, 2016)  
Ms. Emma Thacker, Associate Director, Graduate  
Affairs, School of Graduate Studies (May 25, 2016)  
Professor Luc de Nil, Vice-Dean, Students, SGS (May  
25, 2016)  
Ms. Josie Lalonde, Associate Director, Student  
Services – Student Systems and Records, SGS (June  
16, 2016)

**School of Graduate Studies – dismissal from Faculty of Forestry’s Ph.D. program – undocumented illness – duty to accommodate – lack of adequate supervision not raised in timely manner — appeal dismissed**

Appeal from the SGS Graduate Academic Appeals Board’s (GAAB) decision to terminate the Student’s enrolment in in the Faculty of Forestry’s Ph.D. program (the “Program”) and a request for reinstatement in the Program. The Student alleged that his progress in the Program was impeded by ongoing illness; a lack of adequate supervision; and/or his registration in the program was terminated prematurely.

On the first ground of appeal, by the Student’s own admission, he neither told his supervisors or anyone else at the University that he continued to be unwell nor submitted any documentation to support this claim. The Student’s failure to disclose his illness absolved the Faculty of the duty to accommodate it. The Panel found that there was no evidence that the Faculty knew, or ought to have known, that the Student was sick and the Faculty could not have accommodated an illness of which it was unaware. The lack of any kind of evidence supporting an ongoing illness was fatal to the Student’s suggestion that his illness ought to have been accommodated by the Division and, ultimately, to the first ground of his appeal.

On the second ground of appeal, the lack of adequate supervision, the Panel found it telling that the first time that this ground of appeal had been raised was when the Student commenced his appeal. The Panel found that the failure to mention this issue with supervision was part of a much larger failure on the Student’s part to communicate with his supervisors about his illness, his struggles in the program, and his need for more support. The Panel refused to interfere with the GAAB’s evaluation of the Student’s performance in the absence of new evidence that might warrant the Panel’s interference.

Finally, the Panel held that while it may feel compassion towards one adversely affect by its decision, it could not modify the GAAB’s decision on this ground.

Appeal dismissed.

FILE: [Report #387](#)  
DATE: December 1, 2016  
PARTIES: Mr. M.M. v. the Faculty of Nursing

Hearing Date(s): November 30, 2016

Committee Members:  
Professor Malcolm Thorburn (Chair)  
Professor Nicholas Terpstra, Faculty Governor  
Mr. Aidan Fishman, Student Governor

Secretary:  
Mr. Chris Lang, Director, Appeals, Discipline and  
Faculty Grievances  
Ms. Sheree Drummond, Chair, Office of the  
Governing Council, Observer

Appearances:  
For the Student Appellant:  
Ms. Rabiya Mansoor, Law Student, Downtown Legal  
Services  
Ms. Jennifer Fehr, Review Counsel, Observer,  
Downtown Legal Services  
Mr. Rylee Raeburn-Gibson, Observer, Downtown  
Legal Services  
The Student

For the Faculty of Nursing:  
Mr. Robert A. Centa, Counsel for the Faculty  
Ms. Emily Home, Student-at-Law,  
Professor Ann Tourangeau, Associate Dean,  
Academic, Faculty of Nursing  
Dr. Francine Wynn, Director, Undergraduate  
Program, Faculty of Nursing  
Professor Pamela Khan, Faculty of Nursing  
Dr. Tanya Lewis, Director, Academic Success Centre  
& Accessibility Services

**Faculty of Nursing– request to void FZ grades – duty to accommodate – appeal started after three years is too long of delay when six month limitation – grounds to extend appeal – addressing appeal on merits and timeliness not mutually exclusive – Faculty need not offer all potential accommodations to meet fairness obligations to student- academic penalty is appropriate where students are informed in clearest possible terms of deadline and consequences of failure to meet deadlines - appeal dismissed**

Appeal from two decisions of the Academic Appeals Committee (the “AAC”) of the Faculty of Nursing. The first decision denied the Student’s petition to void his FZ grades in two courses from Fall 2012. The second decision denied the Student’s petition to void his FZ grades in two courses from Winter 2014 and recommend that the Student’s registration in the BScN (nursing) program be cancelled. The Student requested reinstatement in the nursing program; voiding all FZ grades and allowing his final assignments in two of his courses to be graded and a number of alternative remedies.

The student suffered from persistent depressive disorder since the age of sixteen. In his second year of the nursing program, the Student’s request to register with Accessibility Services was denied. Near the end of the Fall term of that year, the Student notified the undergraduate program chair at the Faculty of Nursing both in person and by email that he would have difficulty completing his course requirements due to mental health issues. At an ensuing meeting with the undergraduate program chair, the Student alleges that the undergraduate program chair represented that the Student had the option of receiving an incomplete grade in his two courses with outstanding assignments, of late withdrawal (WDR status) or of submitting his assignments much later, at the end of a planned leave of absence. The Student submitted a request for a leave of absence for three terms, which he was granted. The Student did not submit the required assignments for his courses and received a failing grade (FZ). When the Faculty sent a letter to notify him of his failing grades, the Student was on a leave of absence and suffering from a number of illnesses. He did not read or even open the letter until after the deadline to appeal his grades had passed.

The Student returned to the Nursing program in the Fall of 2013. Once again, he applied for accommodations through Accessibility Services and was registered in the Winter term. He retook the courses he had failed and passed them. The Student suffered another acute depressive episode that continued on to the summer of 2014. As a result, he did not complete the coursework in two other courses and was assigned incomplete grades. In the summer of 2014, the Student was informed by the Faculty that he would have to submit the outstanding assignments in those courses by 15 August in

order for grades to be submitted by the deadline of 30 August. In that same letter, the Faculty made clear that should he fail to submit his assignments by the deadline, he would receive a grade of FZ, and this would result in “the termination [of his enrolment] from the program.”

The Student submitted his assignments after the August 15, 2014 deadline. The Student alleged that he misread the letter because of his then-undiagnosed ADHD. As a result of his failure to submit those assignments the Student received a grade of FZ in those courses and his registration in the nursing program was terminated.

The student took over three years to start his appeal of the grades he received from the Fall of 2012. According to the Faculty of Nursing’s Undergraduate Calendar, students have six months from the time of the original decision to launch an appeal. The Committee found that the Student cannot use the fact that he chose not to read correspondence from the university as grounds for extending the deadline of his appeal. Nor was the delay justified by any potential misinformation given to him by the Faculty that his right of appeal had expired, because even if the Faculty had given him that advice, he did not begin working with counsel until a year and a half after he allegedly received that advice, and did not start his appeal more than six months after working with counsel – almost two years later. Finally, the Committee held that the Faculty had not waived any right to raise arguments of delay simply because it responded to the substance of the Student’s argument in this case. It was open to the Faculty to oppose the Student’s appeals on their merits as well as point out its lateness. The Faculty may insist on the administrative need to ensure timeliness while also providing the Student with substantive reasons for the dismissal of his claim in their reply.

The Committee was troubled by the fact that the Faculty of Nursing could have offered accommodations to the Student in the fall of 2012 such as assigning him grades of incomplete (INC) or granting him deferred standing (SDF) which they failed to do. The Committee also found that matters could have been dealt with more effectively had Accessibility Services granted the Student accommodations in the fall of 2012. The Committee was also troubled by the idea that the undergraduate chair may have given the Student the wrong information that he could avoid failing grades if he took a leave of absence. That said, the Committee did not find that the student was treated unfairly. Although the Student did not receive all the accommodations that might have been offered, his treatment by the Faculty of Nursing was in accordance with faculty policies and these policies were administered fairly.

For his appeals relating to course work in 2014, the Committee found that there was no suggestion that the Faculty misled him about how they would treat his case. He was informed in the clearest possible terms of the deadline for submission of his work and of the consequences of failure to do so. Given the long extension granted to the Student and the clarity of the Faculty’s expectations, the Committee found that there was no basis for the suggestion that the Student was unfairly treated in this case. Appeals dismissed. The Student was appropriately awarded failing grades in four courses in the BScN program. In keeping with the standards of that program, the CoS was correct in its decision to terminate the Student’s enrolment in that program.

## EXEMPTION FROM PROGRAM REQUIREMENTS

FILE: [Report #293](#)  
DATE: December 16, 2004  
PARTIES: Mr. C., the Appellant v. the Faculty of  
Pharmacy

Hearing Date(s):  
November 22, 2004

Committee Members:  
Assistant Dean Bonnie Goldberg, Chair  
Professor Pamela Catton  
Ms Françoise Ko  
Professor John Furedy  
Professor Ian McDonald

Secretary:  
Mr. Paul Holmes  
  
In Attendance:  
For the Student:  
Mr. C., the Appellant

For the Faculty of Pharmacy:  
Ms Brenda Thrush, Registrar, Faculty of Pharmacy  
Dean Wayne Hindmarsh, Faculty of Pharmacy

**Faculty of Pharmacy – exemption from program requirements – Divisional appeal allowed despite irregularities and failure to follow procedure – financial circumstances considered – no extenuating circumstances related to academic performance – appeal dismissed**

Request to proceed to Year 3 of Pharmacy program, despite not having met the academic requirements. Request made on financial grounds unrelated to failing grade. The Faculty Appeals Committee heard the appeal despite not usually considering financial hardship as ground of appeal and despite the Student not having submitted a petition. The Committee found that the Student did not take proactive steps, or seek academic assistance offered by the Division to improve academic performance. Not all available means of financial support had been exhausted. There was no merit to the Student's allegation of differential treatment. There was no evidence of extenuating circumstances directly related to academic performance. The Committee stated that it does not have the jurisdiction to remove a failing grade due to financial considerations. Appeal dismissed.

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FILE: [Report #313](#)  
DATE: December 21, 2006  
PARTIES: The Student Appellant v. UTM

Hearing Date(s):  
December 11, 2006

Committee Members:  
Assistant Dean Kate Hilton, Chair  
Mr. Terry Buckland  
Professor William Gough  
Dr. Joel Kirsh  
Professor Lorne Sossin

Secretary:  
Dr. Anthony Gray  
  
In Attendance:  
(the "Student")  
Professor Gordon Anderson, UTM

**UTM – request to graduate with a cumulative GPA of less than 1.50 – grades for transfer credits not included in GPA calculations – University's policy of refusing to transfer grades from other institutions is sound – policy at the time of transfer was known – annual GPA and cumulative GPA calculations never included grades from transfer credits – appeal dismissed – recommendation that borderline grades should attract attention and review from a Faculty's administration – concern expressed about fairness to students who are experiencing serious academic difficulty**

Request to graduate with a cumulative GPA of less than 1.50. The Student had completed all other degree requirements. The Student claimed that his cumulative GPA had been calculated incorrectly. The Student claimed that the grades from his transfer credits from courses taken at York University should have been transferred to the University of Toronto. The Committee considered the grades submitted by the Student and the University's policy of refusing to transfer grades

from other institutions. The Committee found that even with transfer credit grades, the Student's cumulative GPA would still have been below that required to graduate; that the University's policy of refusing to transfer grades from other institutions was a sound one, since there may be significant differences between programs; that the Student was aware of the policy at the time of his transfer to UTM; and that the Student's transfer credits had appeared on his transcript each semester with no grades attached, and that the annual GPA and cumulative GPA calculations did not include his grades from York University. Appeal dismissed. The Committee observed that, given the serious impact that a failing grade has on a student's GPA, borderline grades should attract review from a Faculty's administration. The Committee registered concern about fairness to students who are experiencing serious academic difficulty.

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FILE: [Report #378](#)  
DATE: July 3, 2015  
PARTIES: Ms. V.O. (the Student) v. the University of Toronto at Mississauga (UTM)

Secretary:  
Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
May 26, 2015

Appearances:  
For the Student Appellant:  
Ms. V.O., the Appellant ("the Student")

Committee Members:  
Ms. Emily Orchard, Chair  
Professor Elizabeth Smyth  
Ms. Susan Froom

For UTM:  
Ms. Michelle Kraus, Office of the Registrar, Petitions, UTM  
Professor Kelly Hannah-Moffat, Vice-Dean Undergraduate, UTM

**UTM – exemption from program requirements – Student's CGPA was below the minimum threshold to graduate with an Honours degree – mere hard work and personal preference do not justify waiving a fundamental degree requirement – appeal dismissed**

Request to graduate with an Honours degree despite not meeting the degree requirement of a CGPA of at least 1.85. After a lengthy history of poor academic performance, the Student graduated with a Bachelor of Arts, and then enrolled in a graduate program. The Student appealed her ineligibility to earn an Honours degree to the Academic Appeals Subcommittee, which concluded that the Student did not have a compelling case to justify an exemption from University regulations.

The Student then appealed to the Academic Appeals Committee. The Committee noted that the Office of the Registrar had informed the Student before graduating and at each stage of the appeal process that she could raise her CGPA to the requirements by enrolling in 2.0 credits and attaining a final grade of 77 percent. The Student therefore had the ability to graduate with an Honours degree at any time she wished. The Committee took into account the contradiction between the Student's submissions that she did not want her failure to earn an Honours degree to affect her career and her simultaneous unwillingness to invest the time and effort to earn said degree. The Committee concluded that waiving the minimum threshold to be granted an Honours degree would be an extremely rare occurrence, and emphasized that hard work alone cannot be the basis upon which the Committee grants a petition to waive a fundamental degree requirement. Similarly, the Student's desire to move on with life and her preference to take more specialized courses did not justify granting the extraordinary relief. Appeal dismissed.

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FILE: [Report #382](#)  
DATE: April 28, 2016  
PARTIES: Ms. A.W. (the Student) v. the Toronto  
School of Theology

Secretaries:  
Mr. Christopher Lang, Director, Ms. Tracey Gameiro,  
Associate Director, and Ms. Krista Osbourne,  
Administrative Assistant, Appeals, Discipline and  
Faculty Grievances

Hearing Date(s):  
April 11, 2016

Committee Members:  
Professor Andrew Green, Chair  
Professor Andrea Sass-Kortsak  
Mr. Alex Ivovic

Appearances:  
For the Student Appellant:  
Mr. A.W., the Appellant (“the Student”)  
Mr. Geoffrey D. K. Wiebe, Counsel  
For the Toronto School of Theology:  
Mr. Robert A. Centa, Counsel  
Professor Alan Hayes  
Dr. Daniella Mallinick  
Professor Jaroslav Skira

**Toronto School of Theology – exemption from program requirements – Student wanted to transfer from the ThD program to the Faculty’s new PhD program without completing the application requirements – Student appealed to the Committee rather than pursuing further internal appeals, but this was not a basis for an adverse inference to be drawn against the Student – Student was arguing against the fairness of the policy itself, not the policy’s application, so the matter was outside of the Committee’s jurisdiction – Student did not take advantage of the opportunities available to him to transfer programs – appeal dismissed**

Request to transfer from the ThD program into the new PhD program in the research doctorate in theological studies without being required to complete two further courses. The Student did not apply to the bridging program designed to allow transfer into the new PhD program despite knowledge of this option, and instead wrote to the Director of the TST requesting to transfer from ‘ThD’ into ‘PhD’ nomenclature. The Student petitioned to the Advanced Degree Appeals Division of the TST, stating that he had not been permitted transfer in the nomenclature without being required to complete two further courses. At the hearing, the Student submitted evidence supporting his claims that he had substantially met the outcomes of the Required Courses given that he had authored an academic book, taught and designed an undergraduate course, and spent time in the learning community in Trinity College, and stated that it would have been a serious delay in his studies to have taken the courses. The Academic Appeals Committee of the GSC denied the Student’s petition, noting that the Student did not choose apply to the PhD program through the existing bridging option, and did not find the arguments made in support of his appeal persuasive. The matter was sent back to the Faculty to determine whether there was room for exploration of an accommodation within the existing bridging option.

The Student then appealed to the Academic Appeals Committee, requesting a declaration that he had met the academic requirements set out by the TST for transfer from the ThD into the PhD program through equivalency to the Required Courses, and directing the TST to transfer him into the PhD program immediately. The Committee noted the unusual manner in which the appeal came before it: the GSC decision did not decide on the merits of the Student’s appeal but instead sent the matter back to an earlier stage in the appeals process, and the Student then appealed to the Committee. The Committee also noted that no adverse inference should be drawn against the Student for coming before the Committee rather than pursuing further internal appeals.

With respect to the Committee’s jurisdiction to provide the remedy requested by the Student, the Committee noted that its role is not to change Faculty policy but rather to ensure that a policy was applied fairly and consistently. The Committee found that the Student was in effect arguing about the fairness of the Faculty’s policy, not about the fairness of the application of the policy to the Student. (See Reports #368, #359-1, and #371.) Despite some procedural fairness issues relating to the transparency and updating of the TST’s Handbook and processes, the Committee concluded that the Student was not treated unfairly. The Committee took into account the fact that the Student did not avail himself of his many opportunities to enter the bridging program, that he did not approach the TST to see if he could obtain an exemption from the requirements in a timely manner, and that he did not take advantage of the ample opportunities the TST provided him with to seek resolution of his appeal. The Committee also rejected the Student’s assertion that the process was procedurally unfair because of a lack of reasons by the Academic Appeals Committee of the GSC, noting that the GSC decision sent the matter back to an earlier stage in the appeals process and gave reasons for this decision. The Committee encouraged the TST and the Student to work together to seek if they could find a solution. Appeal dismissed.

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FILE: [Report #387](#)  
DATE: December 1, 2016  
PARTIES: Mr. M.M. v. the Faculty of Nursing

Hearing Date(s): November 30, 2016

Committee Members:  
Professor Malcolm Thorburn (Chair)  
Professor Nicholas Terpstra, Faculty Governor  
Mr. Aidan Fishman, Student Governor

Secretary:  
Mr. Chris Lang, Director, Appeals, Discipline and  
Faculty Grievances  
Ms. Sheree Drummond, Chair, Office of the  
Governing Council, Observer

Appearances:  
For the Student Appellant:  
Ms. Rabiya Mansoor, Law Student, Downtown Legal  
Services  
Ms. Jennifer Fehr, Review Counsel, Observer,  
Downtown Legal Services  
Mr. Rylee Raeburn-Gibson, Observer, Downtown  
Legal Services  
The Student

For the Faculty of Nursing:  
Mr. Robert A. Centa, Counsel for the Faculty  
Ms. Emily Home, Student-at-Law,  
Professor Ann Tourangeau, Associate Dean,  
Academic, Faculty of Nursing  
Dr. Francine Wynn, Director, Undergraduate  
Program, Faculty of Nursing  
Professor Pamela Khan, Faculty of Nursing  
Dr. Tanya Lewis, Director, Academic Success Centre  
& Accessibility Services

**Faculty of Nursing– request to void FZ grades – duty to accommodate – appeal started after three years is too long of delay when six month limitation – grounds to extend appeal – addressing appeal on merits and timeliness not mutually exclusive – Faculty need not offer all potential accommodations to meet fairness obligations to student- academic penalty is appropriate where students are informed in clearest possible terms of deadline and consequences of failure to meet deadlines - appeal dismissed**

Appeal from two decisions of the Academic Appeals Committee (the “AAC”) of the Faculty of Nursing. The first decision denied the Student’s petition to void his FZ grades in two courses from Fall 2012. The second decision denied the Student’s petition to void his FZ grades in two courses from Winter 2014 and recommend that the Student’s registration in the BScN (nursing) program be cancelled. The Student requested reinstatement in the nursing program; voiding all FZ grades and allowing his final assignments in two of his courses to be graded and a number of alternative remedies.

The student suffered from persistent depressive disorder since the age of sixteen. In his second year of the nursing program, the Student’s request to register with Accessibility Services was denied. Near the end of the Fall term of that year, the Student notified the undergraduate program chair at the Faculty of Nursing both in person and by email that he would have difficulty completing his course requirements due to mental health issues. At an ensuing meeting with the undergraduate program chair, the Student alleges that the undergraduate program chair represented that the Student had the option of receiving an incomplete grade in his two courses with outstanding assignments, of late withdrawal (WDR status) or of submitting his assignments much later, at the end of a planned leave of absence. The Student submitted a request for a leave of absence for three terms, which he was granted. The Student did not submit the required assignments for his courses and received a failing grade (FZ). When the Faculty sent a letter to notify him of his failing grades, the Student was on a leave of absence and suffering from a number of illnesses. He did not read or even open the letter until after the deadline to appeal his grades had passed.

The Student returned to the Nursing program in the Fall of 2013. Once again, he applied for accommodations through Accessibility Services and was registered in the Winter term. He retook the courses he had failed and passed them. The Student suffered another acute depressive episode that continued on to the summer of 2014. As a result, he did not

complete the coursework in two other courses and was assigned incomplete grades. In the summer of 2014, the Student was informed by the Faculty that he would have to submit the outstanding assignments in those courses by 15 August in order for grades to be submitted by the deadline of 30 August. In that same letter, the Faculty made clear that should he fail to submit his assignments by the deadline, he would receive a grade of FZ, and this would result in “the termination [of his enrolment] from the program.”

The Student submitted his assignments after the August 15, 2014 deadline. The Student alleged that he misread the letter because of his then-undiagnosed ADHD. As a result of his failure to submit those assignments the Student received a grade of FZ in those courses and his registration in the nursing program was terminated.

The student took over three years to start his appeal of the grades he received from the Fall of 2012. According to the Faculty of Nursing’s Undergraduate Calendar, students have six months from the time of the original decision to launch an appeal. The Committee found that the Student cannot use the fact that he chose not to read correspondence from the university as grounds for extending the deadline of his appeal. Nor was the delay justified by any potential misinformation given to him by the Faculty that his right of appeal had expired, because even if the Faculty had given him that advice, he did not begin working with counsel until a year and a half after he allegedly received that advice, and did not start his appeal more than six months after working with counsel – almost two years later. Finally, the Committee held that the Faculty had not waived any right to raise arguments of delay simply because it responded to the substance of the Student’s argument in this case. It was open to the Faculty to oppose the Student’s appeals on their merits as well as point out its lateness. The Faculty may insist on the administrative need to ensure timeliness while also providing the Student with substantive reasons for the dismissal of his claim in their reply.

The Committee was troubled by the fact that the Faculty of Nursing could have offered accommodations to the Student in the fall of 2012 such as assigning him grades of incomplete (INC) or granting him deferred standing (SDF) which they failed to do. The Committee also found that matters could have been dealt with more effectively had Accessibility Services granted the Student accommodations in the fall of 2012. The Committee was also troubled by the idea that the undergraduate chair may have given the Student the wrong information that he could avoid failing grades if he took a leave of absence. That said, the Committee did not find that the student was treated unfairly. Although the Student did not receive all the accommodations that might have been offered, his treatment by the Faculty of Nursing was in accordance with faculty policies and these policies were administered fairly.

For his appeals relating to course work in 2014, the Committee found that there was no suggestion that the Faculty misled him about how they would treat his case. He was informed in the clearest possible terms of the deadline for submission of his work and of the consequences of failure to do so. Given the long extension granted to the Student and the clarity of the Faculty’s expectations, the Committee found that there was no basis for the suggestion that the Student was unfairly treated in this case. Appeals dismissed. The Student was appropriately awarded failing grades in four courses in the BScN program. In keeping with the standards of that program, the CoS was correct in its decision to terminate the Student’s enrolment in that program.

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<p>FILE: <a href="#">Report #393</a> (2017-2018)          DATE: December 14, 2017          PARTIES: R.S. (“the Student”) v. the University of Toronto, Mississauga (UTM)</p>	<p>Secretary:          Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances</p>
<p>Hearing Date(s): November 9, 2017</p>	<p>Appearances:          For the Student Appellant:          Mr. R.S. (“the Student”)</p>
<p>Committee Members:          Professor Malcolm Thorburn (Chair)          Professor Paul Kingston, Faculty Governor          Ms. Amanda Harvey-Sanchez, Student Governor</p>	<p>For the Faculty of Kinesiology and Physical Education:          Professor Gretchen Kerr, Vice-Dean of Academic Affairs          Mr. Timothy Linden, Assistant Registrar, Office of the Registrar</p>

**Faculty of Kinesiology and Physical Education – grade appeal – exemption from program requirements – deference given to course instructors absent evidence of unfairness – justifications for course policies concerning late assignments – no significant evidence of unfairness – student was an exemplary member of the faculty community – faculty support for student to be able to take a different course to fulfill program requirements – adequacy of reasons - appeal allowed in part**

The Student appeals a decision made by the Dean of the Faculty of Kinesiology and Physical Education and asked the Committee for the following relief: (1) review the grades for a number of small assignments for KPE440H; (2) give the Student the opportunity to produce another assignment in satisfaction of a video assignment that he had handed in late; (3) *aequitas* standing in KPE440H; (4) removal of KPE440H as a degree requirement for the Bachelor of Education degree; or (5) the option to take a course other than KPE440H in order to fulfil the specified degree requirement.

The Committee dismissed the Student's request for all of these grounds of relief except for the opportunity to take a course other than KPE440H in fulfillment of his degree requirements. The Committee gave the course instructor considerable deference in the marks that had been allocated for the small assignments that formed part of the course, as there was no evidence of unfairness. One of the grade appeals related to an assignment that was handed in well past its due date, contrary to a course policy that set out that assignments were deducted marks for lateness and given a grade of zero if more than a week late. The Committee held that there were good reasons for policies like this one, specifically, that instructors should be able to grade assignments together to ensure that they are all subject to the same standard and cannot be expected to ascertain whether each assignment was actually completed by the deadline if it was not in their possession at that point. The Committee further found that students needed to be in the habit of actually providing deliverables when they are expected. In this case, the instructor had taken additional steps to assist students with the assignments and had provided the Student with an additional opportunity to submit a replacement assignment. The Student failed to provide adequate documentation of alleged mental health problems that prevented him from completing this substitute assignment. The Student's request for remedies 1 – 4 was denied.

However, the Student's request that he be allowed to take an alternative course to fulfill his degree requirements was granted based on evidence given by a professor who attested that the Student was an exemplary member of the Faculty community, and that the Faculty would do whatever they could to make sure that the Student would be able to graduate from the program. In particular, the professor would personally write Victoria College requesting that the Student be admitted to their comparable course so that he could substitute it for KPE440H.

The Committee closed by recommending that the Faculty of Kinesiology and Physical Education put in place more robust measures to instruct and assist students with the academic appeals process, including providing more information about expectations around materials and appearing before any panels. The Committee also commented that the Dean may have provided inadequate reasons for his decision in this case. The Committee found it to be a duty incumbent upon all public decision-makers to justify their decisions in a way that provides meaningful guidance to those who are subject to those decisions. Appeal allowed in part.

## **EXTERNAL ASSESSMENT OF ACADEMIC WORK**

Leading Cases:	<b>274, 277, 291</b>
appeal allowed:	<b>291</b>
appeal dismissed:	<b>274, 277</b>

## EXTERNAL ASSESSMENT OF ACADEMIC WORK

FILE: [Report #274](#)  
DATE: February 28, 2003  
PARTIES: Mr. A.C. v. the School of Graduate  
Studies

Secretary:  
Mr Paul Holmes, Judicial Affairs Officer

Hearing Date(s):  
September 11, 2002

In Attendance:  
Mr. A.C., the student  
Professor Susan Howson, Associate Dean, School of  
Graduate Studies

Committee Members:  
Professor Ed Morgan, Chair  
Dr. Alice Dong  
Professor Luigi Girolametto  
Mr. David Melville  
Professor Cheryl Misak

**School of Graduate Studies – appeal from termination from program – reinstatement in program – test for re-admittance not met, unbiased evaluation of thesis sought and investigation into reasons behind negative vote of external examiner sought – external assessment of academic work – test for re-admittance properly set out and met – no evidence that thesis should not have been allowed to proceed to defense – no evidence of misconduct or actionable bias – independent evaluation of thesis not required – no evidence that existing evaluations were improper – no evidence that undermined forcefulness or appropriateness of evaluation – no evidence of wrongdoing by external examiner – appeal dismissed**

Appeal from the termination of the Student from the PhD program in the Graduate Department of Sociology. The Student was considered to be a “lapsed” student but had been readmitted into the program after a Faculty committee determined his thesis should go forward to defense. Upon reinstatement the Student’s thesis received a negative evaluation by an external examiner and it did not pass the program’s oral examination. After failing the oral examination the Student was terminated from the program. The Student appealed the termination directly to the Graduate Academic Appeals Board which, in dismissing the appeal, concluded that the reinstatement process had not been improper. The Student claimed that the Board erred in finding that the test for re-admittance had been properly met and that the professor who oversaw his re-admittance held no intellectual and philosophical bias against him; and that the Board erred in failing to seek and obtain an independent, unbiased evaluation of the thesis and to investigate the reasons behind the negative vote of the external examiner. The Committee found that the test for re-admittance was properly set out by the Graduate Academic Appeals Board and was met in the case. The Committee found no evidence to indicate that the thesis should not have been allowed to proceed to defense. The Committee considered the Student’s version of the conversations between him and the Professor in question, and found that while the Professor may have told the Student that he was not up to expected standards, that did not establish any misconduct or actionable bias. The Committee found that the Board was not required to seek an independent evaluation of the thesis because there was no evidence that the existing evaluations were biased, done in bad faith, or otherwise improper. The thesis was already subject to an external evaluation that was highly critical. The Committee found that there was nothing put before it that undermined the forcefulness or appropriateness of the existing external evaluation. The Committee found that the Student did not provided evidence of wrongdoing by the external examiner and to conduct an investigation based solely on the Student’s claim of wrongdoing would have been inappropriate. Appeal dismissed.

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FILE: [Report #277](#)  
DATE: March 27, 2003  
PARTIES: Mr. G.S. (the Student) v. the School of  
Graduate Studies

Secretary:  
Mr. Paul Holmes, Judicial Affairs Officer

Hearing Date(s):  
February 24, 2002

In Attendance:  
For the Student:  
Mr. G.S., the Student

Committee Members:  
Professor Ed Morgan, Chair

For SGS:  
Professor Rashmi Desai, Associate Dean, School of  
Graduate Studies

Dr. Alice Dong  
Ms. Durré Hanif  
Professor Ellen Hodnett  
Professor John Furedy

Professor J.D. Lavers, Associate Chair, Graduate Studies,  
Department of  
Electrical and Computer Engineering

**School of Graduate Studies – grade appeal – Student’s performance re-evaluated by new examiner – external assessment of academic work – any possible flaws from previous evaluations cured by reevaluation – no basis for claim that the new examiner lacked qualifications – strength or fairness of the reevaluation not undermined by lower grade – new examiner acted properly in conducting independent reevaluation – no jurisdiction to re-evaluate course work and no reason to do so given new evaluator’s expertise and fairness of reevaluation process – appeal dismissed – observation that recording a conversation with a member of the university community without consent is contrary to the university’s atmosphere of good faith**

Request to change a failing course grade. The Student’s projects for the course were reevaluated twice by his course instructor. The Divisional Appeals Committee ordered that the Student’s performance be re-evaluated by a new examiner. On the reevaluation the Student received a failing mark. The Committee found that any possible flaws from the previous evaluations were cured once the reevaluation by the new examiner took place. The Committee found no basis for the Student’s claim that the new examiner lacked the qualifications to conduct the reevaluation. The Committee considered the Student’s objections to the procedures pursued by the examiner and found that the Student had not made out any case of unfairness. The Student’s lower grade in the reevaluation did not undermine the strength or fairness of the reevaluation; the new examiner was not obliged to consult with the course instructor in regards to the reevaluation; and the new examiner acted properly in conducting the reevaluation independently. The Committee considered the Student’s objection to the substance of the grade and found that it did not have the jurisdiction to reevaluate the Student’s course work, and that there was no reason to do so, given the new evaluator’s expertise and the fairness of the reevaluation process. Appeal dismissed. The Committee noted that the Student had tape recorded one of his conversations with the new examiner. The Committee observed that recording a conversation with a member of the university community without that person’s consent is contrary to the atmosphere of good faith in which the business of the university is conducted.

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FILE: [Report #291](#)  
DATE: June 14, 2004  
PARTIES: Ms T., the Appellant v. Faculty of Law

Secretary:  
Mr. Paul Holmes

Hearing Date(s):  
May 22, 2004

In Attendance:  
For the Student:  
Ms T., the Appellant  
Mr. T., brother of the appellant

Committee Members:  
Assistant Dean Bonnie Goldberg, Chair  
Professor Clare Beghtol  
Dr. Pamela Catton  
Ms Françoise Ko  
Professor Jake Thiessen

For the Faculty of Law:  
Associate Dean Tony Duggan, Faculty of Law,  
University of Toronto

**Faculty of Law – grade appeal – *aegrotat* standing, “pass” standing, or increase from grade requested – *aegrotat* standing – external assessment of academic work – delay, frustration, late instructions and lack of guidance – delay and frustration met definition of exceptional circumstances – more time to complete the assignment without delay and frustration – better performance with earlier instructions – grade inconsistent with other grades – appeal allowed – grade of “D” vacated and replaced with a grade of AEG – recommendation that the Faculty provide its faculty with information regarding orientation, evaluation methods, and the obligations of its teaching staff – unfairness related to the third party reader process – violation of procedure for a third party reader to receive extraneous comments**

Appeal from a grade of “D” in the course. The Student requested one of three remedies: “*Aegrotat*” standing; “pass” standing; or an increase from the grade of “D”. The Student elected to write an essay worth 100% of the final grade. The Student sought review of the grade through a third party reader before applying to the Faculty’s Academic Standing Committee for *aegrotat* standing in the course. The Student claimed relief based on the excessive time she devoted to

preliminary research while seeking topic approval, her frustrations in obtaining topic approval, the lack of guidance provided by the instructor in topic development and on the final topic, and the very late start date on which she had to begin writing the paper. The Committee considered the grounds upon which the Faculty awards *aegrotat* standing and found that the delay and frustration that the Student experienced met the definition of exceptional circumstances, despite no illness or a traumatic personal experience being suffered. The Committee found that due to the circumstances, the Student was unable to satisfactorily complete the requirements of a course where otherwise she would have performed successfully. Without the delay and frustration the student experienced researching topics she would have had more time to complete the assignment; with earlier instructions regarding the professor's expectations for the paper and greater supervision once the topic was approved, she would have performed better; and the grade was inconsistent with the Student's other grades awarded at the Faculty. Appeal allowed. The Committee ordered that the grade of "D" be vacated and replaced with a grade of AEG. The Committee recommended that the Faculty provide its faculty, and particularly adjunct professors, with information regarding orientation, evaluation methods, and the obligations of its teaching staff. The student also alleged unfairness related to the processes for appealing grades at the Faculty. The Student claimed that the third party reader received written information from the course professor regarding the circumstances relating to topic approval while she was not allowed to submit similar material. The Committee stated that the third party reader receiving extraneous comments was a violation of the procedure by which third party readers are meant to evaluate only the paper.

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## **DUTY TO ACCOMMODATE**

Leading Cases:	<b>254, 373, 386, 387, 409</b>
appeal allowed:	<b>254</b> ( <i>in part</i> )
appeal dismissed:	<b>373</b> ( <i>in part</i> ), <b>386, 387, 409, 416</b>

FILE: [Report #254](#)  
DATE: March 1, 2001  
PARTIES: Mr. M.M. (the Student) v UTSC

Secretary:  
Ms. Susan Girard

Hearing Date(s):  
February 8, 2001

In Attendance:  
Mr. M.M.  
Associate Dean Ian McDonald

Committee Members:  
Professor Ralph Scane, Acting Chair  
Professor Raymond Cummins  
Mr. Ljupco Gjordjinski  
Professor Olga Pugliese  
Ms. Susan Scace

**UTSC – request for deferral of final examinations – medical and religious grounds – prevented by illness from seeing doctor on day of exam – medical certificate and evidence established serious illness – subjective nature of whether attendance was “actually prevented” by illness – see provision S.B.2 of the Calendar – Faculty’s interpretation of medical certificate requirements too rigid – regulation does not prescribe that medical advice must be sought on day of missed examination – see provision S.D.3(a) of the Calendar – delay in seeking medical attention may affect weight and credibility of evidence but not determinative – minority opinion that onus to prove illness prevented writing exam not satisfied – exams conflicted with religious obligations – dates not deferred prior to exam due to examination preparation and belief that Faculty would arrange later dates – prevented from writing exams due to busy time proceeding exams and personal concerns – any lulling effect of Faculty comments overcome when exam dates were communicated – University duty to accommodate religious requirements but students must also plan lives with University calendar in mind – University fulfilled its duty by providing opportunity to avoid actual conflicts – appeal with respect to deferral of the final examination in one course allowed – appeal with respect to deferral of final examinations in three courses dismissed – failing grade in the course to be vacated and Student to be permitted to write a deferred examination in the Faculty’s period for deferred examinations**

Request for a deferral of a final examination in one course on medical grounds, and a deferral of final examinations in three courses on religious grounds. The Student claimed that he did not write the one exam because he was suffering from the flu and he was unable to leave his house on the exam date to see a doctor. He did visit his doctor 6 days after the exam. The Committee accepted the Student’s evidence as to the effect of his illness and found that the medical certificate offered adequate corroboration. The Committee observed the difficulty of enforcing the Faculty’s regulation, as described in provision S.B.2 of the Calendar, due to the necessarily subjective nature of whether attendance at an examination was “actually prevented” by illness. The Committee found that the Faculty’s interpretation of the regulation regarding requirements for medical certificates too rigid and not justified by the regulation itself. The Committee found that provision S.D.3(a) of the Calendar did not prescribe that medical advice must be sought on the day of the missed examination. The Committee observed that delay in seeking medical attention may affect the weight and credibility of evidence tendered, but that it is only one factor to be considered. A minority of the Committee found that the Student had not satisfied the onus upon him to show that he was too ill to write the exam. With respect to the request for a deferral of final examinations in three courses, the Student claimed that the scheduled dates for the examinations conflicted with his religious obligations. The Student’s petition to defer the examinations was granted and the three deferred examinations were scheduled in the two days immediately following Easter Monday. The Student claimed that he did not immediately file a petition to change the date of the deferred exams because he was busy with another examination as well as with forthcoming religious preparations, and because the Faculty had lulled him into believing that he would write the deferred examinations on a later date. Five days following the set dates for the deferred examination, the Student filed a petition for deferral on the grounds that he was unable to concentrate on the exams due to the busy time proceeding the exams and personal concerns. The Committee found that any lulling effect on the Student should have been overcome when the dates of the exams were communicated by the Faculty. The Committee observed that while the University had a duty to accommodate religious requirement by not forcing conflicts between compulsory requirements and religious holy days, students must on their part generally plan their lives with the University’s calendar in mind. The Committee found that the University fulfilled its duty by providing an opportunity to avoid actual conflict between the Student’s holy days and its examinations and that the Student chose not to avail himself of what was offered because he considered that he needed more study time than he had already provided for himself. The appeal with respect to the deferral of the final examination

in one course allowed. The appeal with respect to the deferral of the final examinations in three courses dismissed. The Committee ordered that the Student's failing grade in the course be vacated and that he be permitted to write a deferred examination in the period for deferred examinations set by the Faculty.

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FILE:	<a href="#">Report #373</a>	Secretary:	Ms. Sinead Cutt, Administrative Assistant, Office of Appeals, Discipline and Faculty Grievances
DATE:	June 5, 2014	Appearances:	
PARTIES:	Ms. R.S. (the Student) v. the School of Graduate Studies	For the Student Appellant:	Ms. Andrea Wobick, Counsel for the Student Ms. R.S., the Appellant ("the Student")
Hearing Date(s):	March 19, 2014	For the School of Graduate Studies:	Mr. Robert Centa, Lawyer for the Division Professor Jane Alderdice, Director, Quality Assessment and Governance Professor Alan Saks, Professor of Organizational Behaviour and HR Management, UTM Ms. Deborah Campbell, Access/Information Services Specialist, Robarts Library
Committee Members:	Ms. Emily Orchard (Chair) Professor Andrea Sass-Kortsak Mr. Adrian De Leon		

**School of Graduate Studies – late withdrawal without academic penalty – reinstatement in program despite failure to meet program requirements – documented personal and medical issues – appeal of some of the courses five years after the Student's initial registration – Student's last-minute submission of documents not accepted – students have a duty to make themselves aware of their rights and responsibilities and the policies of the programs – late withdrawal without academic penalty granted when the Student's already-existing circumstances significantly and unpredictably worsen – the Student's successful performance in some courses cannot be relied on to suggest that she could properly perform in all of her courses – Student not entitled to monetary relief for the Course in which she was granted late withdrawal – late withdrawal and aegrotat standing not allowed for four courses on the merits and untimeliness of the appeal – administrative errors that led to the failure of Accessibility Services to assess the Student cannot be relied upon without a temporal limit – the University cannot be expected to accommodate a condition of which it was unaware – appeal dismissed in part**

Appeal from the School of Graduate Studies' (SGS) decision to terminate the Student's enrolment in her Program, and a request for late withdrawal without academic penalty from five courses. The Student relied on her uncontested serious personal and medical problems, together with the Faculty's alleged failure to sufficiently accommodate them, as the basis for her failure to perform satisfactorily in the courses. The Student was terminated from the Program as a result of her failure to maintain a mid-B average. At issue in this case was whether the Student's disabilities were sufficiently accommodated by the Faculty and whether any alleged failure to accommodate the Student's disabilities justified the extraordinary relief of late withdrawal without academic penalty and substitution of aegrotat standing five years after the earliest courses were undertaken.

The Committee denied the Student's request to admit additional documents on the eve of the Continuation Hearing, noting that the Student's failure to make this request in a timely fashion was unreasonable (especially given that the matter was adjourned for six months).

The Committee rejected the Student's assertion that she was unaware of her right to appeal grades in various courses and that the Faculty had a duty to personally inform her of this right, emphasizing that students have a duty to familiarize themselves with their rights and responsibilities and the policies of their respective programs and to act in a timely fashion to avail themselves thereof, and further that the Student was made aware of her right to appeal in the SGS Calendar.

With respect to the first Course, the Committee found that the extraordinary relief of late withdrawal without academic penalty was warranted because the Student's already-existing circumstances became significantly more severe and could not have been reasonably anticipated by the Student. The Committee also noted that the Student's ability to perform well in other courses and her decision to drop courses before the drop date cannot be relied upon to suggest that she was well

enough to perform well in all of her courses or assess the severity of the impact of an FZ on her status in the program. The Committee stated that it did not aim to establish a precedent that would empower students to turn a wilfully blind eye to University policies only to later seek late withdrawal without academic penalty on the basis that they were unaware of such policies; students are not absolved of their obligations to familiarize themselves with relevant rights and responsibilities, even if they are entitled to special accommodation. The Committee also noted that students are not entitled to monetary refunds of courses for which they are granted late withdrawal without academic penalty.

With respect to the second, third, fourth, and fifth courses, the Committee dismissed the Student’s appeals for late withdrawal without academic penalty and aegrotat standing as untimely and without merit. [The courses were taken between Winter 2009 and Winter 2012, and though the exact circumstances differ in the reasoning for each course, the reasoning will be discussed together here.] The Committee noted its disappointment at the administrative error that led to the failure of Accessibility Services to assess the Student; however, such a failure must have a temporal limit. The Student cannot rely on that failure to explain away the FZs she received in courses taken months and years after her initial attempt to enlist the office’s support. The Student was aware of her tenuous academic and personal circumstances and ought to have sought relief in a timely fashion; there was no satisfactory explanation of her failure to inform Accessibility Services of her injuries and issues. The duty to accommodate students can only be imposed upon the University in circumstances in which it is made aware of a student’s disability. There was also no evidence to support the Student’s allegations that the Professors in one of her courses were biased against her.

The Committee concluded that the SGS’s decision to terminate the Student’s registration was entirely reasonable, particularly as the record indicated that this decision followed numerous accommodations and several clear written warnings to the Student that her academic standing was in jeopardy.

Appeal dismissed in part.

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<p>FILE: <a href="#">Report # 386</a>          DATE: August 10, 2016          PARTIES: V.S. (“the Student”) v. the School of Graduate Studies (“SGS”)</p> <p>Hearing Date(s): Wednesday, May 25, 2016 and Thursday, June 16, 2016</p> <p>Committee Members:          Emily Orchard (Chair)          Professor Paul Kingston, Faculty Governor          Ms. Susan Froom, Student Governor</p> <p>Secretary:          Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances (May 25, 2016)          Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances (June 16, 2016)</p>	<p>Appearances:          For the Student Appellant:          Mr. V.S. (“the Student”) (via Skype)          Ms. Ejona Xega, Law Student, Downtown Legal Services          Ms. Rabiya Mansoor, Observer, Downtown Legal Services (June 16, 2016)</p> <p>For School of Graduate Studies:          Mr. Rob Centa, Counsel          Professor Jay Malcolm Graduate Coordinator, Faculty of Forestry (May 25, 2016)          Professor Mohini Sain, Dean, Faculty of Forestry, (May 25, 2016 – in person; June 16, 2016 - via Skype)          Professor Sanjay Nayak, Director-General, CIPET (June 16, 2016 – via teleconference)          Ms. Deborah Paes Graduate Administrator, Faculty of Forestry (May 25, 2016)          Ms. Emma Thacker, Associate Director, Graduate Affairs, School of Graduate Studies (May 25, 2016)          Professor Luc de Nil, Vice-Dean, Students, SGS (May 25, 2016)          Ms. Josie Lalonde, Associate Director, Student Services – Student Systems and Records, SGS (June 16, 2016)</p>
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**School of Graduate Studies – dismissal from Faculty of Forestry’s Ph.D. program – undocumented illness – duty to accommodate – lack of adequate supervision not raised in timely manner — appeal dismissed**

Appeal from the SGS Graduate Academic Appeals Board’s (GAAB) decision to terminate the Student’s enrolment in the Faculty of Forestry’s Ph.D. program (the “Program”) and a request for reinstatement in the Program. The Student

alleged that his progress in the Program was impeded by ongoing illness; a lack of adequate supervision; and/or his registration in the program was terminated prematurely.

On the first ground of appeal, by the Student’s own admission, he neither told his supervisors or anyone else at the University that he continued to be unwell nor submitted any documentation to support this claim. The Student’s failure to disclose his illness absolved the Faculty of the duty to accommodate it. The Panel found that there was no evidence that the Faculty knew, or ought to have known, that the Student was sick and the Faculty could not have accommodated an illness of which it was unaware. The lack of any kind of evidence supporting an ongoing illness was fatal to the Student’s suggestion that his illness ought to have been accommodated by the Division and, ultimately, to the first ground of his appeal.

On the second ground of appeal, the lack of adequate supervision, the Panel found it telling that the first time that this ground of appeal had been raised was when the Student commenced his appeal. The Panel found that the failure to mention this issue with supervision was part of a much larger failure on the Student’s part to communicate with his supervisors about his illness, his struggles in the program, and his need for more support. The Panel refused to interfere with the GAAB’s evaluation of the Student’s performance in the absence of new evidence that might warrant the Panel’s interference.

Finally, the Panel held that while it may feel compassion towards one adversely affect by its decision, it could not modify the GAAB’s decision on this ground.

Appeal dismissed.

FILE: [Report #387](#)  
 DATE: December 1, 2016  
 PARTIES: Mr. M.M. v. the Faculty of Nursing

Appearances:  
 For the Student Appellant:  
 Ms. Rabiya Mansoor, Law Student, Downtown Legal Services  
 Ms. Jennifer Fehr, Review Counsel, Observer, Downtown Legal Services  
 Mr. Rylee Raeburn-Gibson, Observer, Downtown Legal Services  
 The Student

Hearing Date(s): November 30, 2016

Committee Members:  
 Professor Malcolm Thornburn (Chair)  
 Professor Nicholas Terpstra, Faculty Governor  
 Mr. Aidan Fishman, Student Governor

For the Faculty of Nursing:  
 Mr. Robert A. Centa, Counsel for the Faculty  
 Ms. Emily Home, Student-at-Law,  
 Professor Ann Tourangeau, Associate Dean, Academic, Faculty of Nursing  
 Dr. Francine Wynn, Director, Undergraduate Program, Faculty of Nursing  
 Professor Pamela Khan, Faculty of Nursing  
 Dr. Tanya Lewis, Director, Academic Success Centre & Accessibility Services

Secretary:  
 Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances  
 Ms. Sheree Drummond, Chair, Office of the Governing Council, Observer

**Faculty of Nursing– request to void FZ grades – duty to accommodate – appeal started after three years is too long of delay when six month limitation – grounds to extend appeal – addressing appeal on merits and timeliness not mutually exclusive – Faculty need not offer all potential accommodations to meet fairness obligations to student- academic penalty is appropriate where students are informed in clearest possible terms of deadline and consequences of failure to meet deadlines - appeal dismissed**

Appeal from two decisions of the Academic Appeals Committee (the “AAC”) of the Faculty of Nursing. The first decision denied the Student’s petition to void his FZ grades in two courses from Fall 2012. The second decision denied the Student’s petition to void his FZ grades in two courses from Winter 2014 and recommend that the Student’s registration in the BScN (nursing) program be cancelled. The Student requested reinstatement in the nursing program; voiding all FZ grades and allowing his final assignments in two of his courses to be graded and a number of alternative remedies.

The student suffered from persistent depressive disorder since the age of sixteen. In his second year of the nursing program, the Student's request to register with Accessibility Services was denied. Near the end of the Fall term of that year, the Student notified the undergraduate program chair at the Faculty of Nursing both in person and by email that he would have difficulty completing his course requirements due to mental health issues. At an ensuing meeting with the undergraduate program chair, the Student alleges that the undergraduate program chair represented that the Student had the option of receiving an incomplete grade in his two courses with outstanding assignments, of late withdrawal (WDR status) or of submitting his assignments much later, at the end of a planned leave of absence. The Student submitted a request for a leave of absence for three terms, which he was granted. The Student did not submit the required assignments for his courses and received a failing grade (FZ). When the Faculty sent a letter to notify him of his failing grades, the Student was on a leave of absence and suffering from a number of illnesses. He did not read or even open the letter until after the deadline to appeal his grades had passed.

The Student returned to the Nursing program in the Fall of 2013. Once again, he applied for accommodations through Accessibility Services and was registered in the Winter term. He retook the courses he had failed and passed them. The Student suffered another acute depressive episode that continued on to the summer of 2014. As a result, he did not complete the coursework in two other courses and was assigned incomplete grades. In the summer of 2014, the Student was informed by the Faculty that he would have to submit the outstanding assignments in those courses by 15 August in order for grades to be submitted by the deadline of 30 August. In that same letter, the Faculty made clear that should he fail to submit his assignments by the deadline, he would receive a grade of FZ, and this would result in “the termination [of his enrolment] from the program.”

The Student submitted his assignments after the August 15, 2014 deadline. The Student alleged that he misread the letter because of his then-undiagnosed ADHD. As a result of his failure to submit those assignments the Student received a grade of FZ in those courses and his registration in the nursing program was terminated.

The student took over three years to start his appeal of the grades he received from the Fall of 2012. According to the Faculty of Nursing's Undergraduate Calendar, students have six months from the time of the original decision to launch an appeal. The Committee found that the Student cannot use the fact that he chose not to read correspondence from the university as grounds for extending the deadline of his appeal. Nor was the delay justified by any potential misinformation given to him by the Faculty that his right of appeal had expired, because even if the Faculty had given him that advice, he did not begin working with counsel until a year and a half after he allegedly received that advice, and did not start his appeal more than six months after working with counsel – almost two years later. Finally, the Committee held that the Faculty had not waived any right to raise arguments of delay simply because it responded to the substance of the Student's argument in this case. It was open to the Faculty to oppose the Student's appeals on their merits as well as point out its lateness. The Faculty may insist on the administrative need to ensure timeliness while also providing the Student with substantive reasons for the dismissal of his claim in their reply.

The Committee was troubled by the fact that the Faculty of Nursing could have offered accommodations to the Student in the fall of 2012 such as assigning him grades of incomplete (INC) or granting him deferred standing (SDF) which they failed to do. The Committee also found that matters could have been dealt with more effectively had Accessibility Services granted the Student accommodations in the fall of 2012. The Committee was also troubled by the idea that the undergraduate chair may have given the Student the wrong information that he could avoid failing grades if he took a leave of absence. That said, the Committee did not find that the student was treated unfairly. Although the Student did not receive all the accommodations that might have been offered, his treatment by the Faculty of Nursing was in accordance with faculty policies and these policies were administered fairly.

For his appeals relating to course work in 2014, the Committee found that there was no suggestion that the Faculty misled him about how they would treat his case. He was informed in the clearest possible terms of the deadline for submission of his work and of the consequences of failure to do so. Given the long extension granted to the Student and the clarity of the Faculty's expectations, the Committee found that there was no basis for the suggestion that the Student was unfairly treated in this case. Appeals dismissed. The Student was appropriately awarded failing grades in four courses in the BScN program. In keeping with the standards of that program, the CoS was correct in its decision to terminate the Student's enrolment in that program.

FILE: [Report # 409](#) (2020-2021)  
DATE: August 17, 2020  
PARTIES: Mr. A.M. (“the Student”) v. University of Toronto  
Faculty of Law

Hearing Date(s):  
June 18, 2020, via Zoom

Committee Members:  
Professor Hamish Stewart, Senior Chair  
Professor Douglas McDougall, Faculty Governor  
Ms. Olivia Batt, Student Governor

Hearing Secretary:  
Mr. Christopher Lang, Director, Office of Appeals,  
Discipline and Faculty Grievances  
Ms. Krista Kennedy, Administrative Clerk and Hearing  
Secretary, Appeals, Discipline and Faculty Grievances

Appearances:  
For the Student Appellant:  
Mr. Marcus McCann, Counsel, Millard and Company  
LLP

For the Faculty of Law:  
Mr. Robert Centa, Counsel, Paliare Roland Rosenberg  
Rothstein LLP

**UT – Faculty of Law – request to return to the program on a part-time basis with appropriate accommodations – duty to accommodate to the point of undue hardship – reasonable accommodation – jurisdiction – standard of review of correctness vs reasonableness – jurisdiction cannot be created by consent (*Phillips and Phillips v. The Queen*, [1983] 2 S.C.R. 161; *Canada (Attorney General) v. Haberman*, 2000 CanLII 15802 (Fed. C.A.) – the Committee’s function does not extend to invalidating the policies of a division, even if it is of the view that those policies are flawed or unfair – *Terms of Reference Academic Appeals Committee* (“Terms”) – although the Terms do not explicitly define the standard of review, the Policy on Academic Appeals within Divisions (2005) states that the “standard of review of an academic appeal is reasonableness.” – s. 17(1) and (2) of the *Human Rights Code* (“Code”) – *Academic Accommodations Policy* – academic accommodations contribute to academic integrity by attempting to ensure that the extraneous factor of disability does not affect a student’s reported results; they are not designed to guarantee that the student succeeds – it is not contrary to the Code to refuse an accommodation that would compromise academic integrity – Student had three unsuccessful, heavily supported, attempts at completing the first year of the program – no realistic basis in which the Student would be likely to succeed in the program regardless of accommodation – dissent – allowing the Student to continue part-time is a reasonable accommodation of his disability – the Student’s history has no bearing on whether part-time studies would now be an appropriate accommodation – the majority Committee agreed with the Academic Standing Committee – appeal dismissed.**

This appeal stems from a decision of the Accommodations Committee to deny the Student the ability to resume his studies on a part-time basis. The Student appealed this decision with the Associate Dean of the Faculty which upheld the decision. The Student then petitioned to the Faculty’s Academic Standing Committee (“ASC”); the ASC dismissed his petition. The Student appeals to the Academic Appeals Committee (“Committee”). The Student is seeking an order permitting him to complete his remaining work for the first year of the program and then to resume studies at the Faculty on a part-time basis with appropriate accommodation.

A few procedural and legal issues arose at the Hearing in which the Chair reviewed and determined these without assistance of the other Committee members.

First is the issue as to whether the Committee has jurisdiction to hear or decide any issues pertaining to this matter. The Student submitted that the Committee has jurisdiction to review the decision of the ASC and the Division conceded that the Committee has jurisdiction. The Chair noted that the Faculty’s concession is not determinative because jurisdiction cannot be created by consent (*Phillips and Phillips v. The Queen*, [1983] 2 S.C.R. 161 at p. 164; *Canada (Attorney General) v. Haberman*, 2000 CanLII 15802 (Fed. C.A.) at para. 20). The Chair noted that the Accommodations Committee as well as the ASC were concerned about whether they had jurisdiction over the Student’s request. The ASC chose to proceed on the assumption that it had jurisdiction, therefore, the appeal to the Committee proceeded on the same assumption. In the Chair’s view, jurisdiction in this matter depends on the proper characterization of the Student’s request and the response by the Deans. There are three ways to characterize the request and response. First, the Student inquired into his status at the Faculty and, in response, the Dean provided the Student information about his status. In this view, there would be no application of any of the Faculty’s policies and there would be no decision to appeal from and thus, the Committee would lack jurisdiction over this matter. Second, the Student requested an accommodation and the Accommodations Committee had jurisdiction over that request even though the Student was no longer registered. In this view, the jurisdiction of the

ASC and the AAC is straightforward. Third, the Student requested an accommodation and the Accommodations Committee did not have jurisdiction over that request because the Student was no longer registered. Thus, the AAC would also not have jurisdiction. The Chair found that the AAC does have jurisdiction over this appeal on either the second or third characterization of the Student's request because the Faculty was applying its accommodation policy. Therefore, the Committee has jurisdiction over the Faculty's response to the Student's request.

The second issue relates to the appropriate standard of review. The Student requested that the Committee conduct a *de novo* review of the Faculty's response to the Student's request and determine whether that response was correct. The Chair indicated that although the Terms do not explicitly define the standard of review, the *Policy on Academic Appeals within Divisions (2005)* states that the "standard of review of an academic appeal is reasonableness." The Chair found that the issue before the Committee is the reasonableness of the decision being challenged by the Student appellant, whether or not it exercises its powers to receive additional evidence. The Chair was extremely reluctant to hold that a decision made by the ASC should be reviewed for correctness rather than for reasonableness. The Chair found that if the Committee were to adopt a standard of review of correctness there would still be a strong element of reasonableness embedded in that standard because the duty to accommodate is a duty of reasonable accommodation. The Chair found that the issue before the Committee is whether the Faculty's overall response to the Student's request was a reasonable application of the Faculty's duty to accommodate in accordance with its accommodation policy.

Lastly, the Chair addressed the University's duty to accommodate in accordance with the *Human Rights Code* (Code). The Chair outlined that the University is obligated to reasonably accommodate a person with a disability to the point of undue hardship. Section 17(1) of the Code indicates that the Student's rights would not be violated if he is "incapable" of meeting the requirements to successfully complete the academic program, however s. 17(2) of the Code would direct the Committee not to find the Student "incapable" unless his disability "cannot be accommodated without undue hardship." Whether or not academic integrity can be considered in determining undue hardship under s. 17(2), it is better considered in relation to "the essential duties or requirements attending the exercise of the right" under s. 17(1). Academic accommodations contribute to academic integrity by attempting to ensure that the extraneous factor of disability does not affect a student's reported results; they are not designed to guarantee that the student succeeds. The University should not provide an accommodation that compromises academic integrity, whether or not doing so would amount to undue hardship, because it would not be possible to fairly assess a student's performance under such an accommodation. An accommodation inconsistent with academic integrity is of no value in determining whether a student is capable of "performing or fulfilling the essential duties or requirements" of their academic program. It is not contrary to the Code to refuse an accommodation that would compromise academic integrity because, if a student is unable to succeed without such an accommodation, that student "is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability."

The Student raised two main issues in his appeal. The first is with respect to procedural fairness and the second is the duty to accommodate. The Student allegation surrounding procedural fairness was based on the fact that the Student did not get an opportunity to respond to the Faculty's submissions or attend the ASC meeting to make oral submissions, while the Faculty was. The Committee found that the Faculty did not deny the Student procedural fairness because the procedure with respect to the Student's petition was in accordance with the ASC's rules. The Committee further held that its function does not extend to invalidating the policies of a division, even if it is of the view that those policies are flawed or unfair. Therefore, for the Committee to allow an appeal on the basis that a university division had acted unfairly even though it followed its own procedures would be tantamount to invalidating that policy and, as a remedy, would require the creation of ad hoc procedures on a case-by-case basis.

The second issue on appeal is the duty to accommodate. The question before the Committee is whether the Faculty's refusal to offer the additional accommodations as requested by the Student was in accordance with its duty to reasonably accommodate his disability. The Committee was divided on whether the Faculty's decision not to grant these accommodations was a reasonable exercise of its duty to accommodate. The majority of the Committee found that over the last number of years the Faculty had provided the Student with extensive accommodations, yet despite these accommodations, the Student could not complete the first year of the program. The majority Committee agreed with the ASC that the Student "has had three unsuccessful, heavily supported attempts at completing the first-year program... There is no realistic basis which we can have confidence that [the Student] is likely to succeed in the program even if undertaken on a part-time basis."

Appeal dismissed.

FILE: [Report # 416](#) (2021-2022)  
DATE: October 29, 2021  
PARTIES: Mr. A.L. (“the Student”) v. Faculty of Medicine

Hearing Date(s):  
June 22, 2021, via Zoom

Committee Members:  
Ms. Sara Faherty, Chair  
Professor Stark Draper, Faculty Governor  
Ms. Olivia Batt, Student Governor

Secretary:  
Ms. Carmelle Salomon-Labbé, Associate  
Director, Office of Appeals, Discipline and Faculty  
Grievances

Appearances:  
For the Student Appellant:  
Mr. Faisal Bhabha, PooranLaw  
Ms. Madison Pearlman, PooranLaw  
The Student

For the Faculty of Medicine:  
Ms. Sari Springer, Littler Mendelson

**Faculty of Medicine – closed hearing – request to find that the Board of Examiners decision was unreasonable, breached procedural fairness, and was discriminatory – request to expunge records of the reports and any negative evaluation – request for monetary damages – request that the Faculty undergo disability sensitivity training – request for the Academic Appeals Committee (the “Committee”) to order an external review to investigate and report on systemic barriers for persons with disabilities in the Faculty – the Student asserted that many of the problems identified in his performance were related to his disability – Ontario *Human Rights Code* – the time frame for the decision was not unreasonable – the decisions adequately considered the arguments made by the Student – the Student was not barred from presenting his arguments about individual outcomes of the patients he treated as part of his appeal – the University has an obligation to put accommodations in place that allow students to meet academic standards, but it is not to disregard or waive those academic standards for students with disabilities – the Faculty provided the prescribed academic accommodations that were intended to allow the Student to perform up to the standards of the program – it can only be the responsibility of the Student to monitor his personal well-being and take steps to optimize medications – not the duty of the Faculty to optimize his medical treatment – this was not a sudden or peremptory dismissal – the Faculty Council Appeals Committee’s decision was a reasonable application of policies designed to safeguard patient safety, and there was no evidence of discrimination or bias in the application of these policies to the Student – Appeal Dismissed**

The Student requested a closed hearing because of “the sensitive nature of some of the evidence that may be heard during the hearing.” Since the Faculty of Medicine (“Faculty”) did not object to this request, the Chair of the Academic Appeal Committee (the “Committee”) granted the request, and the Committee held a closed hearing.

The Student appealed the decision of the Faculty of Medicine Academic Appeal Committee which affirmed the Board of Examiners’ decision to dismiss the Student from the General Surgery Residency Program. The Student’s first ground of appeal relates to whether the division followed its policies and procedures, the next two grounds focus on the reasonableness of the decision, and the remaining three grounds are framed by the Student as violations under the Ontario *Human Rights Code*.

Regarding the first ground of appeal, the Student argued that the Faculty did not provide him with written reasons for dismissing him from the program within a reasonable timeframe. The Student pointed to section 7.2 of the “*Guidelines for the Assessment of Postgraduate Residents of the Faculty of Medicine at the University of Toronto*” (“Guidelines”), which notes that a resident must be informed in writing of the decision to dismiss them from the program. The Student argued that although the Guidelines do not include an expressed deadline to communicate a decision about a dismissal, this implies that a decision must be provided within a reasonable amount of time. The Committee found that given the complexity of the case, the need for careful review, and the number of people involved in making this critical decision, the time frame was not unreasonable. Based on the foregoing, the Committee concluded that the Faculty followed its policies in regard to the decision-making about the dismissal of the Student.

In his second ground of appeal, the Student challenged the fairness and reasonableness of the Faculty’s decision in two ways. First, he asserted that the Faculty did not take into account relevant evidence because it relied on the St. Michael’s Hospital Report, which had serious deficiencies and was therefore unreliable. Second, he was convinced that the process

in front of the General Surgery Residency Program and the Board of Examiners did not adequately note individual patient records, which the Student believed were necessary in order to determine whether or not he had provided adequate care to his patients. The Committee noted that the decision from the Faculty of Medicine Academic Appeal Committee outlined that the Student's Statement of Appeal was considered as well as other documents, including the Faculty's Response, and the St. Michael's Hospital Report. The Committee believed that the Resident Program Dismissal Report would have been a more complete document if it included a section summarizing the Student's counter arguments, but the Committee could not conclude that a lack thereof meant that the Student's points had not been considered. The Committee noted that the St. Michael's Hospital Report contained a two-page synopsis that outlined the Student's explanation for his behaviour and therefore, it would not be accurate to indicate that the Student's responses were not included in the report. The Committee found that the decisions adequately considered the arguments made by the Student. Regarding the second challenge, the Student argued that the four medical files that were reviewed by the St. Michael's Hospital Report are critical evidence that show his medical decisions were not unsafe for patients, and that they are partly exculpatory because they contained evidence that other medical professionals working on the files also made errors on those days. The Committee noted that the St. Michael's Hospital Report outlined the positive outcomes for the four patients by noting that due to the deliberate intervention of others, no harm was inflicted on the patients. The Committee found that the Student was not barred from presenting his arguments about individual outcomes of the patients he treated as part of his appeal of his dismissal. It concluded that the decision-makers were free to assign to the arguments about ultimate patient outcome as much or little weight as they deemed appropriate.

The final three grounds of appeal touch on allegations that the Faculty's dismissal violated the Ontario *Human Rights Code*. The Committee discussed this ground in four parts. First, the Committee considered whether the Student's disability was appropriately accommodated by the Faculty. The Committee reviewed four letters pertaining to the Student's disability, medication regimen, and accommodations. The Committee noted that the Student's academic accommodations consistently stressed his need for close mentorship and detailed feedback. The Student argued that he did not get this. The Student further suggested that if academic performance issues can be traced back to his disability, then the Faculty cannot act on those issues because to do so is to discriminate against him on the basis of his disability. The Committee remarked that the University has an obligation to put accommodations in place that allow students to meet academic standards, but it is not to disregard or waive those academic standards for students with disabilities. The Committee noted that based on the assurances outlined in the Student's documents, the Faculty provided the prescribed academic accommodations that were intended to allow the Student to perform up to the standards of the program. The Student took the position that the development of his accommodations should have been more collaborative. The Committee agreed that an ongoing collaboration with students is preferable to occasional points of connection that was outlined by the Faculty. The Committee observed that although the evidence presented by the Student and the Faculty did not present a closely collaborative narrative, it was not possible for the Committee to determine whether that was a possibility during the years the Student was at the Faculty. The Committee noted that the quantity and quality of feedback the Student received was copious as there were many In Training Evaluation Reports ("ITERs") that document the detailed written feedback for the Student. Many comments outlined in the ITERs reference oral feedback as well. Furthermore, the comments in the ITERs created the impression that there was ongoing communication with the Student about his performance. Also, several specific comments made it clear that the authors of the ITERs were sharing their thoughts with the Student during his shifts. The Committee was of the view that the Faculty met the accommodations set forth in the Student's letters.

Second, the Committee considered whether the Faculty should have provided a shorter on-call period for the Student and whether the Student's medication regime was optimized. The Student asserted that many of the problems identified in his performance were related to his disability. He further asserted that the demanding shift schedule negatively affected his performance. Furthermore, he argued that the irritability and lack of sleep due to the shift schedule were related to his disability and therefore, should have been accommodated. The Committee noted that the Student did not have an accommodation regarding shortened shifts or longer breaks between shifts. The Committee found that the argument related to the Student's shifts was not developed or documented, and it was not possible to find that he should have been given shorter on-call periods. Furthermore, the Committee believed that the other incidents, even without the one connected to irritability, could have supported the Faculty's decision. Regarding the optimization of the Student's medication regime, the Committee noted that it is unable to rule on whether the Student's medication regime was optimized. It further noted that it can only be the responsibility of the Student to monitor his personal well-being and take steps to optimize medications. The same issues that led to the Student's removal from the program were identified for years and pointed out in multiple ITERs. If the Student believed these issues were related to his disability and could have been improved by adjustments to his treatment, then he was obligated to make those changes. It could not have been the duty of the Faculty to optimize his medical treatment.

Third, the Committee reviewed whether the Faculty was obligated to provide the Student with a new referral to the Board of Medical Assessors. The Committee noted that there was not any ongoing discussion or communication concerning the Student's medication at the time of the incidents that occasioned the Student's dismissal. The *post hoc* assertion that the Student was not properly medicated was not persuasive to the Committee. The Committee noted that the Student was consistently underperforming in his rotations and receiving feedback about his failure to meet expectations. The Committee was of the view that requesting appropriate accommodation and adhering to an appropriate health-care regime was the responsibility of the Student. The Faculty's obligation to connect students with appropriate resources was met by the Faculty when it referred the Student to Accessibility Services and Dr. Bilkey, and it could not have been responsible for monitoring the Student's medication regime. Lastly, the Committee considered whether the manner and timing of the Student's dismissal were appropriate. Upon extended review and consideration of the evidence, the Committee found that the Faculty's dismissal was years in the making. The Student suggested that prejudice against him due to his disability led the Faculty to pretend to have patient safety concerns, but those concerns were not real or severe enough to warrant the dismissal. The Student asked the Committee to infer discrimination in the decision even though it may not be apparent in the phrasing or reasoning of the decision. The Committee noted that while it was mindful of the insidiousness of discrimination, it was not willing to make such an inference in these circumstances as it can only make judgements based on evidence and clearly articulated standards. It further noted that the Student did not provide any evidence of prejudice or ill will against him. The Student further argued that the comments made in the ITERS and orally to the Student that he should consider changing medical fields was evidence of prejudice against him. The Committee noted that although it was aware that arguing that a candidate for a role is "not a good fit" can be a strategy to cover up bias, the evidence in this case supports a different interpretation because the remarks were never that he should leave the Faculty but rather that he might perform better in a different practice area. The Student finally argued that the criticism he received from other members of the medical team was a result of negative stereotyping. The Committee concluded that the medical professionals who voiced concerns about the Student's decisions and behaviour during the shifts in question could not all have been motivated by stereotypical thinking, since the complainants were not aware of the Student's disability. Further, the Committee noted that this was not a sudden or peremptory dismissal since there were multiple failed rotations in his first year, another failed rotation in the second year, more failed rotations in the third year, and an abundance of specific negative feedback, outlining the same issues.

The Student requested eight remedies: the first two ask the Committee to find that the Board of Examiners' decision was unreasonable, breached procedural fairness, and was discriminatory. The Committee, in reviewing the Faculty of Medicine's Appeal Committee decision, did not find it to be any of those. The next three requests are for the Committee to expunge records of the reports that recommended the Student's dismissal, expunge the St. Michael's Hospital Report and expunge any negative evaluations of the Student. The Committee noted that it does not have the authority to expunge those reports and evaluations. The sixth request is for monetary damages, which the Committee cannot grant. The seventh request is for the Committee to direct members of the Faculty to undergo disability sensitivity training, including specific training on how to adapt residency requirements to meet the needs of residents with disabilities. The Committee commented that although it cannot "direct" such training, it would support it. Finally, the Student asked the Committee to order an external review to investigate and report on systemic barriers for persons with disabilities within the Faculty. The Committee noted that it does not have the authority to order such a review and did not find evidence to support the argument that such a review would need to be external in order to be valid.

The decision of the Faculty of Medicine's Faculty Council Appeals Committee was a reasonable application of policies designed to safeguard patient safety, and there was no evidence of discrimination or bias in the application of these policies to the Student. Appeal dismissed.

## **THESIS SUPERVISOR APPOINTMENTS**

Leading Cases:	<b>390</b>
appeal allowed:	
appeal dismissed:	<b>390</b>

FILE: [Report #390](#) (2017-2018)  
DATE: December 4, 2017  
PARTIES: G.B. (“the Student”) v. the Toronto School of Theology (“TST”) and Graduate Centre for Theological Studies (“GCTS”)

Hearing Date(s): October 31, 2017

Committee Members:  
Professor Hamish Stewart, Senior Chair  
Professor Avrum Gotlieb, Faculty Governor  
Ms. Mama Nii Owoo, Student Governor

Secretary:  
Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

Appearances:  
For the Student Appellant:  
Mr. G.B. (the Student)  
Professor Donald Wiebe, Representative for the Student

For the School of Theology:  
Mr. Robert A. Centa, Paliare Roland Rosenberg Rothstein LLP

In Attendance:  
Professor Elizabeth Smyth, Vice-Dean, Programs, School of Graduate Studies. University of Toronto  
Professor Jaroslav Skira, Director, Eastern Christian Studies Program, Associate Professor of Historical Theology, Regis College

**UT – Toronto School of Theology – Graduate Centre for Theological Studies - removal of the chair of a Ph.D. supervisory committee – requirement that supervisors be members of a graduate Faculty – terms clear on the face of the Memorandum of Agreement – appeal dismissed**

Student appeal from a decision of the Academic Appeals Committee (AAC) of the Graduate Centre for Theological Studies (GCTS) of the Toronto School of Theology (TST), dismissing his appeal from a decision of the acting Director of the GCTS, removing the Chair of the Student’s Ph.D. supervisory committee.

The Chair of the Student’s Ph.D. supervisory committee had been removed by the acting Director of the GCTS because he refused to be appointed as a member to the GCTS. The acting Director of the GCTS was exercising her authority pursuant to Paragraph 32 of the *Memorandum of Agreement between the University of Toronto, the TST, and the TST’s Member Institutions* (in effect as of July 1, 2014), the TST’s *Guidelines for Graduate Faculty Appointments* (at p. 2) and the GCTS’s *Graduate Conjoint Degree Handbook* (at p. 1) which collectively provide that all faculty members engaged in conjoint graduate degree programs do not automatically have teaching and supervisory privileges. Faculty members must be approved by the TST Director, and be appointed as members of the GCTS. This policy is consistent with the policy at the School of Graduate Studies’ (SGS) policy that provides that no-one may serve as a Ph.D. supervisor or on a committee unless they are a member of a graduate faculty and approved by the SGS. The Committee held that these policies are clear on their face and do not permit individuals who are not members of a graduate faculty to serve on doctoral supervisory committees. The Committee found that the acting Director applied the relevant policies correctly. The Committee went on to comment that while it is possible that a policy that is clear on its face that it permits no discretion might, in practice, be applied with a measure of discretion, they found no evidence that the SGS or the TST exercises any discretion with respect to their policy on membership in a graduate faculty. Appeal dismissed.

## **EXPUNGEMENT**

Leading cases: **411**

Appeal allowed:

Appeal dismissed: **411**

FILE: [Report # 411](#) (2020-2021)  
DATE: November 26, 2020  
PARTIES: Mr. J.H. (“the Student”) v. University of Toronto  
Faculty of Applied Science and Engineering

Hearing Secretary:  
Ms. Krista Kennedy, Administrative Clerk and Hearing  
Secretary, Office of Appeals, Discipline and Faculty  
Grievances

Hearing Date(s):  
November 2, 2020, via Zoom

Appearances:  
For the Student Appellant:  
The Student

Committee Members:  
Ms. Sara Faherty, Chair  
Professor Salvatore Spadafora, Faculty Governor  
Ms. Olivia Batt, Student Governor

For the Faculty of Applied Science and Engineering:  
Professor Thomas Coyle, Vice-Dean, Undergraduate  
Studies, Faculty of Applied Science and Engineering

**UT – Faculty of Applied Science and Engineering – request to expunge transcript – appropriateness of expungement – Statement Concerning Change of Student Personal Information in Official Academic Records – Governing Council’s Transcript Policy – accuracy of academic records fundamental to the integrity of the University – Retroactive withdrawal (WDR) same impact as expungement – the integrity of an academic record must be maintained and cannot be falsified; therefore, expungement is not an appropriate remedy – decision of the Academic Appeals Board affirmed – appeal dismissed**

This appeal stems from the Academic Appeals Board of the Faculty of Applied Science and Engineering (“AAB”) decision to deny the Student’s request for an expungement of his transcript. The Student is seeking complete expungement of his transcript, removal of any evidence that he was ever enrolled at the University, and removal of seven previously granted Student Retroactive Withdrawals (“WDR”).

The AAB determined that although it was sympathetic to the Student’s circumstances, it was unable to expunge a student record and alternatively, granted the WDRs for all remaining courses on his transcript so that no grades or credits remain. Furthermore, the Division offered to provide a letter to the Student to include with his applications to other institutions explaining that the Faculty granted him a late withdrawal from all courses and that he retains no credits from the University.

The motivation for the request to expunge his transcript is the Student’s desire to start his post-secondary academic career over again at a film school. He has been in touch with various schools and he would like to apply as a freshman, rather than a transfer student. His eligibility as a freshman will determine how many years he can spend at the institution he wishes to attend; two vs four years. The Student prefers to attend for a full four years and feels his admission chances are better if he is considered a freshman. The Student relied on persuasive evidence that he was pressured to enroll in the Faculty of Applied Science and Engineering and treated harshly resulting in the Student being mentally unwell. The Student reports that he was subject to physical and emotional abuse which eventually led to an incident where police and emergency services were involved. This incident ended the Student’s term, and his transcript shows WDR for seven courses for the Winter term of that year. The Student states that the policies of the institutions he wishes to attend will treat him as a transfer student if he has any University level courses completed at another institution, however, the Committee noted that the submissions of the Student were not supported by his communications with those institutions. Ultimately, those institutions indicated that they would not treat the Student like a transfer student if he did not earn a credit at another University.

The Committee found that the Student is asking for a remedy that cannot be reasonably granted even if the Committee is able to protect the Student from academic consequences of his past enrollments, the Committee cannot require the Division to remove all traces from the Student’s record. The Governing Council’s Transcript Policy requires that an academic transcript “must include...an enrollment history, which traces chronologically the student’s participation at the University.” The Committee found that the removal of evidence that a course was attempted would be to falsify the academic record. The University can remove record of a student’s academic performance, but it cannot undo the fact that the Student was enrolled in courses at the University. Further, in the *Statement Concerning Change of Student Personal Information in Official Academic Records* outlines that “the accuracy of students’ academic records is fundamental to the integrity of the University’s academic mission.” The Student is requesting that the Committee direct the Division to remove any record of the Student at the University however, the Committee found that the University cannot erase and replace its records depending on the benefit it may provide the former student. The integrity of the academic record must be maintained and cannot be falsified; therefore, expungement is not an appropriate remedy. It would be inappropriate for the Committee to

direct the Division to grant a remedy that violates the integrity of its records. The Division has provided a remedy that has virtually the same impact as expunging the records which was a very generous application of its policies. The Committee affirms the decision of the AAB. Appeal dismissed.

## TIMELINESS / MOTIONS

Leading Cases:	266, 279, 307, 308, 310, 312, 317, 340, 348, 355, 373, 384, 387, 392, 404
appeal allowed:	266 ( <i>in part</i> ), 317 ( <i>in part</i> ), 404
appeal dismissed:	279, 308, 312, 340, 348, 355, 373 ( <i>in part</i> ), 384, 387, 392
▪ <a href="#">delay in filing petition</a> :	266, 279, 340, 355, 384, 387
▪ <a href="#">leave to file late appeal/ extend deadline for appeal</a> :	312, 317, 348, 392, 404
▪ <a href="#">request to file additional materials before hearing</a> :	373
▪ <a href="#">motion to quash appeal</a> :	308
▪ <a href="#">motion to produce information</a> :	307
▪ <a href="#">motion to exclude response</a> :	310

## DELAY IN FILING PETITION

FILE: [Report #266](#)  
DATE: May 21, 2002  
PARTIES: Ms. S.R., (the Student) v UTSC

Secretary:  
Mr. Paul Holmes, Judicial Affairs Officer

Hearing Date(s):  
April 25, 2002

In Attendance:  
For the Student:  
Ms. S.R., the Appellant (student)  
Mr. Eliot Berlin, counsel for the Appellant

Committee Members:  
Assistant Dean Jane Kidner, Acting Chairperson  
Professor Clare Beghtol  
Professor Philip Byer  
Professor Luigi Girolametto  
Ms. Geeta Yadav

For UTSC:  
Professor Ian McDonald, Associate Dean, UTSC

**UTSC – late withdrawal without academic penalty – alternative request for a notation placed on transcript – undiagnosed learning disability not known until after completion of course – post-facto request – aware of drop dates – no alternative options or assistance sought – remedy only sought for lowest mark of academic career – impossible to predict to what degree learning disability affected academic performance – notation allowed in similar circumstances – special consideration would have been afforded had learning disability been known – appeal allowed in part – appeal with respect to late withdrawal without academic penalty denied – appeal with respect to the request for a notation on transcript allowed – Student to have noted on or with transcript that the Student had an unidentified learning disability that could have entitled her to special accommodation for such tests and examinations, with respect to time allotted, location, and computer assistance provided**

Request for late withdrawal without academic penalty from one course, or alternatively that a notation be placed on her transcript stating that she had an undiagnosed learning disability at the time she took the course. The Student received a grade of D+. The Student claimed that her standing in the course was the result of an undiagnosed learning disability which she did not become aware of until approximately two years after completing the course. The Committee found that there was no suggestion by the Student that she was unaware of the drop dates for the course nor evidence as to why she did not avail herself of the option, afforded to all students who were experiencing difficulty in the course, of taking a math reprise course in place of the course. The Student acknowledged that she did not seek any academic counseling. The Committee found that the Student was only seeking late withdrawal without academic penalty for the one course at issue, the lowest mark in her academic career, and not for all the courses taken prior to the diagnosis of her learning disability. The Committee considered the other courses the Student took in the relevant time period and the nature of her learning disability and found that it was impossible to predict the degree to which the Student's learning disability had affected her academic performance. With respect to the Student's request to have a notation on her transcript, the Committee considered a case in which such a notation was allowed in similar circumstances, and the fact that the Faculty would have been given special consideration to the Student had it been aware of her learning disability, and found that the request for the notation should be allowed. Appeal allowed in part. The appeal with respect to late withdrawal from the course was denied. The appeal with respect to the request for a notation on the transcript allowed. The Committee ordered that the Student have noted on or with her transcript that during the period covered by the transcript the Student had an unidentified learning disability that could have entitled her to special accommodation for such tests and examinations, with respect to time allotted, location, and computer assistance provided.

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FILE: [Report #279](#)  
DATE: May 6, 2003  
PARTIES: Mr. M.T. (the Appellant) v. the Faculty of Arts and Sciences

Secretary:  
Mr. Paul Holmes

Hearing Date(s):  
April 7, 2003

In Attendance:  
For the Student: Mr. M.T., the Appellant

Committee Members:

For FAS:  
Professor William Michelson, formerly Associate Dean, Social Sciences

Assistant Dean Bonnie Goldberg, Chair  
Professor Sherwin Desser  
Professor Luigi Girolametto  
Professor Gretchen Kerr  
Mr. Chris Ramsaroop

Faculty of Arts and Science, University of Toronto

**Faculty of Arts and Sciences – late withdrawal without academic penalty – appeal twelve years after receiving failing grade – illness – grade could unfairly restrict opportunity to pursue academic career or further academic study – not possible to accumulate sufficient documentary evidence as to how illness affected academic performance – insufficient medical evidence – medical documentation not created at time of petition – familiarity with University procedures – minority opinion that circumstances of medical condition prevented Student from seeking assistance at the time and that oral evidence substantiated claim of illness – appeal dismissed**

Request for late withdrawal without academic penalty from one course. The Student failed the course. The Student undertook the appeal twelve years after receiving the failing grade. The Student claimed that his performance in the course was negatively affected by illness. The Student claimed that, given his subsequent academic achievement, the course grade could unfairly restrict his opportunity to pursue an academic career or further academic study. The Student requested that the Committee not require proof that his future career prospects could be negatively impacted by his failure in the course. The Committee found that only partial information about the Student's performance in the course was available for review and thus it was not possible to accumulate sufficient documentary evidence as to how the Student's performance in the course was affected by illness. The Committee found that the medical evidence presented as to the severity, nature, and impact of the Student's illness was insufficient and that the medical documentation was not created at the time the petition was made. The Committee found that the Student had sought late withdrawal from other courses during the relevant period, and was thus familiar with the University's procedures and could have addressed the impact of his illness on his academic performance at that time. The Committee observed that the Student was seeking relief for a perceived detrimental effect that could not be proved or disproved, but would, if granted, set a precedent of removing grades from transcripts, well past deadlines, well past reasonable time frames, and without sufficient supporting documentation. A minority of the Committee found that the circumstances of the Student's medical condition prevented him from seeking assistance at the time the problems occurred and that the medical documentation, with the Student's oral evidence, substantiated his claim of illness. Appeal dismissed.

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FILE: [Report #340](#)  
DATE: January 29, 2010  
PARTIES: Mr. M.S. (the Student) v. UTSC

Appearances:  
For the Student Appellant:  
M.S. (the Student)

Hearing Date(s):  
January 11, 2010

For the University of Toronto at Scarborough:  
Professor John Scherk

Committee Members:  
Professor Emeritus Ralph Scane, Chair  
Kenneth Davey  
Min Hee Margaret Kim  
Professor Ronald Kluger  
Professor Elizabeth Smyth

**UTSC – application for leave to file a late appeal – request to write deferred examination – Terms of Reference – s. 3.1.6 of Terms of Reference – appeal four years after initial appeal – request for late withdrawal from entire program – appeal dismissed**

Application for leave to file a late appeal. The appeal related to a substantive appeal from a decision approximately four years prior issued by the Subcommittee on Academic Appeals at UTSC. The Student filed a statement with respect to his intended appeal to the Academic Appeals Committee on November 24, 2008. The Committee noted the Terms of Reference which stated appeals must be made within 90 calendar days after the date of the decision. The Committee examined the issue of whether extraordinary circumstances existed which would justify an extension of time. The Student had previously petitioned and been permitted to defer Winter term examinations in 2004 to August, 2004. The

Student did poorly in those examinations resulting in low sessional GPAs, affecting the Student's cumulative GPA. The Student graduated in June, 2008 but found their overall results an impediment to hopes of entering a medical degree or postgraduate program. The Student regarded the 2004 decision to defer examinations rather than seek late withdrawal from the entire program as an error of inexperience compounded by extraordinary stress and worries about student loans. The basis of the Student's original appeal related to the Student's arrest and charge with a criminal offence. All charges against the Student were eventually dropped. The Student had always denied involvement with the crimes in question. The Student alleged that the effects of their confinement and arrest, medical problems, and the high degree of stress impeded his ability to function academically when he wrote the deferred examinations. The Subcommittee sympathized with the Student over the situation which it acknowledged the Student had no control, but found the circumstances did not justify granting the requested relief. The Student's grounds for arguing he should be permitted to proceed with an appeal at a later date were that he discussed the possibility of a further appeal with an academic advisor at UTSC after the initial appeal. The Student also stated that he was too exhausted to fight the University's decision after the initial appeal. In opposition, UTSC noted that if the substantive appeal were to be granted, the Student's examination results would have had to be vacated and replaced by a prospective rewrite of the relevant examinations, leaving the Student short of the requisite credits for their degree. The Committee found that this issue was primarily a matter for a panel considering a substantive appeal, but nonetheless considered when determining the application for leave to file a late appeal. The Committee considered that the provision for an extension of time for appeals was intended to protect against situations where appeals were not filed due to mishap or inadvertence, where genuine intention to appeal was formed within the allowed time, or where some major event of illness or other situation prevented or impeded a student's ability to appeal. The Committee found that these circumstances did not exist in the Student's case. The Committee noted that the evidence that the Student was given misleading advice regarding his appeal was insufficient to grant the remedy he sought. Appeal dismissed.

FILE: [Report #355](#)  
 DATE: April 15, 2011  
 PARTIES: C.K. (the Student) v. Faculty of Arts  
 and Sciences, Woodsworth College

Appearances:  
 For the Student Appellant:  
 C.K. (the Student)

Hearing Date(s):  
 March 10, 2011

For the Faculty of Arts and Sciences, Woodsworth  
 College:  
 Professor John W. Browne, Dean's Designate, Faculty of  
 Arts and Science  
 Cheryl Shook, Registrar, Woodsworth College

Committee Members:  
 Professor Edward Morgan, Chair  
 Professor William Gough  
 James Park

**Faculty of Arts and Science, Woodsworth College – preliminary issue of timeliness – withdrawal from course – removal of grades from transcript – Certificate Program in Business – 90 day appeal period – appeal deadlines – confidentiality – twenty year delay – appeal period – policy on appeal periods – discovery of alleged error – extension of deadline – notification of student – appeal dismissed**

Appeal of a decision of Woodsworth College to deny the Student withdrawal from two courses from a Certificate Program in Business. The appeal relates to the preliminary issue of the timeliness of the appeal. The Student was enrolled in the courses approximately twenty years prior to the appeal in the 1990-1991 academic year. Woodsworth took the position the 90 day appeal period for seeking such relief expired in November 1991 and that the matter could not be reopened. The Student stressed the need for confidentiality in the proceedings and was satisfied with the University's policy of redacting names from publicly available copies of published academic appeals. The Committee found that Woodsworth's view that the appeal period expired twenty years prior was too strict. The Committee held that, if a student had evidence there was a mistake in their transcript dating from 20 years ago and the error was only just recognized, the passage of time would not prevent the Committee from addressing the error. The Committee found, however, that the Student became aware of the problem twelve years after the courses ended in 2003. The Student acknowledged this fact. The Committee found that the Director of Professional and International Programs at Woodsworth gave the Student all the information needed to submit an appeal at that point. The Committee held that once an alleged error is discovered and a student is given a proper explanation of how to submit a formal appeal, the appeal deadline begins to run. The Committee further held that both Woodsworth and the University of Toronto at large are not open to appeals from every student for an indefinite period of time. The Committee explained that to do so

would place too great a burden on the University of Toronto’s record keeping and appeal system. The Committee concluded that the appeal period expired 90 days after the explanatory conversation the Student had with the Director of Professional and International Programs at Woodsworth twelve years after the 1990-1992 academic year. The Committee found it was on the Student to bring the appeal within 90 days at that time, and could not wait four years later to do so. Appeal dismissed.

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FILE: [Report #384](#)  
DATE: June 23, 2016  
PARTIES: Mr. A.P. (the Student) v. the Faculty of Arts and Science

Hearing Date(s):  
May 27, 2016

Committee Members:  
Professor Malcolm Thorburn, Chair  
Professor Avrum Gottlieb  
Mr. Faizan Akbani

Secretaries:  
Mr. Christopher Lang, Director, and Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Appearances:  
For the Student Appellant:  
Mr. Alex Redinger, Downtown Legal Services  
Ms. Ejona Xega, Observer, Downtown Legal Services  
Ms. Melanie Warren, Social Work Student, Downtown Legal Services

For the Faculty of Arts and Science:  
Mr. Robert A. Centa, Counsel  
Professor Adrienne Hood, Associate Professor, Department of History and Acting Associate Dean, Undergraduate, Faculty of Arts and Science  
Ms. Shelley Cornack, Registrar, University College  
Mr. Michael Nicholson, Coordinator, Student Academic Progress, Office of the Assistant Vice President

**Faculty of Arts and Science – delay in filing petition – late withdrawal without academic penalty – request to re-write an examination – anxiety issues – Student’s particular health issues did not preclude him from checking his email or from filing an appeal in a timely manner, especially given that the Student was aware that an important decision was to be released, that the Student had prior experience with these academic processes, and that there is an obligation on students to check their emails regularly – appeal dismissed**

Appeal from the Academic Appeals Board’s decision rejecting the Student’s request for a second consideration of his earlier petition for an extension of time for filing an appeal of the decision of the Faculty’s Committee on Standing (CS), which had rejected the Student’s petition requesting a re-write of his final examination in one course and late withdrawal without academic penalty from six other courses.

The Student did not withdraw from the six courses at issue before the drop date, and he subsequently missed the deadline for withdrawal through the LWD process (the last day of classes). The CS denied the Student’s petition for late withdrawal on its merits, stating that he did not present appropriate documentation nor compelling reasons why he could not withdraw in a timely manner. The CS also denied the Student’s petition for a re-write of an examination in another course, noting that this was not an available remedy for the course. The Student indicated his intent to appeal this decision, but he did not do so within the 90-day deadline. Nine months after the CS decision, the Student filed a petition requesting additional time to file an appeal. This petition was denied because of the delay.

The Student then filed a petition to the AAB for another consideration of his request for an extension to appeal the CS’s decision. The AAB denied the petition, stating that though the Student had provided evidence for a chronic health issue, the AAB did not find compelling evidence to support the Student’s assertion that he was unable to check his email around the time that the CS released the decision and that he was therefore only aware of the decision after the 90-day window had passed.

The Student then appealed to the Academic Appeals Committee. At issue in the appeal was the Student’s delays in filing his petitions. The Student did not deny that he was late; rather, he argued that his delays at each stage were reasonable given his particular health problems. The Committee took into account the fact that the Student withdrew from another course in determining that it was not reasonable for the Student not to withdraw from the six courses in a timely manner. Further, the Committee took into account the Student’s correspondence with University administrators in determining that though his anxiety would make it more difficult for him to draft an appeal, it was still reasonable to

expect him to send an email asking for an extension of time to file an appeal. The Committee concluded that the AAB was reasonable in its determination that the Student’s anxiety and associated problems did not preclude him from checking his email or from filing an appeal in a timely manner, especially given the fact that the Student was aware of the fact that an important decision was to be released, that he had prior experience with these academic processes, and that students have an obligation to check their emails regularly. Appeal dismissed.

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FILE:	<a href="#">Report #387</a>	Secretary:
DATE:	December 1, 2016	Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances
PARTIES:	Mr. M.M. v. the Faculty of Nursing	Ms. Sheree Drummond, Chair, Office of the Governing Council, Observer
Hearing Date(s):	November 30, 2016	
Committee Members:		Appearances:
Professor Malcolm Thorburn (Chair)		For the Student Appellant:
Professor Nicholas Terpstra, Faculty Governor		Ms. Rabiya Mansoor, Law Student, Downtown Legal Services
Mr. Aidan Fishman, Student Governor		Ms. Jennifer Fehr, Review Counsel, Observer, Downtown Legal Services
		Mr. Rylee Raeburn-Gibson, Observer, Downtown Legal Services
		The Student
		For the Faculty of Nursing:
		Mr. Robert A. Centa, Counsel for the Faculty
		Ms. Emily Home, Student-at-Law,
		Professor Ann Tourangeau, Associate Dean, Academic, Faculty of Nursing
		Dr. Francine Wynn, Director, Undergraduate Program, Faculty of Nursing
		Professor Pamela Khan, Faculty of Nursing
		Dr. Tanya Lewis, Director, Academic Success Centre & Accessibility Services

**Faculty of Nursing– request to void FZ grades – duty to accommodate – appeal started after three years is too long of delay when six month limitation – grounds to extend appeal – addressing appeal on merits and timeliness not mutually exclusive – Faculty need not offer all potential accommodations to meet fairness obligations to student- academic penalty is appropriate where students are informed in clearest possible terms of deadline and consequences of failure to meet deadlines - appeal dismissed**

Appeal from two decisions of the Academic Appeals Committee (the “AAC”) of the Faculty of Nursing. The first decision denied the Student’s petition to void his FZ grades in two courses from Fall 2012. The second decision denied the Student’s petition to void his FZ grades in two courses from Winter 2014 and recommend that the Student’s registration in the BScN (nursing) program be cancelled. The Student requested reinstatement in the nursing program; voiding all FZ grades and allowing his final assignments in two of his courses to be graded and a number of alternative remedies.

The student suffered from persistent depressive disorder since the age of sixteen. In his second year of the nursing program, the Student’s request to register with Accessibility Services was denied. Near the end of the Fall term of that year, the Student notified the undergraduate program chair at the Faculty of Nursing both in person and by email that he would have difficulty completing his course requirements due to mental health issues. At an ensuing meeting with the undergraduate program chair, the Student alleges that the undergraduate program chair represented that the Student had the option of receiving an incomplete grade in his two courses with outstanding assignments, of late withdrawal (WDR status) or of submitting his assignments much later, at the end of a planned leave of absence. The Student submitted a request for a leave of absence for three terms, which he was granted. The Student did not submit the required

assignments for his courses and received a failing grade (FZ). When the Faculty sent a letter to notify him of his failing grades, the Student was on a leave of absence and suffering from a number of illnesses. He did not read or even open the letter until after the deadline to appeal his grades had passed.

The Student returned to the Nursing program in the Fall of 2013. Once again, he applied for accommodations through Accessibility Services and was registered in the Winter term. He retook the courses he had failed and passed them. The Student suffered another acute depressive episode that continued on to the summer of 2014. As a result, he did not complete the coursework in two other courses and was assigned incomplete grades. In the summer of 2014, the Student was informed by the Faculty that he would have to submit the outstanding assignments in those courses by 15 August in order for grades to be submitted by the deadline of 30 August. In that same letter, the Faculty made clear that should he fail to submit his assignments by the deadline, he would receive a grade of FZ, and this would result in “the termination [of his enrolment] from the program.”

The Student submitted his assignments after the August 15, 2014 deadline. The Student alleged that he misread the letter because of his then-undiagnosed ADHD. As a result of his failure to submit those assignments the Student received a grade of FZ in those courses and his registration in the nursing program was terminated.

The student took over three years to start his appeal of the grades he received from the Fall of 2012. According to the Faculty of Nursing’s Undergraduate Calendar, students have six months from the time of the original decision to launch an appeal. The Committee found that the Student cannot use the fact that he chose not to read correspondence from the university as grounds for extending the deadline of his appeal. Nor was the delay justified by any potential misinformation given to him by the Faculty that his right of appeal had expired, because even if the Faculty had given him that advice, he did not begin working with counsel until a year and a half after he allegedly received that advice, and did not start his appeal more than six months after working with counsel – almost two years later. Finally, the Committee held that the Faculty had not waived any right to raise arguments of delay simply because it responded to the substance of the Student’s argument in this case. It was open to the Faculty to oppose the Student’s appeals on their merits as well as point out its lateness. The Faculty may insist on the administrative need to ensure timeliness while also providing the Student with substantive reasons for the dismissal of his claim in their reply.

The Committee was troubled by the fact that the Faculty of Nursing could have offered accommodations to the Student in the fall of 2012 such as assigning him grades of incomplete (INC) or granting him deferred standing (SDF) which they failed to do. The Committee also found that matters could have been dealt with more effectively had Accessibility Services granted the Student accommodations in the fall of 2012. The Committee was also troubled by the idea that the undergraduate chair may have given the Student the wrong information that he could avoid failing grades if he took a leave of absence. That said, the Committee did not find that the student was treated unfairly. Although the Student did not receive all the accommodations that might have been offered, his treatment by the Faculty of Nursing was in accordance with faculty policies and these policies were administered fairly.

For his appeals relating to course work in 2014, the Committee found that there was no suggestion that the Faculty misled him about how they would treat his case. He was informed in the clearest possible terms of the deadline for submission of his work and of the consequences of failure to do so. Given the long extension granted to the Student and the clarity of the Faculty’s expectations, the Committee found that there was no basis for the suggestion that the Student was unfairly treated in this case. Appeals dismissed. The Student was appropriately awarded failing grades in four courses in the BScN program. In keeping with the standards of that program, the CoS was correct in its decision to terminate the Student’s enrolment in that program.

## LEAVE TO FILE LATE APPEAL / EXTEND DEADLINE

FILE: [Report #312](#)  
DATE: December 5, 2006  
PARTIES: Mr. R (for the Student) v. UTSC

Secretary:  
Dr. Anthony Gray

Hearing Date(s):  
December 5, 2006

Appearances:  
For the student:  
Mr. R

Committee Members:  
Assistant Dean Kaye Joachim, Chair  
Professor Ellen Hodnett  
Professor Michael Marrus  
Ms. Estafania Toledo  
Dr. John Wedge

For UTSC  
Professor and Associate Dean, Nick Cheng

**UTSC – request for continued registration and leave to file late appeal – not initially thought to be worthwhile to file appeal – lack of written notice of 90 day deadline played no part in failure to meet deadline – effective September 1, 2006, the right to appeal to Governing Council should be clearly communicated – University Policy on Academic Appeals within Divisions – section 3.2.1 the Terms of Reference – no reasonable explanation or demonstrated exceptional circumstances for delay – request for permission to file appeal beyond the 90 day deadline refused – appeal dismissed**

Request for continued registration at UTSC and leave to extend the 90 day deadline for appeal. The notice of appeal was submitted approximately 5 months from the date of the decision of the Divisional Appeals Committee. The Student claimed that he delayed for two months in filling the appeal because, at the time he received the Divisional Appeals Committee decision, he did not initially think it was worthwhile and later he changed his mind. The Divisional Appeals Committee decision was not accompanied by written material specifically advising the Student of the deadline to appeal. The Committee found that the Student was aware throughout the process of his right to appeal to Governing Council. The Calendar and UTSC Petitions Guide for Students clearly stated the appeal process and deadlines. Thus, the lack of written material on the 90 day deadline played no part in the Student's failure to meet the deadline. The Committee noted that effective September 1, 2006, the existence of the right to appeal to Governing Council should be clearly communicated, in writing, to students for whom the appeal was denied, as stated in the University Policy on Academic Appeals within Divisions. The Committee considered section 3.2.1 the *Terms of Reference* and found that the Student did not offer a reasonable explanation nor demonstrated exceptional circumstances for the delay in filing the appeal. Request for permission to file the appeal beyond the 90 day deadline was refused. Appeal dismissed.

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FILE: [Report #317](#)  
DATE: April 9, 2007  
PARTIES: Student Appellant v. UTM

Secretary:  
Dr. Anthony Gray

Hearing Date(s):  
March 22, 2007

Appearances:  
For the Student:  
the Student Appellant

Committee Members:  
Assistant Dean Kaye Joachim, Chair  
Professor Jan Angus  
Ms. Coralie D'Souza  
Professor William Gough  
Dr. Joel Kirsh

For UTM:  
Gordon Anderson, Chair, Academic Appeals Board,  
UTM

**UTM – late withdrawal without academic penalty and leave to file late appeal – ongoing anxiety and depression – no evidence that medical condition prevented or hindered withdrawing from courses in timely fashion – impact on a Student's GPA not a reason for granting late withdrawal – unduly technical to deny leave to file a late appeal in the circumstances – medical evidence directly connected the student's medical state**

**with missing the drop deadline for two courses – Appeal allowed in part – withdrawal without academic penalty from two courses allowed – withdrawal without academic penalty from two other courses dismissed**

Request for late withdrawal from two courses due to the Student's ongoing anxiety and depression, and leave to file a late appeal to a subsequent decision of the Divisional Appeal Board denying late withdrawal from two other courses. The Committee considered the medical evidence presented and found that it did not suggest that the Student's medical condition prevented or hindered her from withdrawing from two of the courses in a timely fashion. The Committee found that the Student's claim that the subsequent lowering of her GPA was disproportionate to the "wrong" of failing to withdraw in time was not a valid reason for granting late withdrawal.

The Committee considered the Student's intention to file the notice of appeal to the Divisional Appeal Board decision denying her request for late withdrawal from two other courses and found that in the circumstances, combined with the lack of any prejudice to UTM, it would be unduly technical to deny her leave to file a late appeal. The Committee found that that the medical evidence directly connected the Student's medical state with missing the drop deadline for these other two courses. Appeal allowed in part. The Committee allowed leave to withdraw without academic penalty from two courses and denied leave to withdraw without academic penalty from two courses.

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FILE: [Report #348](#)  
DATE: October 18, 2010  
PARTIES: M.K. (the Student) v. UTM

Secretary:  
Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
October 1, 2010

Appearances:  
For the Student Appellant:  
M.K. (the Student)

Committee Members:  
Renu Mandhane, Chair  
Professor Denise Belsham  
Professor William Gough  
Dr. Sarita Verma  
Joeita Gupta

For the UTM:  
Professor Angela Langef, UTM  
Sandra Speller, UTM

**UTM – late withdrawal without academic penalty – mature student – family issue – child – no dispute of truthfulness of events – deadline – drop-date – candid and forthcoming – nature of a drop-date – nature of a deadline – allowed to take up to last day possible – extenuating circumstances – requirements of allowing late withdrawal without academic penalty – appeal allowed**

Appeal of a decision denying the Student their petition for a late withdrawal without academic penalty from two courses. The Student was a mature student and had a child during the 2008-2009 calendar year. The Student was placed on academic probation during that year and was advised by UTM not to enrol in summer courses. The Student did so despite this advice. The Student eventually withdrew from two courses, remaining in the two courses that came under review by the Committee. The Student spoke to an academic counsellor and was advised of the deadline for withdrawal without academic penalty. The Student missed the deadline. The Student submitted a petition for an extension of completion of coursework for one course the day after the deadline. Two days after the deadline, the Student withdrew their petition and petitioned for late withdrawal without academic penalty from both courses. The petitions were denied and the Student failed both courses and was subsequently suspended for one year due to their poor GPA. The Student submitted that the birth of their child and other family issues negatively affected their performance. The Committee found the Student was candid and forthcoming in their oral submissions regarding an unexpected and serious family issue that arose on the day of the deadline which resulted in the Student missing the deadline. The Committee noted that UTM had accepted that the event that occurred on the deadline date was, in fact, unexpected and serious. UTM submitted that since the Student had sufficient time to drop the courses prior to the unforeseen event and the deadline, the Student should not be granted relief. The Committee found that the very existence of a drop date or a deadline for withdrawal implies that students are entitled to wait until that very date to make their final decision. The Committee accepted that there was an unexpected and serious family issue that arose on the day of the deadline and that the Student fell into the narrow exception where extenuating circumstances required allowing late withdrawal without academic penalty. Appeal allowed.

FILE: [Report # 404](#) (2018-2019)  
DATE: June 20, 2019  
PARTIES: M.U-S. (the “Student”) v. Toronto School of Theology

Hearing Secretary:  
Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Office of Appeals Discipline and Faculty Grievances

Hearing Date(s): June 6, 2019

Appearances:  
For the Student Appellant:  
Mr. Alex Severance, Law Student, Downtown Legal Services

Committee Members:  
Professor Stephen Waddams, Chair  
Professor Mohan Matthen, Faculty Governor  
Mr. Price Amobi Maka, Student Governor

For the Toronto School of Theology:  
Mr. Robert A. Centa, Counsel, Paliare Roland Rosenberg Rothstein LLP

**Toronto School of Theology (TST) – appeal from TST decision terminating Student’s candidacy for degree of Doctor of Theology – Notice of Appeal to Academic Appeals Committee filed late – exceptional circumstances apply because TST’s own appeal committee erred in refusing jurisdiction to hear Student’s appeal – underlying purpose of exception is to prevent general rule from causing inequity – adequate notice of right to appeal not given to Student – seeking legal advice does not displace exceptional circumstances and cannot of itself create a strict new time period – appeal allowed – matter remitted to Graduate Studies Council Academic Appeals Committee**

The Student appealed from a decision of the Toronto School of Theology (TST) terminating her candidacy for the degree of Doctor of Theology.

TST communicated its decision to terminate the Student’s candidacy for the degree of Doctor of Theology by letter dated September 7, 2016. Thereafter, the Student immediately indicated a wish to appeal the decision and filed an appeal to the Graduate Studies Council Academic Appeals Committee (GSCAAC) within the prescribed time limit. The Student was then erroneously informed by letter from the Registrar dated December 15, 2016, that she was not eligible to appeal to the GSCAAC.

The Student appealed to the Academic Appeals Committee (AAC) from the decision of TST terminating her candidacy for the degree of Doctor of Theology by filing a Notice of Appeal on February 7, 2019. While TST conceded that its own appeal committee erred in refusing jurisdiction to hear the Student’s appeal, TST argued that the Student’s notice of appeal to the AAC was filed out of time.

Both parties agreed that the only issue before the AAC was the time issue. Section 3.1.6 of the AAC’s Terms of Reference stipulates that an appeal to the AAC shall, except in exceptional circumstances, be commenced by filing a notice of appeal no later than 5 pm on the ninetieth day after the date of the decision from which the appeal is being taken. Accordingly, the AAC identified the question before it as whether the words “except in exceptional circumstances” apply in this case.

The parties referred the AAC to the four-part test used in previous AAC decisions and judicial statements to determine whether the AAC should exercise its discretion and allow the Student to file their appeal beyond the 90-day time limit. The AAC noted that while these factors are relevant in many cases, they are not strict pre-requisites in all circumstances. The AAC noted that the underlying purpose of the exception must be borne in mind, that is, to prevent the strict general rule from causing an inequity. In this case, the TST erroneously led the Student to believe that there was and would be no decision of the TST appeals committee and so no decision from which she could appeal. While the policy of the University on Academic Appeals Within Divisions states that any student whose appeal has been denied must be advised of the right to appeal to the AAC, the Registrar’s letter to the Student in this case did not include any indication of a right to appeal. The AAC opined that it would be preferable in general for students to be informed individually of their right of appeal. The AAC concluded that in the exceptional circumstances of this case, where the Student was mistakenly advised that she was ineligible to appeal, adequate notice was not given to the Student of her right to appeal. The statement in the Th.D. and Ph.D. Handbook relied on by TST (stating that all Th.D. students have the right to appeal the final result of a TST appeals process to the AAC) was confusing in the particular circumstances of this case, as the

Registrar's letter did not give the appearance of being itself a decision of the 'TST' appeals committee. The AAC also stated that in its opinion, the seeking of legal advice by the Student did not displace the exceptional circumstances of this case and could not be said, in itself, to create a new strict time period.

The AAC allowed the appeal and remitted the matter to the GSCAAC.

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## REQUEST TO FILE ADDITIONAL MATERIALS BEFORE HEARING

FILE: [Report #373](#)  
DATE: June 5, 2014  
PARTIES: Ms. R.S. (the Student) v. the School of Graduate Studies

Secretary:  
Ms. Sinead Cutt, Administrative Assistant, Office of Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
March 19, 2014

Appearances:  
For the Student Appellant:  
Ms. Andrea Wobick, Counsel for the Student  
Ms. R.S., the Appellant (“the Student”)

Committee Members:  
Ms. Emily Orchard (Chair)  
Professor Andrea Sass-Kortsak  
Mr. Adrian De Leon

For the School of Graduate Studies:  
Mr. Robert Centa, Lawyer for the Division  
Professor Jane Alderdice, Director, Quality Assessment and Governance  
Professor Alan Saks, Professor of Organizational Behaviour and HR Management, UTM  
Ms. Deborah Campbell, Access/Information Services Specialist, Robarts Library

**School of Graduate Studies – late withdrawal without academic penalty – reinstatement in program despite failure to meet program requirements – documented personal and medical issues – appeal of some of the courses five years after the Student’s initial registration – Student’s last-minute submission of documents not accepted – students have a duty to make themselves aware of their rights and responsibilities and the policies of the programs – late withdrawal without academic penalty granted when the Student’s already-existing circumstances significantly and unpredictably worsen – the Student’s successful performance in some courses cannot be relied on to suggest that she could properly perform in all of her courses – Student not entitled to monetary relief for the Course in which she was granted late withdrawal – late withdrawal and aegrotat standing not allowed for four courses on the merits and untimeliness of the appeal – administrative errors that led to the failure of Accessibility Services to assess the Student cannot be relied upon without a temporal limit – the University cannot be expected to accommodate a condition of which it was unaware – appeal dismissed in part**

Appeal from the School of Graduate Studies’ (SGS) decision to terminate the Student’s enrolment in her Program, and a request for late withdrawal without academic penalty from five courses. The Student relied on her uncontested serious personal and medical problems, together with the Faculty’s alleged failure to sufficiently accommodate them, as the basis for her failure to perform satisfactorily in the courses. The Student was terminated from the Program as a result of her failure to maintain a mid-B average. At issue in this case was whether the Student’s disabilities were sufficiently accommodated by the Faculty and whether any alleged failure to accommodate the Student’s disabilities justified the extraordinary relief of late withdrawal without academic penalty and substitution of aegrotat standing five years after the earliest courses were undertaken.

The Committee denied the Student’s request to admit additional documents on the eve of the Continuation Hearing, noting that the Student’s failure to make this request in a timely fashion was unreasonable (especially given that the matter was adjourned for six months).

The Committee rejected the Student’s assertion that she was unaware of her right to appeal grades in various courses and that the Faculty had a duty to personally inform her of this right, emphasizing that students have a duty to familiarize themselves with their rights and responsibilities and the policies of their respective programs and to act in a timely fashion to avail themselves thereof, and further that the Student was made aware of her right to appeal in the SGS Calendar.

With respect to the first Course, the Committee found that the extraordinary relief of late withdrawal without academic penalty was warranted because the Student’s already-existing circumstances became significantly more severe and could not have been reasonably anticipated by the Student. The Committee also noted that the Student’s ability to perform well in other courses and her decision to drop courses before the drop date cannot be relied upon to suggest that she was well enough to perform well in all of her courses or assess the severity of the impact of an FZ on her status in the

program. The Committee stated that it did not aim to establish a precedent that would empower students to turn a wilfully blind eye to University policies only to later seek late withdrawal without academic penalty on the basis that they were unaware of such policies; students are not absolved of their obligations to familiarize themselves with relevant rights and responsibilities, even if they are entitled to special accommodation. The Committee also noted that students are not entitled to monetary refunds of courses for which they are granted late withdrawal without academic penalty.

With respect to the second, third, fourth, and fifth courses, the Committee dismissed the Student's appeals for late withdrawal without academic penalty and aegrotat standing as untimely and without merit. [The courses were taken between Winter 2009 and Winter 2012, and though the exact circumstances differ in the reasoning for each course, the reasoning will be discussed together here.] The Committee noted its disappointment at the administrative error that led to the failure of Accessibility Services to assess the Student; however, such a failure must have a temporal limit. The Student cannot rely on that failure to explain away the FZs she received in courses taken months and years after her initial attempt to enlist the office's support. The Student was aware of her tenuous academic and personal circumstances and ought to have sought relief in a timely fashion; there was no satisfactory explanation of her failure to inform Accessibility Services of her injuries and issues. The duty to accommodate students can only be imposed upon the University in circumstances in which it is made aware of a student's disability. There was also no evidence to support the Student's allegations that the Professors in one of her courses were biased against her.

The Committee concluded that the SGS's decision to terminate the Student's registration was entirely reasonable, particularly as the record indicated that this decision followed numerous accommodations and several clear written warnings to the Student that her academic standing was in jeopardy.

Appeal dismissed in part.

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FILE: [Report #392](#) (2017-2018)  
DATE: December 11, 2017  
PARTIES: L.R. ("the Student") v. the University of  
Toronto, Mississauga (UTM)

Hearing Date(s): November 1, 2017

Committee Members:  
Mr. John Monahan (Chair)  
Professor Jan Mahrt-Smith, Faculty Governor  
Mr. Aidan Fishman, Student Governor

Secretary:  
Mr. Christopher Lang, Director, Appeals, Discipline  
and Faculty Grievances

Appearances:  
For the Student Appellant:  
Mr. L.R. ("the Student")  
Mr. Robert Sniderman, Law Student, Downtown  
Legal Services  
Ms. Jennifer Fehr, Staff Lawyer, Downtown Legal  
Services

For the UTM:  
Mr. Rob Centa, Counsel, Paliare Roland  
Ms. Emily Home, Counsel, Paliare Roland  
Professor James Davis, Associate Professor Teaching  
Stream  
Mr. Don MacMillan, Faculty Registrar

**UTM – entitlement to have examination re-read performed by external examiners using clean copies of the exam – time limits to file an appeal – time limit started at the time the Student learned of the issue to be appealed – time limit paused when circumstances outside of the Student's control interrupt his ability to proceed with an appeal – discretionary power to extend a time limit not exercised because lack of evidence of continuing intention to pursue an appeal – no evidence that examination re-read policy applied unfairly – appeal dismissed**

Student appeal of the manner in which his examination re-reads were performed. The Student had successfully been granted an examination re-read for two courses by the Academic Appeals Board. The Student claimed that that the re-

reads were performed in an unfair manner because they were not both conducted by external examiners and because neither involved the use of clean copies of his exams. The Student asked the Committee to grant him the remedy of obtaining re-reads of clean copies of both examinations by Faculty professors other than those who originally taught him the courses.

The Committee dismissed the Student's appeal because it was not brought within the Faculty's policy which provides that appeals must be filed within ninety days of the date of the notification of the Faculty's final decision (*Undergraduate Calendar, Engineering, Part XII.2*). The Committee found that the 90-day-time limit became effective when the Student was aware that both of his exams would be re-marked by the same instructors who had marked them in the first place, and that clean copies of the exams would not be used. Having started once the Student learned that his exams would not be re-marked by external examiners using clean copies, the time limit was temporarily suspended in a number of circumstances including: (1) when a University staff member advised the student to hold off filing an appeal until they could meet in person; (2) the period of time between the Student's initial contact with legal counsel and learning that they could not represent him; (3) and for one week after a period where the Student experienced serious medical issues and a hospitalization. Even with these periods of suspension, the Student still filed his appeal well-outside of the required 90-day time limit.

In whether to exercise its discretionary powers to grant an extension of the 90-day time limit in this case, the Committee was referred to the *Canada (Minister of Human Resources Development) v. Gattellaro* [2005] F.C.J. No. 1106, which provides that the discretion should be exercised by considering four factors : (1) A continuing intention to pursue the application or appeal; (2) a reasonable explanation for the delay; (3) the matter discloses an arguable case; and (4) there is no prejudice to the other party in allowing the extension. While the Committee found that there was a minimal amount of prejudice in granting the extension and that there was an arguable case for the Student (given the divergent practices regarding examination re-reads across faculties), there was no evidence that the Student had a continuing intention to pursue the application or a reasonable explanation for the delay in filing (beyond those causes for which the time limit was extended, discussed above). The Committee declined to exercise its discretion to extend the time period in this case. The Student's appeal was dismissed on the grounds of a lack of timeliness.

The Committee went on to hold that even if the appeal were heard on its substantive merit, the appeal would be dismissed. Though other Faculties (including the Faculty of Arts and Science and the School of Graduate Studies) have their own faculty-specific policies regarding examination re-reads, for the Faculty of Applied Science and Engineering the *University Assessment and Grading Practices Policy* is silent on the matter of who should perform re-reads and whether or not they are given clean copies to review. There was no evidence that the relevant policy was applied unfairly, with partiality, or inconsistently by the Faculty in this case. Appeal dismissed.

## MOTION TO QUASH APPEAL

FILE: [Report #308](#)  
DATE: February 3, 2006  
PARTIES: the Student Appellant v. Faculty of  
Medicine

Hearing Date(s):  
January 24, 2006

Committee Members:  
Professor Emeritus Ralph Scane, Senior Chair  
Professor Glen Jones  
Professor Michael Marrus  
Professor Ian McDonald  
Mr. Mahadeo Sukhai

Secretary:  
Mr. Anthony Gray, Judicial Affairs Officer

In Attendance:  
For the Student Appellant:  
Mr. Robert Wakulet (Counsel)  
For the Faculty of Medicine  
Ms Sari Springer (Counsel)

**Faculty of Medicine – motion to quash appeal – undue delay and want of prosecution – termination from residency programme in plastic surgery – belief that there was no urgency in filing the material referred to in the Notice of Appeal – depression and personality disorder – Acting Secretary’s response clearly indicated no hearing date would be fixed until complete submission were received – surrounding circumstances did not remove prima facie unreasonableness for delay – medical reports did not explain delay in proceeding – intention to proceed with appeal abandoned – Faculty and Governing Council under no duty to press matter – excessive delay prejudiced Faculty response – Faculty evidence vulnerable to challenge due to delay – Motion granted – Appeal quashed for excessive delay in prosecution – Divisional Appeals Committee decision stands as final decision of University**

Motion brought by the Faculty of Medicine to quash, on the grounds of undue delay and want of prosecution, an appeal brought by the Student from a decision to terminate the Student from the residency programme in plastic surgery. The Student appealed the Faculty’s decision on medical grounds. The Student tendered medical reports, as evidence on the substantive appeal and in response to the motion brought by the Faculty, which indicated that the Student was suffering from depression and a personality disorder. The Student claimed that the wording of the form of notice of appeal lulled the Student into a belief that there was no urgency in filing the material referred to in his Notice of Appeal and that he could wait until a hearing date was fixed. The Committee found that the Acting Secretary’s response to the Student clearly indicated that she would await the complete submission of the Student before fixing a hearing date. The Committee considered the medical reports and the Student’s Statement of Appeal and found that the surrounding circumstances did not remove the prima facie unreasonableness for the delay between the original filing of the Notice of Appeal and the filing of documents referred to in that notice which were required to proceed with a hearing. The symptoms described in the medical reports did not explain or justify the delay in proceeding and the fact that the Student focused on preparing a successful application to Queen’s University during the relevant period indicated that had he abandoned his intention to proceed with his studies in plastic surgery, and the appeal. The Committee found that the Faculty was under no duty to the Student to press the matter, nor was the Governing Council Office. The Committee found that the Faculty was prejudiced in making any response to the substantive appeal by the excessive delay. The Faculty’s complaints against the Student which led to his termination stemmed from behavioural issues in a clinical setting, the evidence of which was particularly vulnerable to challenge due to the long delay. Motion granted. Appeal quashed for excessive delay in prosecution. The Committee ordered that the decision of the Divisional Appeals Committee stand as the final academic appeal decision of the University.

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## MOTION TO PRODUCE INFORMATION

FILE: [Report #307](#)  
DATE: January 23, 2006  
PARTIES: the Student Appellant v. the Faculty of Applied Science and Engineering

Hearing Date(s):  
January 19, 2006

Committee Members:  
Assistant Dean Bonnie Goldberg, Chair  
Dr. Pamela Catton  
Professor Yuki Johnson  
Dr. Joel Kirsh  
Ms Coralie D'Souza

Secretary:  
Dr. Anthony Gray

In Attendance:  
For the Student:  
the Appellant  
Mr Ronald Bohm, counsel for the appellant

For the Faculty of Engineering:  
Mr Rob Centa, counsel for the Respondent, the Faculty of Applied Science and Engineering  
Ms Barbara McCann, Registrar, Faculty of Applied Science and Engineering  
Professor Kim Pressnail, Applied Science and Engineering  
Ms Ella Lund-Thomsen, Counsellor, Faculty of Applied Science and Engineering

**Faculty of Applied Science and Engineering – request to increase grades from examination period – alternative request to increase sessional average and for courses taken in following term be counted – grade appeal – illness before and during exam period – remedy of assessed grade appealed – Student charged under *Code of Behaviour on Academic Matters* – Student allowed to attend courses pending resolution of charges and appeal – motion to compel the University to produce information not considered because information not relevant – minority opinion that information was relevant but satisfied that Faculty provided sufficient information – observation that Faculty is ill-advised to allow a student to continue in a program, when contesting a Faculty decision that the student has not met academic standards – Committee troubled by Faculty policy of assessed or inferred examinations – Faculty policy applied fairly and properly – Faculty took into account illness – Committee does not add percentages to grades to unlock academic barriers – Faculty provided constructive relief – appeal dismissed – remedy of retroactive withdrawal without academic penalty from the term restored – recommendation that Faculty arrange academic accommodations**

Request to increase the grades from the examination period by 10%. In the alternative, The Student requested that his sessional average be increased 1.8% to obtain the requisite 60%, so that he could proceed to fourth year, and that the five courses he took in the following term be counted. The Student had become ill with acute maxillary sinusitis before and during the exam period. The Faculty granted the student assessed grades for the exams written and not written during the term. Following allegations that the Student committed an academic offence during a mid-term examination, the Student submitted a second petition to the Faculty, on the grounds of the academic sanction imposed and personal and financial concerns. The Faculty had granted the Student retroactive withdrawal from the term. The Student chose not to accept that remedy, appealing the decision and refuting the imposition of the academic sanction. Accordingly, the Faculty charged the Student under the *Code of Behaviour on Academic Matters*. The Faculty allowed the Student to attend courses pending the resolution of the charges under the *Code* and the appeal. The parties agreed that if the appeal was dismissed, the student would receive no credit for the courses. The Student brought a motion for an order compelling the University to produce additional information about the student's performance in the courses he was taking pending the resolution of his appeal, and an adjournment to consider the information. The Committee deliberated *in camera* regarding the relevance of the grades. The Committee found that the student's academic performance subsequent to the events at issue in the appeal were not relevant and therefore there was no need to compel the production of the information or to make a determination as to whether the agreement between the parties was followed. A minority of the Committee found that the grades were relevant to the deliberations, but was satisfied with the information provided by the Faculty. The Committee observed that it was an ill-advised interim arrangement for a student to be allowed to continue in a program when contesting a Faculty decision that he has not met its academic standards. The Committee found that the Faculty took into account the Student's illness through its formula and its adherence to its own guidelines and provided the relief it would provide to any other student in the program. The Committee stated its discomfort with the mechanistic nature of assessing grades by formula when a student is unable to perform due to reasons beyond his control. The Committee stated that it was troubled that the Faculty persists in providing accommodation in the form of assessed or inferred examinations rather than supplemental examinations, but found that

the Faculty applied its policy fairly and properly in regard to this accommodation. The Committee found that in the normal course of its duties, it does not add percentages to grades to craft an average that would unlock an academic barrier to proceeding in a program. With reference to the second petition, the Committee found that, in revisiting its original decision, the Faculty provided constructive relief to the Student. Appeal dismissed. Divisional remedy of retroactive withdrawal without academic penalty from the term affirmed. The Committee ordered that the Student was to receive no credit for the courses taken in the following term. The Committee recommended that the Faculty arrange academic accommodations for the Student given that he had missed the first few weeks of the term.

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## MOTION TO EXCLUDE RESPONSE

FILE: [Report #310](#)  
DATE: September 29, 2006  
PARTIES: The Student Appellant v UTSC

Secretary:  
Dr. Anthony Gray

Hearing Date(s):  
September 1, 2006

In Attendance:  
For the Student:  
The “Student”  
Mr. Roland Luo (Counsel for the Student)

Committee Members:  
Assistant Dean Kate Hilton, Chair  
Professor Brian Corman  
Professor Glen Jones  
Professor Ellen Hodnett  
Ms. Johanna Weststar

For UTSC:  
Associate Dean Nick Cheng, UTSC

**UTSC – request to re-write final examination – physical illness – poor instruction – additional materials filed following Notice of Appeal – motion to exclude Faculty response denied – evidence submitted did not merit relief based on medical grounds – no jurisdiction to assess quality of instructor – classroom performance of a particular instructor constitute grounds for academic appeal only where a student was differentially disadvantaged – no conclusive evidence that instruction was inadequate – no reason to conclude that instruction had had differential impact – appeal dismissed**

Request to re-write the final examination in one course. The Student claimed that she had received poor instruction and that at the time of her final examination she was suffering from nausea and dizziness. The Student’s physical illness was raised for the first time in the Notice of Appeal to the Committee. With the Committee’s permission, the Student filed additional materials in support of her appeal following the original Notice of Appeal. The Student brought a motion to exclude the Faculty’s response to the Student’s additional materials on the grounds that the Faculty had failed to deliver the response within the agreed-upon timelines. The Committee denied the motion on the grounds that all applicable timelines had been complied with and that there was no prejudice to the Student. The Committee considered the Student’s medical certificate and oral evidence with respect to her physical and mental state, and the Faculty’s policy on rewriting a final exam based on medical grounds and found that the evidence submitted did not meet the standard required to merit relief. The Committee noted that neither it, nor the Divisional Appeals Committee, has the jurisdiction to assess the quality of a particular instructor and that allegations concerning the classroom performance of a particular instructor (even if substantiated) would constitute grounds for an academic appeal only in rare situations where a student could demonstrate that he or she was differentially disadvantaged, relative to the other students in the class. The Committee found that that there was no conclusive evidence submitted that the instruction was inadequate and no reason to conclude that the instruction had had a differential impact on the Student relative to her fellow classmates. Appeal dismissed.

## ALLEGATION OF BIAS / PROCEDURAL FAIRNESS

Leading Cases:	265, 272, 290, 297, 321, 367, 370, 382, 393, 403
appeal allowed:	265, 297, 393 ( <i>in part</i> )
appeal dismissed:	272, 290, 321, 367, 382, 389, 403
▪ <a href="#">Bias regarding evaluations:</a>	290, 297, 321,
▪ <a href="#">Procedural fairness of evaluations:</a>	265
▪ <a href="#">Fairness of Divisional appeals decision:</a>	272, 297, 367, 370, 382, 403
▪ <a href="#">Adequacy of Reasons</a>	367, 389, 393

## BIAS RELATING TO EVALUATIONS

FILE: [Report #290](#)  
DATE: February 2, 2004  
PARTIES: Ms. L. (the Student) v. The School of  
Graduate Studies

Secretary:  
Mr. Paul Holmes, Judicial Affairs Officer

Appearances:

Hearing Date(s):  
December 3, 2003

For the Student:  
Ms. L. (the “Student”)

Committee Members:  
Assistant Dean Jane Kidner, Chair  
Professor Phil Byer  
Professor John Furedy  
Professor David Jenkins  
Mr. Adam Watson

For SGS:  
Professor Joan Cherry, Associate Dean, Division II  
(Social Sciences), SGS  
Ms. Jane Alderdice, Coordinator, Policy, Program and  
Liaison, SGS  
Professor Anne Jordon, Associate Chair, Department of  
Curriculum, Teaching and Learning (the “Graduate  
Department”), OISE/UT

**School of Graduate Studies – request for examination to be remarked by external examiner – *Procedural Guide for Externally Rereading an Examination* – capacity of examiners challenged – allegations of personal and generalized bias – no jurisdiction to assess correctness of exam marks or competence of examiners unless reasonable apprehension of bias – no evidence of personal bias – examiners did not know Student’s identity or status – no evidence of generalized bias – collective mindset against acceptance of Student’s theoretical approach improbable – minority opinion that discrepancy between prior marks and failure on exam, and potential lack of specific math expertise of faculty cause for concern – minority opinion that letter from Faculty to Chair of Graduate Department Student Appeals Committee attempted to intimidate Student – appeal dismissed**

Request to have a comprehensive examination remarked by an external examiner in accordance with the Faculty’s *Procedural Guide for Externally Rereading an Examination*. The Student challenged the capacity of the examiners to properly evaluate her approach to the questions, asserted that her answers had not been read fully and carefully, claimed that the examiners displayed an incomplete and distorted knowledge of the literature, and had distorted what she said in her answers. She also asserted that there was a generalized bias against her “scientific” approach, and a personal bias against her on the part of one or more examiners, both of which were operating against her and which contributed to the result on the exam. On the issues of the substantive correctness of the assessments of the exam, the Committee found that it was not the job of the Committee to assess the correctness of exam marks or the competence of the University’s examiners. The Committee agreed with the reasons of the Graduate Academic Appeals Board that “unless there is something, such as a reasonable apprehension of bias, to cause a failure of confidence in what has been done, the assessment process must come to an end.” On the issue of personal bias, the Committee found no evidence to suggest that the faculty who marked the Student’s exam knew her identity, and found no evidence to substantiate an allegation of bias based on the Student’s status. On the issue of general bias, the Committee found it improbable that the faculty possessed a collective mindset against the acceptance of the Student’s theoretical approach, and no evidence was presented to support the claim. A minority of the Committee stated that it was concerned with the discrepancy between the Student’s prior marks on her coursework and her failure on the comprehensive exam, and with the potential lack of specific math expertise of the faculty who marked the Student’s exam. The minority observed that a letter from the Faculty to the Chair of the Graduate Department’s Student Appeals Committee appeared to be an attempt to intimidate the Student. Appeal dismissed.

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FILE: [Report #297](#)  
DATE: May 9, 2005  
PARTIES: Ms. P (the Student) v. OISE/UT

Secretary:  
Mr. Andrew Drummond

In Attendance:  
For the Appellant:  
Ms. K. Roach (Counsel)

Hearing Date(s):  
April 26, 2005

Committee Members:

Prof. Emeritus Ralph Scane, Chair  
Prof. Clare Beghtol  
Mrs. Shari Graham Fell  
Mr. Stefan Neata  
Prof. Ian McDonald

Ms. P. (the Student)

For OISE/UT:  
Ms. R. Cambell (Counsel)  
Ms. L. Cowin  
Mr. J. Mazurek

**OISE/UT – request to repeat *practicum* session – first and second *practicum* sessions failed – performance affected by illness – allegation of bias – classroom skills adversely affected by illness – supervisors did not have opportunity to consider or mitigate effects of illness – Associate teacher was aware of failure of first *practicum* session – appropriate test of bias is “whether a reasonably informed bystander could reasonably perceive bias on the part of the adjudicator” – knowledge of previous failure might predispose adjudicator failing student again – same faculty advisor in both *practicums* – threshold test met for reasonable apprehension of bias – appeal allowed – minority opinion that but for the effects of illness the Student would still not have been able to overcome the defects in classroom performance and that flaws in the Student’s performance were already a matter of serious concern before the Student’s failure in the first *practicum* became known – appeal allowed – failure in the second *practicum* vacated and the Student allowed to repeat it – recommendation that the Faculty reconsider its appeal process regarding *practicums***

Request to repeat the second *practicum* session. The Student failed the first and second *practicum* sessions and therefore failed the year in the B.Ed programme. The Student claimed that her performance was adversely affected by her diabetes, which was diagnosed part way through the course, and that there was a lack of procedural fairness in her assessment, as the Associate teacher evaluating her discovered halfway through the *practicum* session that the Student had failed the earlier *practicum* session. The Committee considered the Student’s medical condition and found that her classroom skills were adversely affected by the effects of her illness and that her supervisors did not have the opportunity to consider or take steps to mitigate these effects. The Committee found that had the Student not been suffering from the fatigue associated with diabetes, she may have been able to pass the *practicum*. The Committee considered the allegation of bias and found that the Associate teacher was aware that the Student had failed the first *practicum* session, and that as per the Divisional Appeals Committee Decision, there should always be two independent assessments of a teacher candidate. The Committee stated that it is not necessary for the Student to prove, or for the Committee to find, that bias actually existed and entered into the decision to fail the Student in order to allow the appeal. The appropriate test approved by courts is “whether a reasonably informed bystander could reasonably perceive bias on the part of the adjudicator.” The Committee stated that an adjudicator’s knowledge of a previous failure might positively predispose the adjudicator to finding negative factors to justify failing the student again and discourage him or her from advancing positive arguments in favour of the student as forcefully as he or she might otherwise do. In addition to the Associate teacher, the Committee found that the faculty advisor in the second *practicum* was also the faculty advisor in the first *practicum*. The Committee found that the combination of these two sources of possible bias, operating in the assessment of a student whose then relevant skills would not provide much margin over a minimum pass and which were adversely affected by her illness, met the threshold test for reasonable apprehension of bias. A minority of the Committee found that, but for the effects of the illness on the Student’s performance, she would still not have been able to overcome the defects in her classroom performance and that the flaws in the Student’s performance during the second *practicum* were already a matter of serious concern before the Student’s failure in the first *practicum* became known. Appeal allowed. The Committee ordered that the failure in the second *practicum* be vacated and that the Student have the opportunity to repeat the *practicum* during the next round. The Committee stated its concern regarding the Faculty’s appeal process which does not allow a student appealing a failed first *practicum* to continue to the second until the appeal is determined. The Committee stated that it did not wish to form a conclusion on the matter but recommended that the process be reconsidered because it appears to create a financial disincentive to the exercise of a right to appeal.

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FILE: [Report #321](#)  
DATE: February 19, 2008  
PARTIES: Mr. J.V. (the Student) v. Graduate  
Department of Architecture, Landscape  
and Design

Hearing Date(s):  
December 10, 2007

Committee Members:  
Professor L. Sossin (Chair)  
Mr. Ken Davy (Student)  
Professor Ellen Hodnett  
Professor Joel Kirsh  
Professor Louise Lemieux-Charles

Secretary:  
Ms. Nancy Smart, Judicial Affairs Officer

Appearances:  
For the Student Appellant:  
Mr. J.V. (the Student)  
For the Graduate Department of Architecture,  
Landscape and Design:  
Professor J. Danahy  
Professor E. Kesik

**Graduate Department of Architecture, Landscape and Design – course grade appeal – instructor bias – no basis to question instructor’s overall assessment of the Student’s participation – no unfairness where same grading scheme was applied to all students, and not contrary to any information provided to students – no credible basis in the evidence presented for allegation of bias – appeal dismissed**

Appeal from a grade of B- in a course and from a grade of B in another course. The grounds of the appeal related to alleged bias of the courses’ instructor. The Student disputed a failing grade of 50% which had been assigned to the class participation mark, worth 5% of the total course mark, and a B grade in the fourth assignment worth 40% of the of the total course mark. The Student believed that his grade in one of the courses was not calculated properly. The Committee upheld the majority of the Divisional Appeal Board’s finding that the instructor’s recollection was sufficient for the purposes of the participation grade. The Committee found that there was no basis to question the instructor’s overall assessment of the Student’s participation. The Committee agreed with the majority of the Divisional Appeal Board that the issue regarding the calculation of the grade was one of consistency and equity to all students. The Committee found that if the same grading scheme was applied to all students, and was not contrary to any information provided to students, then no unfairness could arise in relation to the Student. The Committee accepted the Divisional Appeals Board finding of no evidence of bias on the part of the instructor, finding that there was no credible basis in the evidence presented for the Student’s view that he had been treated unfairly. Appeal dismissed.

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## PROCEDURAL FAIRNESS OF EVALUATION

FILE: [Report #265](#)  
DATE: April 25, 2002  
PARTIES: Mr. Z.B. (via tele-conference) v. Faculty of Law

Secretary:  
Ms. Susan Girard, Acting Secretary

In Attendance:  
For the Appellant: Mr. Z.B. (via telephone conference)  
For the Faculty of Law: Professor Mayo Moran,  
Associate Dean, Faculty of Law

Hearing Date(s):  
April 1, 2002

Committee Members:  
Professor Richard Powers, Interim Chair  
Professor Clare Beghtol  
Professor Sherwin Desser  
Professor David Jenkins  
Mr. Kashif Pirzada

**Faculty of Law – appeal of a grade for course work – Interim Chair appointed, pursuant to *Terms of Reference* – independent review of paper – instructor’s original grade and reasons included in rereading process – bias – fairness in process and appearance of fairness in process of equal consideration – process not at arm’s length – failure to provide level of fairness consistent with claim of Faculty – appeal allowed – independent review of paper to be conducted by minimum of two reviewers, selected from outside the Faculty, and who receive only the paper, the course description and an explanation of the requirements for the paper – average of grades received from the two independent reviewers to determine the Student’s final grade for the paper.**

Appeal of a grade received on an essay submitted in one course. An Interim Chair was appointed, pursuant to *section 1* and *section 3(a)(iii)* of the *Terms of Reference*, to preside at the appeal. The Student had received a grade of “C” on a course paper. The Student appealed the grade and an independent review of the paper was completed. The independent reviewer received the paper, the reasons for the appeal and the original comments made by the course instructor relating to the grading of the paper. The independent reviewer concluded that the course instructor’s grade was reasonable. The Committee considered the Faculty’s appeals procedures and found that the rereading process was not an “impartial” and “independent” process because the inclusion of the instructor’s original grade and reasons potentially biased the proceedings. The Committee observed that fairness in the process and the appearance of fairness in the process is of equal consideration. The Committee found that in reviewing the Student’s paper, the independent reviewer was judging the efforts of one of his colleagues. The Committee stated that it was not determining that the independent reviewer was biased in favour of his colleague but it found that the process was not at arm’s length and therefore failed to provide a level of fairness consistent with the Faculty’s claim that it was “in accord with fairness”. Appeal allowed. The Committee ordered that an independent review of the Student’s paper be conducted by a minimum of two reviewers, selected from outside the Faculty, and that the reviewers should receive only the paper, the course description and an explanation of the requirements for the paper. The average of the grades received from the two independent reviewers was to determine the Student’s final grade for the paper.

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## PROCEDURAL FAIRNESS OF DIVISIONAL DECISION

FILE: [Report #272](#)  
DATE: November 28, 2002  
PARTIES: Ms. M.K. (the Student) v. UTSC

Hearing Date(s):  
November 19, 2002

Committee Members:  
Professor Ed Morgan, Chair  
Professor Sherwin Desser  
Professor Cheryl Misak  
Mr. Chris Ramsaroop  
Professor John Wedge

Secretary:  
Mr. Paul Holmes, Judicial Affairs Officer

In Attendance:  
For the Student:  
Ms. M.K. (the Student)  
Ms. Soma Choudhury, Downtown Legal Services  
Ms. Erica Toews (observing), Faculty of Law

For UTSC:  
Professor Ian McDonald, Associate Dean

**UTSC – request to write a deferred examination – student visited dying family member abroad – had family member died then conditions for “special considerations” would be met and petition granted – see Faculty’s policy on deferred exams – reasonable to consider visit to dying family member to be equally appropriate “special circumstance” – not in position to predict course of family member’s fatal illness – need to travel abroad a factor beyond Student’s control – Divisional Appeals Committee did not have complete information before it – Divisional Appeals Committee was under mistaken impression that the Student was failing course – error sufficient to undermine fair process – appeal allowed – Student permitted to write deferred examination in course**

Request to write deferred examination. The Student claimed that she was unable to write the exam because she had left Canada to visit with her dying grandmother. The Faculty advised the Committee that had the Student’s grandmother died prior to the exam the conditions for special considerations, as described in the Faculty’s policy on deferred exams, would have been met and the Student’s petition would be granted, but that the same conditions were not met for a visit to the grandmother in advance of her death. The Committee found that if a visit abroad in the event of a grandparent’s death constituted an appropriate “special circumstance” for a deferred exam, then it was reasonable to consider a visit to a dying grandparent to be an equally appropriate “special circumstance”. The Student was not in a position to predict the precise course of her grandmother’s fatal illness and her need to travel abroad just prior to the exam was a factor beyond her control. The Committee observed that if the Divisional Appeals Committee had had the complete medical diagnosis of the Student’s grandmother before it when it heard the appeal it may have come to a different conclusion. The Committee found that the Divisional Appeals Committee was under the mistaken impression that the Student was failing the course at the time of her departure from Canada and that the error was sufficient to undermine the fair process of the appeal. The Committee observed that the exercise of the Divisional Appeals Committee’s judgment would be tainted by misinformation about whether the petitioner is passing or failing the course for which special consideration is being requested, and found that the Student had a right to a hearing by the Divisional Appeals Committee with her accurate academic record before it. Appeal allowed. The Committee ordered that the Student be permitted to write a deferred examination in the course.

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FILE: [Report #297](#)  
DATE: May 9, 2005  
PARTIES: Ms. P (the Student) v. OISE/UT

Hearing Date(s):  
April 26, 2005

Committee Members:  
Prof. Emeritus Ralph Scane, Chair  
Prof. Clare Beghtol  
Mrs. Shari Graham Fell  
Mr. Stefan Neata

Secretary:  
Mr. Andrew Drummond

In Attendance:  
For the Appellant:  
Ms. K. Roach (Counsel)  
Ms. P. (the Student)

For OISE/UT:  
Ms. R. Cambell (Counsel)  
Ms. L. Cowin  
Mr. J. Mazurek

Prof. Ian McDonald

**OISE/UT – request to repeat *practicum* session – first and second *practicum* sessions failed – performance affected by illness – allegation of bias – classroom skills adversely affected by illness – supervisors did not have opportunity to consider or mitigate effects of illness – Associate teacher was aware of failure of first *practicum* session – appropriate test of bias is “whether a reasonably informed bystander could reasonably perceive bias on the part of the adjudicator” – knowledge of previous failure might predispose adjudicator failing student again – same faculty advisor in both *practicums* – threshold test met for reasonable apprehension of bias – appeal allowed – minority opinion that but for the effects of illness the Student would still not have been able to overcome the defects in classroom performance and that flaws in the Student’s performance were already a matter of serious concern before the Student’s failure in the first *practicum* became known – appeal allowed – failure in the second *practicum* vacated and the Student allowed to repeat it – recommendation that the Faculty reconsider its appeal process regarding *practicums***

Request to repeat the second *practicum* session. The Student failed the first and second *practicum* sessions and therefore failed the year in the B.Ed programme. The Student claimed that her performance was adversely affected by her diabetes, which was diagnosed part way through the course, and that there was a lack of procedural fairness in her assessment, as the Associate teacher evaluating her discovered halfway through the *practicum* session that the Student had failed the earlier *practicum* session. The Committee considered the Student’s medical condition and found that her classroom skills were adversely affected by the effects of her illness and that her supervisors did not have the opportunity to consider or take steps to mitigate these effects. The Committee found that had the Student not been suffering from the fatigue associated with diabetes, she may have been able to pass the *practicum*. The Committee considered the allegation of bias and found that the Associate teacher was aware that the Student had failed the first *practicum* session, and that as per the Divisional Appeals Committee Decision, there should always be two independent assessments of a teacher candidate. The Committee stated that it is not necessary for the Student to prove, or for the Committee to find, that bias actually existed and entered into the decision to fail the Student in order to allow the appeal. The appropriate test approved by courts is “whether a reasonably informed bystander could reasonably perceive bias on the part of the adjudicator.” The Committee stated that an adjudicator’s knowledge of a previous failure might positively predispose the adjudicator to finding negative factors to justify failing the student again and discourage him or her from advancing positive arguments in favour of the student as forcefully as he or she might otherwise do. In addition to the Associate teacher, the Committee found that the faculty advisor in the second *practicum* was also the faculty advisor in the first *practicum*. The Committee found that the combination of these two sources of possible bias, operating in the assessment of a student whose then relevant skills would not provide much margin over a minimum pass and which were adversely affected by her illness, met the threshold test for reasonable apprehension of bias. A minority of the Committee found that, but for the effects of the illness on the Student’s performance, she would still not have been able to overcome the defects in her classroom performance and that the flaws in the Student’s performance during the second *practicum* were already a matter of serious concern before the Student’s failure in the first *practicum* became known. Appeal allowed. The Committee ordered that the failure in the second *practicum* be vacated and that the Student have the opportunity to repeat the *practicum* during the next round. The Committee stated its concern regarding the Faculty’s appeal process which does not allow a student appealing a failed first *practicum* to continue to the second until the appeal is determined. The Committee stated that it did not wish to form a conclusion on the matter but recommended that the process be reconsidered because it appears to create a financial disincentive to the exercise of a right to appeal.

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FILE: [Report #367](#)  
DATE: October 7, 2013  
PARTIES: Mr. A.K.D. (the Student) v. the Faculty of Applied Science and Engineering

Secretary:  
Ms. Natalie Ramtahal, Coordinator, Appeals,  
Discipline and Faculty Grievances

Hearing Date(s):  
September 11, 2013

Appearances:  
For the Student Appellant:  
Mr. A.K.D., the Appellant (“the Student”)

Committee Members:  
Professor Hamish Stewart, Chair  
Professor Elizabeth Cowper  
Mr. Andrew Girgis

For the Faculty of Applied Science and Engineering:  
Professor Thomas Coyle, Chair of the Committee on Examinations  
Mr. Khuong Doan, Associate Registrar, Student Services

**Faculty of Applied Science and Engineering – reinstatement to program – Student was refused further registration due to poor academic performance – Faculty allowed appeal in part, but did not provide reasons for its decision to not allow reinstatement – Committee noted that the Faculty should have provided written reasons for its decision, but the absence of reasons did not change the outcome of the Student’s petition – Student attended classes and completed some coursework for the courses he would have taken had he been reinstated – Student argued that the Faculty erred procedurally by not instructing him on which documentation to submit – AAB dismissed the appeal – reinstatement not appropriate given the Student’s poor assessment in the courses thus far and the timeline of the evidence submitted – divisions of the University should encourage students to support their appeals with suitable documentation, but it remains the Student’s responsibility to submit suitable documentation – Committee agreed with the AAB and concluded that its decision was reasonable – to grant a remedy that would give the Student credit for the courses would be highly unusual given that he wasn’t enrolled in them and the basis for assessing his performance in them was very thin – Faculty staff names need not be redacted, especially when the matter does not affect them in a personal capacity – appeal dismissed**

Appeal from an academic status of “Refused Further Registration.” Student performed so poorly in his program that he had been refused registration for the following term. Student petitioned the Faculty for special consideration on the ground that he might have been suffering from ADHD. Student sought reinstatement into the program or, in the alternative, a waiver of the rule that had resulted in his being refused further registration. This petition was dismissed for want of adequate documentation. The Student then submitted a revised petition with additional documentation concerning his ADHD diagnosis and the course of treatment he was pursuing. The Faculty allowed the petition in part, effectively granting the Student his alternative remedy. The Faculty changed the Student’s academic status from “Refused Further Registration” to “Academic Repeat Probation – Withdraw for eight months,” which would allow the Student to re-enroll two semesters later than he requested. The Faculty did not give any reasons for refusing to reinstate the Student, or for granting the alternative remedy. The Student then submitted another petition to the Faculty, with supporting documentation indicating that he had been attending classes throughout the semester in the hope of being reinstated.

Student then appealed from the Faculty’s decision to the Academic Appeals Board, claiming that his condition had stabilized and drawing the AAB’s attention to his immigration and financial difficulties as well as alleged procedural irregularities in the Faculty’s process. Student sought credit for two of the courses he had been attending, and an opportunity to obtain credit for the remaining three courses through deferred examinations. The AAB obtained term work reports from the instructors in the courses that the Student had attended, which mostly indicated poor performance. The AAB concluded that the Faculty’s decision was fair and reasonable; reinstatement in the requested term was not appropriate given the timeline of the evidence submitted.

Student then appealed to the Academic Appeals Committee. The Committee concluded that the Faculty erred in failing to provide written reasons for its decision, but stated that this error did not affect the outcome of the appeal as the AAB provided reasons, which were the basis of the appeal to the Committee. The Committee also noted that it is the Student’s responsibility to make his or her case for a remedy in the appeal process; the Faculty cannot direct students as to what information to provide given the confidential nature of such information. The Committee agreed with the AAB that the Student’s situation fell well outside the circumstances in which a deferred examination, aegrotat standing, or assessment of grades would be given. To grant one of these remedies in this situation would have been highly unusual given that the Student was not enrolled in the courses and the basis for assessing his performance was very thin. The

Committee also noted that the medical evidence did not strongly support the Student’s assertion that his treatment had been successful. The Committee concluded that the AAB’s decision was reasonable. Appeal dismissed.

The Committee also denied the Faculty’s request to redact the names of all of the Faculty’s faculty and staff who were involved in the Student’s case, noting that the fact that an individual was acting in an official or institutional capacity is not by itself a reason for redacting that person’s name. The Committee noted that it might look more favourably on such a motion where there was some allegation concerning personal misconduct by a member of the faculty or staff, particularly if the Committee found that allegation to be unfounded.

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FILE:	<a href="#">Report #370</a>	Secretary:	
DATE:	March 27, 2014	Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances	
PARTIES:	Ms. V.M. (the Student) v. the School of Graduate Studies	Appearances:	
Hearing Date(s):		For the Student Appellant:	
March 25, 2014		Ms. V.M., the Appellant (“the Student”)	
Committee Members:		For the School of Graduate Studies:	
Ms. Andrea Russell (Chair)		Mr. Robert Centa, Lawyer for the Division	
Professor Elizabeth Cowper		Ms. Jane Alderdice, Director, Quality Assessment and Governance	
Ms. Mainawati Rambali		Professor Luc De Nil, Dean’s Designate	
		Professor Harry Elsholtz (LMP)	

**School of Graduate Studies (SGS) – reinstatement to program – Faculty’s policy reasonable and applied fairly – GAAB decision reasonable and substantiated by evidence – no new evidence raised in the hearing before the Committee – appeal dismissed**

Appeal from the SGS’s decision to terminate the Student’s registration in the Ph.D program in the Department of Laboratory Medicine and Pathobiology. The Student appealed the termination to the Graduate Academic Appeals Board (GAAB), which dismissed the appeal. The Student then appealed to the Academic Appeals Committee. The Committee dismissed the appeal. The Committee noted that the Student raised no new evidence in her oral or written submissions that was either persuasive or relevant to the Appeal; all of the evidence raised at the hearing had either been addressed in the GAAB’s decision, or was irrelevant to the question of the reasonableness of the GAAB decision and of the SGS’s decision to terminate the Student’s registration. The Committee found that the Student’s allegation that the GAAB was biased against her was completely unsubstantiated, noting that the GAAB decision was thoroughly argued, reasonable, and substantiated by the evidence. The Committee noted that it found the decision of the SGS to terminate the Student’s registration to be entirely reasonable, particularly as the record indicated that this decision came only after numerous clear written and verbal warnings to the Student that her academic standing in her program was in jeopardy. The Committee also noted that the SGS’s policy at issue in this appeal was reasonable and its application of the policy was justified in this case. Appeal dismissed.

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FILE: [Report #382](#)  
DATE: April 28, 2016  
PARTIES: Ms. A.W. (the Student) v. the Toronto School of Theology

Secretaries:  
Mr. Christopher Lang, Director, Ms. Tracey Gameiro, Associate Director, and Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
April 11, 2016

Committee Members:  
Professor Andrew Green, Chair  
Professor Andrea Sass-Kortsak  
Mr. Alex Ivovic

Appearances:  
For the Student Appellant:  
Mr. A.W., the Appellant (“the Student”)  
Mr. Geoffrey D. K. Wiebe, Counsel  
For the Toronto School of Theology:  
Mr. Robert A. Centa, Counsel  
Professor Alan Hayes  
Dr. Daniella Mallinick  
Professor Jaroslav Skira

**Toronto School of Theology – exemption from program requirements – Student wanted to transfer from the ThD program to the Faculty’s new PhD program without completing the application requirements – Student appealed to the Committee rather than pursuing further internal appeals, but this was not a basis for an adverse inference to be drawn against the Student – Student was arguing against the fairness of the policy itself, not the policy’s application, so the matter was outside of the Committee’s jurisdiction – Student did not take advantage of the opportunities available to him to transfer programs – appeal dismissed**

Request to transfer from the ThD program into the new PhD program in the research doctorate in theological studies without being required to complete two further courses. The Student did not apply to the bridging program designed to allow transfer into the new PhD program despite knowledge of this option, and instead wrote to the Director of the TST requesting to transfer from ‘ThD’ into ‘PhD’ nomenclature. The Student petitioned to the Advanced Degree Appeals Division of the TST, stating that he had not been permitted transfer in the nomenclature without being required to complete two further courses. At the hearing, the Student submitted evidence supporting his claims that he had substantially met the outcomes of the Required Courses given that he had authored an academic book, taught and designed an undergraduate course, and spent time in the learning community in Trinity College, and stated that it would have been a serious delay in his studies to have taken the courses. The Academic Appeals Committee of the GSC denied the Student’s petition, noting that the Student did not choose apply to the PhD program through the existing bridging option, and did not find the arguments made in support of his appeal persuasive. The matter was sent back to the Faculty to determine whether there was room for exploration of an accommodation within the existing bridging option.

The Student then appealed to the Academic Appeals Committee, requesting a declaration that he had met the academic requirements set out by the TST for transfer from the ThD into the PhD program through equivalency to the Required Courses, and directing the TST to transfer him into the PhD program immediately. The Committee noted the unusual manner in which the appeal came before it: the GSC decision did not decide on the merits of the Student’s appeal but instead sent the matter back to an earlier stage in the appeals process, and the Student then appealed to the Committee. The Committee also noted that no adverse inference should be drawn against the Student for coming before the Committee rather than pursuing further internal appeals.

With respect to the Committee’s jurisdiction to provide the remedy requested by the Student, the Committee noted that its role is not to change Faculty policy but rather to ensure that a policy was applied fairly and consistently. The Committee found that the Student was in effect arguing about the fairness of the Faculty’s policy, not about the fairness of the application of the policy to the Student. (See Reports #368, #359-1, and #371.) Despite some procedural fairness issues relating to the transparency and updating of the TST’s Handbook and processes, the Committee concluded that the Student was not treated unfairly. The Committee took into account the fact that the Student did not avail himself of his many opportunities to enter the bridging program, that he did not approach the TST to see if he could obtain an exemption from the requirements in a timely manner, and that he did not take advantage of the ample opportunities the TST provided him with to seek resolution of his appeal. The Committee also rejected the Student’s assertion that the process was procedurally unfair because of a lack of reasons by the Academic Appeals Committee of the GSC, noting that the GSC decision sent the matter back to an earlier stage in the appeals process and gave reasons for this decision. The Committee encouraged the TST and the Student to work together to seek if they could find a solution. Appeal dismissed.

FILE:	<a href="#">Report #403</a> (2018-2019)	Appearances:
DATE:	May 9, 2019	
PARTIES:	D.B. (the “Student”) v. Faculty of Medicine	For the Student Appellant: The Student Mr. Michael D. Wright, Cavaluzzo LLP, Counsel Mr. Tyler Boggs, Cavaluzzo LLP, Counsel
HEARING DATE:	March 28, 2019	
Committee Members:		For the Faculty of Medicine:
Ms. Vanessa Laufer, Chair		Ms. Emily Lawrence, Counsel Paliare Roland Rosenberg Rothstein LLP
Professor Mark Lautens, Faculty Governor		Mr. Robert A. Centa, Counsel Paliare Roland Rosenberg Rothstein LLP
Ms. Maya Kashyap, Student Governor		

**Faculty of Medicine – Student appeals from decision of Faculty of Medicine Appeals Committee upholding decision of Board of Examiners referring Student for remediation in professionalism due to lapses in professional behaviour – standard of review is reasonableness - Faculty regulations and procedures followed – relevant evidence taken into consideration – *Baker v. Canada (Minister of Citizenship & Immigration [1999] SCC 699* – relaxed standard of procedural fairness appropriate when consequence of decision appealed from are remedial, educational and restorative, not punitive, and right to continue in academic program or career is not at stake – appeal dismissed**

The Student was enrolled in the Faculty of Medicine Undergraduate Medical Program at the University of Toronto (MD Program) from 2012 to 2016. The Student graduated from the MD Program in May 2016. He is now a registered member of the College of Physicians and Surgeons of Ontario and a practising physician.

In the Fall of 2015, while still enrolled in the MD Program, the Student was referred by the Clerkship Director to the Undergraduate Medical Education Board of Examiners (BoE) due to lapses in professional behaviour over the course of the MD Program. The BoE referred the Student for remediation in professionalism. The Student appealed from the decision of the BoE to the Faculty of Medicine Appeals Committee (FMAC). The FMAC upheld the decision of the BoE referring the Student for remediation in professionalism.

The Student then appealed from the decision of the FMAC to the Academic Appeal Committee (AAC) on the basis that: (i) the Faculty of Medicine did not follow its own regulations and procedures when it referred him to the BoE; (ii) relevant evidence was not taken into consideration by the BoE when the decision was made; and (iii) the decision could not be supported by the evidence that was considered when it was made by the FMAC. The Student also argued that the Clerkship Director was biased against him, and that she had attacked his character without evidence during the BoE process. The Student argued further that he did not receive proper notice of the BoE hearing, and that he did not have adequate time to prepare a defence or know the full case against him. The Student argued that he was not allowed to attend in front of the BoE, or to have an advocate attend on his behalf. The Student argued that he was not afforded due process.

The AAC determined that the question before it was whether the FMAC decision was reasonable. It concluded that the FMAC’s determination that Faculty regulations and procedures were followed was reasonable and that the Clerkship Director may deviate from normal practice when referring a case to the BoE provided a rationale is given. The AAC considered that the FMAC reasonably concluded that the Clerkship Director had reasonable grounds to refer the matter to the BoE in light of the professionalism concerns of the Faculty. The AAC noted that the Clerkship Director received direct observations and assessments of the Student’s professional behaviour from Faculty colleagues who were well-suited to make informed, context-specific professionalism evaluations that should not be interfered with by the AAC. The AAC also concluded that the FMAC was reasonable in rejecting the Student’s claim that he had not received reasonable notice of the BoE meeting or sufficient time to prepare a defence, noting that the Student had been informed of the meeting and rationale for some more than a month in advance. The AAC went on to determine that the FMAC received and considered extensive evidence and that its decision was rationally connected to and based on that evidence, noting that the Student attended in person and was legally represented. The AAC concluded that the FMAC’s determination that the BoE’s decision was supportable and connected to the evidence was reasonable.

The AAC reviewed a number of legal cases concerning procedural fairness, including the factors for procedural fairness outlined in the case of *Baker v. Canada (Minister of Citizenship & Immigration [1999] SCC 699*. Applying those factors to

the specific context of this case where the BoE process was *in camera* and submissions were made primarily in writing, the AAC determined that a more relaxed standard of procedural fairness was appropriate, observing that the consequences at the BoE for the Student were remedial, educational and restorative, not punitive, and that it was not a situation where the Student's right to continue in the program or his career were at stake. In considering the case of *AlGhailthy v University of Ottawa* 2012 ONSC 142 (para.31), the AAC noted that the case outlines that courts are reluctant to interfere with academic decisions unless there has been “manifest unfairness” in the procedure, or the decision was unreasonable. The AAC found that neither the proceedings of the BoE nor the FMAC were manifestly unfair or that the decisions were unreasonable, noting that the Faculty of Medicine is well-suited to determine what is best for its community as its faculty members are expert assessors of professionalism within its academic programs, and the AAC should not interfere with their academic assessments. The AAC found no evidence of bias. Furthermore, the AAC determined that even if it was incorrect and there was any denial of procedural fairness at the BoE, any such defects were cured by the FMAC proceedings which amounted to a *de novo* hearing and met the requirements of procedural fairness. Finally, the AAC distinguished this case from the case of *Khan v The University of Ottawa* [1977] O.J. No. 2650 because the Student in this case was not facing a failed year or the loss of the right to continue in his profession and his credibility was not a central issue in the case. As such, the AAC concluded that procedural fairness did not require an oral hearing in this case.

The AAC found the decision of the FMAC to be reasonable and dismissed the appeal.

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## ADEQUACY OF REASONS

FILE:	<a href="#">Report #367</a>	Secretary:
DATE:	October 7, 2013	Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances
PARTIES:	Mr. A.K.D. (the Student) v. the Faculty of Applied Science and Engineering	Appearances: For the Student Appellant: Mr. A.K.D., the Appellant (“the Student”)  For the Faculty of Applied Science and Engineering: Professor Thomas Coyle, Chair of the Committee on Examinations Mr. Khuong Doan, Associate Registrar, Student Services
Hearing Date(s): September 11, 2013		
Committee Members: Professor Hamish Stewart, Chair Professor Elizabeth Cowper Mr. Andrew Girgis		

**Faculty of Applied Science and Engineering – reinstatement to program – Student was refused further registration due to poor academic performance – Faculty allowed appeal in part, but did not provide reasons for its decision to not allow reinstatement – Committee noted that the Faculty should have provided written reasons for its decision, but the absence of reasons did not change the outcome of the Student’s petition – Student attended classes and completed some coursework for the courses he would have taken had he been reinstated – Student argued that the Faculty erred procedurally by not instructing him on which documentation to submit – AAB dismissed the appeal – reinstatement not appropriate given the Student’s poor assessment in the courses thus far and the timeline of the evidence submitted – divisions of the University should encourage students to support their appeals with suitable documentation, but it remains the Student’s responsibility to submit suitable documentation – Committee agreed with the AAB and concluded that its decision was reasonable – to grant a remedy that would give the Student credit for the courses would be highly unusual given that he wasn’t enrolled in them and the basis for assessing his performance in them was very thin – Faculty staff names need not be redacted, especially when the matter does not affect them in a personal capacity – appeal dismissed**

Appeal from an academic status of “Refused Further Registration.” Student performed so poorly in his program that he had been refused registration for the following term. Student petitioned the Faculty for special consideration on the ground that he might have been suffering from ADHD. Student sought reinstatement into the program or, in the alternative, a waiver of the rule that had resulted in his being refused further registration. This petition was dismissed for want of adequate documentation. The Student then submitted a revised petition with additional documentation concerning his ADHD diagnosis and the course of treatment he was pursuing. The Faculty allowed the petition in part, effectively granting the Student his alternative remedy. The Faculty changed the Student’s academic status from “Refused Further Registration” to “Academic Repeat Probation – Withdraw for eight months,” which would allow the Student to re-enroll two semesters later than he requested. The Faculty did not give any reasons for refusing to reinstate the Student, or for granting the alternative remedy. The Student then submitted another petition to the Faculty, with supporting documentation indicating that he had been attending classes throughout the semester in the hope of being reinstated.

Student then appealed from the Faculty’s decision to the Academic Appeals Board, claiming that his condition had stabilized and drawing the AAB’s attention to his immigration and financial difficulties as well as alleged procedural irregularities in the Faculty’s process. Student sought credit for two of the courses he had been attending, and an opportunity to obtain credit for the remaining three courses through deferred examinations. The AAB obtained term work reports from the instructors in the courses that the Student had attended, which mostly indicated poor performance. The AAB concluded that the Faculty’s decision was fair and reasonable; reinstatement in the requested term was not appropriate given the timeline of the evidence submitted.

Student then appealed to the Academic Appeals Committee. The Committee concluded that the Faculty erred in failing to provide written reasons for its decision, but stated that this error did not affect the outcome of the appeal as the AAB provided reasons, which were the basis of the appeal to the Committee. The Committee also noted that it is the Student’s responsibility to make his or her case for a remedy in the appeal process; the Faculty cannot direct students as

to what information to provide given the confidential nature of such information. The Committee agreed with the AAB that the Student's situation fell well outside the circumstances in which a deferred examination, aegrotat standing, or assessment of grades would be given. To grant one of these remedies in this situation would have been highly unusual given that the Student was not enrolled in the courses and the basis for assessing his performance was very thin. The Committee also noted that the medical evidence did not strongly support the Student's assertion that his treatment had been successful. The Committee concluded that the AAB's decision was reasonable. Appeal dismissed.

The Committee also denied the Faculty's request to redact the names of all of the Faculty's faculty and staff who were involved in the Student's case, noting that the fact that an individual was acting in an official or institutional capacity is not by itself a reason for redacting that person's name. The Committee noted that it might look more favourably on such a motion where there was some allegation concerning personal misconduct by a member of the faculty or staff, particularly if the Committee found that allegation to be unfounded.

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FILE: [Report #389](#)  
DATE: August 23, 2017  
PARTIES: Mr. C.O. (the "Student") v. the Faculty of Applied Sciences and Engineering

Secretary:  
Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Appeals, Discipline and Faculty Grievances

Hearing Date(s): June 29, 2017

Appearances:

Committee Members:  
Professor Hamish Stewart, Chair  
Professor Jan Mahrt-Smith, Faculty Panel Member  
Ms. Susan Froom, Student Panel Member

For the Student:  
Mr. C.O. (the Student)  
Ms. Clara Ryu, Law Student, Downtown Legal Services  
Ms. Jennifer Fehr, Staff Lawyer, Downtown Legal Services

For the Faculty of Applied Sciences and Engineering:  
Professor James Davis, Associate Professor, Teaching Stream  
Mr. Don MacMillan, Faculty Registrar

In Attendance:  
Ms. Vanessa Laufer, New Chair of the Academic Appeals Committee (Observer)  
Mr. John F. Monahan, New Chair of the Academic Appeals Committee (Observer)

**Faculty of Applied Sciences and Engineering – anxiety disorder and deaths of extended family members attributed to poor performance on exams – conditions existed before course drop date – late withdrawal without academic penalty – reinstatement to program – Student was refused further registration due to poor academic performance – Faculty did not provide adequate reasons for its decision to not allow reinstatement – absence of adequate reasons did not change the outcome of the Student's petition –consequences of refusal to readmit into the program deprives student of pursuing a minor only available at University not an exceptional circumstance – adequate reasons – appeal dismissed**

Request for late withdrawal from four courses without academic penalty. At the end of the first term of the Student's final year of his program, he finished his final exams with a cumulative GPA was 1.51 and a sessional average was 55%. The Faculty deemed the Student to have failed the term and refused him readmission to the program. The Student appealed a grade in one of his courses, which was dismissed by the AAB. The Student then brought this petition for a late withdrawal without academic penalty from the four courses that he had failed, which was dismissed by the AAB. He appealed this dismissal to the Committee, asking for a late withdrawal without academic penalty from the four courses that he had failed on the basis that he was suffering an anxiety disorder at the time of the exams, as well as grieving the recent deaths of his grandfather and his uncle.

The Student’s anxiety disorder had been diagnosed prior to his final year of the program. The Student had applied for, and received, academic accommodations for his chronic and severe anxiety throughout his time at the University. Prior to the semester at issue, the Student had attended counselling sessions over the summer with the University’s Health and Wellness services. He was registered with Accessibility Services, and had received an accommodation of extra time to write one of his mid-term exams. He did not apply for any other accommodations or bring his difficulties to the attention of the Faculty.

The Student’s grandfather died in the summer preceding the start of the term and his uncle died in the fall of his final year in the program. There was no evidence on the record that the Student sought medical assistance or counselling to help to deal with his sadness following these deaths. All of these mental health issues occurred prior to the Faculty’s “drop date” for the fall term.

The Committee referred to Report #375, Report #264, Report #314, Report #367, and Report #373 which set out that the remedy of late withdrawal without penalty is an extraordinary remedy, reserved for unusual and unique situations. The University sets drop dates and expects its students to decide by that time whether or not they will continue with their studies. Exceptions to this policy are rare, but could include situations where unexpected and unforeseeable circumstances occur after the drop date, where already existing circumstances become unpredictably worse, or where already existing circumstances do not reasonably resolve. In the absence of an exceptional circumstance, the Committee found that the decisions of the CoE and the AAB were fair and reasonable applications of the Faculty’s and the University’s policies.

The Committee found that the fact that the Student was almost complete his program and the consequence of a refusal to readmit on the Student’s ability to pursue a minor program of his choice were irrelevant in assessing the reasonableness of a division’s decision-making (Report #280).

The Committee did find however, that the CoE and the AAB had failed to provide the Student with adequate reasons for their decisions. Relying on Report #367, the Committee found that it is a “basic and uncontroversial principle of procedural fairness that a tribunal that makes decisions affecting the rights and interests of the parties before it should provide the parties with reasons for its decision for the benefit of the parties, the public, and any Tribunal who might review the decision.” The Committee found that the Student is entitled to know why their petition was dismissed, and that decisions should indicate the facts and the principles that led the tribunal to its conclusions even if they are just in a summary form (Report #258 of the Academic Appeals Committee, December 14, 2001). The Committee held that it was clear that the AAB had carefully considered the Student’s petition and had good reasons for dismissing it; but that they should have been outlined in the letter to the Student.

Appeal dismissed.

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FILE: [Report #393](#) (2017-2018)  
DATE: December 14, 2017  
PARTIES: R.S. (“the Student”) v. the Faculty of  
Kinesiology and Physical Education

Secretary:  
Ms. Tracey Gameiro, Associate Director, Appeals,  
Discipline and Faculty Grievances

Hearing Date(s): November 9, 2017

Appearances:  
For the Student Appellant:  
Mr. R.S. (“the Student”)

Committee Members:  
Professor Malcolm Thorburn (Chair)  
Professor Paul Kingston, Faculty Governor  
Ms. Amanda Harvey-Sanchez, Student Governor

For the Faculty of Kinesiology and Physical  
Education:  
Professor Gretchen Kerr, Vice-Dean of Academic  
Affairs  
Mr. Timothy Linden, Assistant Registrar, Office of  
the Registrar

**Faculty of Kinesiology and Physical Education – grade appeal – exemption from program requirements – deference given to course instructors absent evidence of unfairness – justifications for course policies concerning late assignments – no significant evidence of unfairness – student was an exemplary member of the faculty community – faculty support for student to be able to take a different course to fulfill program requirements – adequacy of reasons - appeal allowed in part**

The Student appeals a decision made by the Dean of the Faculty of Kinesiology and Physical Education and asked the Committee for the following relief: (1) review the grades for a number of small assignments for KPE440H; (2) give the Student the opportunity to produce another assignment in satisfaction of a video assignment that he had handed in late; (3) *aegetat* standing in KPE440H; (4) removal of KPE440H as a degree requirement for the Bachelor of Education degree; or (5) the option to take a course other than KPE440H in order to fulfil the specified degree requirement.

The Committee dismissed the Student's request for all of these grounds of relief except for the opportunity to take a course other than KPE440H in fulfillment of his degree requirements. The Committee gave the course instructor considerable deference in the marks that had been allocated for the small assignments that formed part of the course, as there was no evidence of unfairness. One of the grade appeals related to an assignment that was handed in well past its due date, contrary to a course policy that set out that assignments were deducted marks for lateness and given a grade of zero if more than a week late. The Committee held that there were good reasons for policies like this one, specifically, that instructors should be able to grade assignments together to ensure that they are all subject to the same standard and cannot be expected to ascertain whether each assignment was actually completed by the deadline if it was not in their possession at that point. The Committee further found that students needed to be in the habit of actually providing deliverables when they are expected. In this case, the instructor had taken additional steps to assist students with the assignments and had provided the Student with an additional opportunity to submit a replacement assignment. The Student failed to provide adequate documentation of alleged mental health problems that prevented him from completing this substitute assignment. The Student's request for remedies 1 – 4 was denied.

However, the Student's request that he be allowed to take an alternative course to fulfill his degree requirements was granted based on evidence given by a professor who attested that the Student was an exemplary member of the Faculty community, and that the Faculty would do whatever they could to make sure that the Student would be able to graduate from the program. In particular, the professor would personally write Victoria College requesting that the Student be admitted to their comparable course so that he could substitute it for KPE440H.

The Committee closed by recommending that the Faculty of Kinesiology and Physical Education put in place more robust measures to instruct and assist students with the academic appeals process, including providing more information about expectations around materials and appearing before any panels. The Committee also commented that the Dean may have provided inadequate reasons for his decision in this case. The Committee found it to be a duty incumbent upon all public decision-makers to justify their decisions in a way that provides meaningful guidance to those who are subject to those decisions. Appeal allowed in part.

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## **Reconsideration Request functus officio**

Leading Cases:

**418**

## RECONSIDERATION REQUEST FUNCTUS OFFICIO

FILE: [Report # 418](#) (2021-2022)  
DATE: February 8, 2022  
PARTIES: Ms. M.M. (“the Student”) v. School of  
Graduate Studies

Hearing Date(s):  
December 14, 2021, via Zoom

Committee Members:  
Professor Andrew Green, Chair  
Professor Jan Mahrt-Smith, Faculty Governor  
Mr. Evan Kanter, Student Governor

Hearing Secretary:  
Mr. Christopher Lang, Director, Office of Appeals,  
Discipline and Faculty Grievances

Appearances:  
For the Student Appellant:  
Ms. Julia Wilkes, Adair Goldblatt Bieber LLP  
Ms. Marlie Earle, Adair Goldblatt Bieber LLP  
The Student

For the School of Graduate Studies:  
Mr. Robert Centa, Paliare Roland Rothstein  
Rosenberg LLP

School of Graduate Studies – request to reconsider a previous decision of the Academic Appeals Committee (“AAC”) – Student argued that materials she received from a *Freedom of Information and Protection of Privacy Act* (“FIPPA”) request provided evidence that the grades she received in a course were unreliable and documents had been deliberately withheld – whether the AAC can reconsider its prior decisions rests on the application of the legal principle of *functus officio* – the principle of *functus officio* applies to the AAC – *Paper Machinery Ltd. v. J. O. Ross Engineering Corp. – Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848 – beyond the two exceptions to the principle of *functus officio*, the principle generally applies unless there is an explicit or implicit statutory power of reconsideration – the AAC does not have an explicit or implicit power to reconsider its prior decisions – the Terms of Reference emphasize that the AAC is the final decision-maker – AAC has very limited common law power to reconsider decisions – Student argued that an exception for fraud and breach of natural justice on the tribunal and such exceptions to *functus officio* are appropriate in the administrative law context – *Berge v. College of Audiologists and Speech Language Pathologists of Ontario*, 2019 ONSC 3351 and *Kennedy v. College of Veterinarians of Ontario*, 2021 ONSC 578 (Div Ct) do not find such a fraud exception in the context of an administrative tribunal – *Canadian Association of Film Distributors and Exporters v. Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) Inc.*, 2014 FCA 235 stated that there should be a reluctance to find new exceptions to the *functus officio* rules – no evidence of fraud or breach of natural justice – the AAC allows for a final resolution of appeals that gives parties certainty and provides a limit on the resources for any single appeal – parties can seek judicial review on procedural and substantive grounds – Request for Reconsideration dismissed – recommendation that the Division ensure steps are taken to provide students with timely and accurate information about their grades when they are appealed – recommendation that the governance process be engaged to determine whether the Terms of Reference should be clarified regarding reconsiderations

The Student sought a reconsideration of a decision of a prior panel of the Academic Appeals Committee (“AAC”) which dismissed her appeal. The Student argued that materials she received from a *Freedom of Information and Protection of Privacy Act* (“FIPPA”) request provided evidence that the grades she received in a course were unreliable and that certain members of the School of Public Health had deliberately withheld documents and/or misled the Graduate Academic Appeals Board (“GAAB”) and the prior panel of the AAC.

Issues pertaining to jurisdiction are a question of law that must be determined by the Chair alone. The Chair of this Panel of the Academic Appeal Committee (“Panel”) needed to determine whether the AAC has jurisdiction to reconsider its prior decisions and if so, in what circumstances, and if the AAC does have jurisdiction in certain circumstances, then should the Committee do so in this case. The Chair noted that whether the AAC can reconsider its prior decisions rests on the application of the legal principle of *functus officio*. With certain exceptions, an administrative tribunal, such as the

AAC, that makes a final decision is *functus officio*, meaning that its work is done and it cannot change or reconsider its decision. The Chair further noted that this principle rests on the need for finality in decision making and such finality provides certainty for the parties, allows for reliance on the decision, limits the burden on the administrative system, and allows a stable basis for judicial review or appeal. The Chair of the Committee referenced the Supreme Court of Canada’s decision in *Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848 (“*Chandler*”) in his analysis of the application of *functus officio* to administrative decision-makers. The Chair noted that based on the discussion found in *Chandler* the principle of *functus officio* applies to administrative tribunals such as the AAC based on the need for finality of proceedings but must be applied flexibly. There are two clear exceptions to the *functus officio* principle which are outlined in *Paper Machinery Ltd. v. J. O. Ross Engineering Corp.* [1934] SCR 186 and cited by the Supreme Court in *Chandler*; (1) the tribunal has made a “slip” in its decision such as a minor error in wording; and (2) the tribunal made an error in expressing its “manifest intention.” The Chair noted that beyond these two exceptions, *functus officio* generally applies unless there is an explicit or implicit statutory power of reconsideration. The Chair stated that the AAC does not have an explicit or implicit power to reconsider its prior decisions because neither the University of Toronto’s Governing Council bylaws nor the AAC’s Terms of Reference provide the AAC with an explicit power of reconsideration. Furthermore, the Terms of Reference do not contain any procedures relating to reconsideration and emphasize that the AAC is the final decision-maker on appeals that have already been through appeal processes in different divisions.

The Student argued that in the context of court proceedings, courts have made an exception for fraud on the tribunal and such an exception to *functus officio* is appropriate also in the administrative law context. The Chair noted that *Berge v. College of Audiologists and Speech Language Pathologists of Ontario*, 2019 ONSC 3351 and *Kennedy v. College of Veterinarians of Ontario*, 2021 ONSC 578 (Div Ct) do not find such a fraud exception in the context of an administrative tribunal, and the Federal Court of Appeal, in *Canadian Association of Film Distributors and Exporters v. Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) Inc.*, 2014 FCA 235, stated that there should be a reluctance to find new exceptions to the *functus officio* rules.

The Student also pointed to a broader exception to the application of *functus officio* which, she argued, relates to a denial of “natural justice” or perhaps, more generally, unfairness. The Chair noted that the Supreme Court in *Chandler* stated that a tribunal must “start afresh” where “the error which renders the decision a nullity is one that taints the whole proceeding.” In support of this, the Supreme Court cited cases which “involve a denial of natural justice which vitiated the whole proceeding.” Furthermore, the Student provided cases that outline tribunals obtaining the power of reconsideration where there was a breach of procedural fairness. The Chair remarked that the case law seems unclear on this point. In two recent decisions of the Ontario Court of Appeal (*Jacobs Catalytic Ltd. v. I.B.E.W., Local 353*, 2009 ONCA 749 and *Stanley v. Office of the Independent Police Review Director*, 2020 ONCA 252), the Court found that there was no power of reconsideration even though the contexts encompassed potential breaches of procedural fairness. The Chair noted that the AAC allows for a final resolution of appeals that gives parties certainty and provides a limit on the resources for any single appeal. Parties can seek judicial review of these decisions on both procedural and substantive grounds. The Chair found that the AAC has no express statutory power to reconsider its prior decisions and has very limited common law power to reconsider decisions where there is a minor error that amounts to a “slip” or where the tribunal has made an error in expressing its intent.

In deciding whether the Panel should reconsider the AAC’s original decision in this matter, the Chair noted that the Panel only needs to consider whether it has the power to reconsider the decision in this case because there was fraud or a breach of natural justice. The Panel found that (1) there was no evidence to support the allegations of fraud; (2) there was no evidence of any intent to mislead either the GAAB or the prior panel of the AAC; and (3) the proposed exceptions for the breaches of natural justice did not apply in this case. The Panel noted that the purpose of fairness is to ensure “administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker” (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para. 22). The Panel noted that none of the materials provided under the FIPPA request change any of the basic facts nor do they demonstrate any insufficiencies in disclosure by the time of the original AAC hearing to warrant reconsideration. Furthermore, the FIPPA materials only support the conclusion that the Student received the necessary materials to make her case. The Panel noted that there may be cases where a breach of fairness is so egregious that it gives rise to a power of reconsideration, however, this is not such a case. Furthermore, fairness can clearly be raised on a judicial review application.

Given that the Panel found that this case does not fit within the very limited circumstances permitting reconsideration, it is unnecessary to deal with the other two issues (delay and the merits of this appeal). Request for reconsideration dismissed.

The Panel recommended that (1) the Division ensure steps are taken to provide students with timely and accurate information about their grades when they are appealed; and (2) the governance process be engaged to determine whether the Terms of Reference should be clarified regarding reconsiderations.

## JURISDICTION

Leading Cases:	293, 310, 323, 333, 334, 366, 371, 376, 381, 382, 388, 391, 399, 359-1, 402, 406, 415, 409
appeal allowed:	
appeal dismissed:	293, 310, 323, 333, 334, 366, 371, 376, 381, 382, 388, 391, 402, 406, 409, 415, 418
▪ <a href="#">General jurisdiction:</a>	293, 310, 333, 334, 366, 376, 381, 382, 388, 391, 397, 399, 359-1, 402, 406, 415, 409
▪ <a href="#">Faculty assessments:</a>	323, 371
▪ <a href="#">Reconsideration:</a>	418

## GENERAL JURISDICTION

FILE: [Report #293](#)  
DATE: December 16, 2004  
PARTIES: Mr. C., the Appellant v. the Faculty of  
Pharmacy

Secretary:  
Mr. Paul Holmes

In Attendance:  
For the Student:  
Mr. C., the Appellant

Hearing Date(s):  
November 22, 2004

Committee Members:  
Assistant Dean Bonnie Goldberg, Chair  
Professor Pamela Catton  
Ms Françoise Ko  
Professor John Furedy  
Professor Ian McDonald

For the Faculty of Pharmacy:  
Ms Brenda Thrush, Registrar, Faculty of Pharmacy  
Dean Wayne Hindmarsh, Faculty of Pharmacy

### **Faculty of Pharmacy – exemption from program requirements – Divisional appeal allowed despite irregularities and failure to follow procedure – financial circumstances considered – no extenuating circumstances related to academic performance – appeal dismissed**

Request to proceed to Year 3 of Pharmacy program, despite not having met the academic requirements. Request made on financial grounds unrelated to failing grade. The Faculty Appeals Committee heard the appeal despite not usually considering financial hardship as ground of appeal and despite the Student not having submitted a petition. The Committee found that the Student did not take proactive steps, or seek academic assistance offered by the Division to improve academic performance. Not all available means of financial support had been exhausted. There was no merit to the Student's allegation of differential treatment. There was no evidence of extenuating circumstances directly related to academic performance. The Committee stated that it does not have the jurisdiction to remove a failing grade due to financial considerations. Appeal dismissed.

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FILE: [Report #310](#)  
DATE: September 29, 2006  
PARTIES: The Student Appellant v UTSC

Secretary:  
Dr. Anthony Gray

In Attendance:  
For the Student:  
The "Student"  
Mr. Roland Luo (Counsel for the Student)

Hearing Date(s):  
September 1, 2006

Committee Members:  
Assistant Dean Kate Hilton, Chair  
Professor Brian Corman  
Professor Glen Jones  
Professor Ellen Hodnett  
Ms. Johanna Weststar

For UTSC:  
Associate Dean Nick Cheng, UTSC

### **UTSC – request to re-write final examination – physical illness – poor instruction – additional materials filed following Notice of Appeal – motion to exclude Faculty response denied – evidence submitted did not merit relief based on medical grounds – no jurisdiction to assess quality of instructor – classroom performance of a particular instructor constitute grounds for academic appeal only where a student was differentially disadvantaged – no conclusive evidence that instruction was inadequate – no reason to conclude that instruction had had differential impact – appeal dismissed**

Request to re-write the final examination in one course. The Student claimed that she had received poor instruction and that at the time of her final examination she was suffering from nausea and dizziness. The Student's physical illness was raised for the first time in the Notice of Appeal to the Committee. With the Committee's permission, the Student filed additional materials in support of her appeal following the original Notice of Appeal. The Student brought a motion to exclude the Faculty's response to the Student's additional materials on the grounds that the Faculty had failed to deliver

the response within the agreed-upon timelines. The Committee denied the motion on the grounds that all applicable timelines had been complied with and that there was no prejudice to the Student. The Committee considered the Student's medical certificate and oral evidence with respect to her physical and mental state, and the Faculty's policy on rewriting a final exam based on medical grounds and found that the evidence submitted did not meet the standard required to merit relief. The Committee noted that neither it, nor the Divisional Appeals Committee, has the jurisdiction to assess the quality of a particular instructor and that allegations concerning the classroom performance of a particular instructor (even if substantiated) would constitute grounds for an academic appeal only in rare situations where a student could demonstrate that he or she was differentially disadvantaged, relative to the other students in the class. The Committee found that there was no conclusive evidence submitted that the instruction was inadequate and no reason to conclude that the instruction had had a differential impact on the Student relative to her fellow classmates. Appeal dismissed.

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FILE: [Report #333](#)  
DATE: May 15, 2009  
PARTIES: Mr. A. M. (the Student) v. UTSC

Appearances:  
For the Student Appellant:  
Mr. A.M. (the Student)

Hearing Date(s):  
April 23, 2009

For the University of Toronto at Scarborough:  
Vice-Dean Professor John Scherk

Committee Members:  
Professor Ed Morgan, Chair  
Professor Elizabeth Cowper  
Professor Michael Marrus  
Ms. Anna Okorokov  
Ms. Maureen Somerville

**UTSC – request to write deferred examination – request changed to late withdrawal without academic penalty after Notice of Appeal submitted – no jurisdiction to hear new requests not submitted to the Faculty – submissions restricted to original request – trauma from male pattern baldness – inadequate medical grounds – no evidence of psychological ramifications of condition – no impact on ability to take examination – past Faculty accommodation more than generous – appeal dismissed**

Request to write a deferred examination. The Student changed his request after submitting his Notice of Appeal and asked the Committee for late withdrawal without academic penalty. The Student had twice been granted permission to write the deferred examination. The Student reenrolled and passed the course in a subsequent term; he now sought late withdrawal to remove the failing grade from his academic record. The Committee found that it had no authority to hear new requests that had not been submitted to the Faculty and the Student was asked to restrict his submissions to the request to take a deferred examination. The Student submitted a doctor's note from a medical practitioner in India indicating that he suffered from male pattern baldness. The Committee found that there were inadequate medical grounds for seeking permission to write the deferred exam. The Committee found that despite the Student's claim that he was traumatized by this condition, no psychological or psychiatric report was submitted, and nothing in the medical file tendered indicated that there were psychological ramifications to his condition. The Committee observed that the Student's condition did not ordinarily impact on a person's ability to take an examination in a university course. The Committee considered that the Student had failed on each occasion to show up at the appointed examination time and that the Faculty had been more than generous in accommodating his various requests. Appeal dismissed.

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FILE: [Report #334](#)  
DATE: May 7, 2009  
PARTIES: Ms. T. D. (the Student) v. the School of Graduate Studies

Secretary:  
Ms Nancy Smart, Judicial Affairs Officer

Hearing Date(s):  
April 22, 2009

Appearances:  
For the Student Appellant:  
Ms. T.D. (the Student)  
Mr. Michael Hamilton (Downtown Legal Services)

Committee Members:  
Professor L. Sossin (Chair)  
Mr. Grant Gonzales (Student)  
Professor Ellen Hodnett Mr. John Stewart  
Professor Cindy Woodland

For the School of Graduate Studies:  
Mr. Robert Centa

**School of Graduate Studies – appeal of a decision to revoke an offer of admission – material information withheld from admission application – full semester of classes completed – charge under the Code requested but not laid – Faculty decision was admissions decision – no jurisdiction to review admissions decisions – see Graduate Academic Appeals Board *Terms of Reference*, the Faculty’s *Calendar* and the Governing Council’s policy regarding appeals within academic divisions – admission irregularities provision of the Ontario Rehabilitation Sciences Programs Application Service – Superior Court jurisdiction to quash University decision – see *Mulligan v. Laurentian University* – no bar to University reconsidering revocation decision – given delay in revocation of admission and availability of information reconsideration could be justified - appeal dismissed – recommendation that if revocation decision was not modified any fees paid for the completed semester should be returned and any record of academic performance should be expunged**

Appeal of a decision to revoke and cancel the Student’s offer of admission and/or registration in the Masters of Health Science Program. The Student had withheld material information from her admission application. The Student had been admitted, registered, and completed a full semester. The Faculty requested a charge be laid against the Student under the Code but no charge was laid. The decision to revoke the Student’s “admission and/or registration” was not imposed as a sanction under the Code and therefore, the Student could not appeal the decision under the Code. The Student sought the appeal on the grounds that the Graduate Academic Appeals Board did have jurisdiction to hear the appeal from the revocation decision, and that, irrespective of how the jurisdiction issue was decided, the Graduate Academic Appeals Board should have considered her prior pending appeal against her termination from the Program due to poor academic performance. The Committee found that the Graduate Academic Appeals Board did not err in its finding that the decision of the Faculty “revoking and cancelling” the Student’s “offer of admission and/or registration” was an admissions decision. The Committee considered whether the Graduate Academic Appeals Board and the Committee had a role in the accountability of the University for admission decisions. The Committee considered the Graduate Academic Appeals Board’s *Terms of Reference*, the Faculty’s *Calendar* and the Governing Council’s policy regarding appeals within academic divisions and found that the University had not conferred on the Graduate Academic Appeals Board or the Committee the jurisdiction to review an admissions decision. The Student claimed that by relying on the revocation of admission after she had completed a full semester, the University was seeking to terminate the Student in a fashion which deprived her of the procedural protections she would have been afforded had the University relied on its termination of the Student for her poor academic performance, or had the University pursued the allegations against the Student for violation of the *Code*. The basis for the University’s revocation of the Student’s admission was the admission irregularities provision of the Ontario Rehabilitation Sciences Programs Application Service regarding, the terms and conditions of which the University claimed the Student had agreed to be bound by when she submitted her application through the service. ORPAS did not provide any appeal route for decisions taken by Universities using its application process. The Committee considered the availability of recourse for an aggrieved student and found that while no appeal route had been established from admissions decisions through internal mechanisms, the Superior Court has jurisdiction to quash a decision of the University, and remit the matter back to the University for a fresh decision or compel the University to take appropriate action, as confirmed in *Mulligan v. Laurentian University*. The Committee observed that pursuing remedies through a judicial review may be costlier and more complex than appeals through internal mechanisms. The Committee found that there were no internal impediments to the University exercising discretion either to proceed under the Code or to revoke admissions where the conduct underlying the revocation of admission could have been treated as an academic matter or as an academic offence. The Committee observed that there was no bar to the University making available an opportunity for a reconsideration of the revocation decision although such a reconsideration process would not lead to any remedies which would bind the University. The Committee observed that if the University did allow for a reconsideration of its revocation decision, it could also have the effect of reviving the appeal of the termination decision. The Committee observed that there may be advantages in approaching such revocations of admission on a case by case basis and that delay might be a relevant consideration in the exercise of such discretion. The Committee found that, given the delay in the revocation of admission and the fact that the University possessed the same information about the Student at the time of admission as it raised subsequently as grounds for the revocation of her admission, such a procedure could be justified. Appeal dismissed. The Committee recommended that if the revocation decision was not modified, the University should return any fees paid by the Student for the semester she completed and expunge any record of the Student’s academic performance in the semester.

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FILE:	<a href="#">Report #366</a>	Secretary:	Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances
DATE:	July 8, 2013	Appearances:	For the Student Appellant: Ms. S.A., the Appellant (“the Student”)
PARTIES:	Ms. S.A. (the Student) v. School of Graduate Studies	For the School of Graduate Studies:	Mr. Robert Centa, Counsel Professor Luc de Nil, Vice-Dean, School of Graduate Studies Ms. Jane Alderdice, Director, Quality Assurance and Governance, School of Graduate Studies
Hearing Date(s):	June 19, 2013		
Committee Members:	Professor Andrew Green, Chair Dr. Avrum Gotlieb Ms. Mainawati Rambali		

**School of Graduate Studies – request to withdraw Notice of Withdrawal – Student withdrew from program when asked to terminate her registration – Student argued that she did not have adequate advice with respect to her options – Committee found that withdrawal from a program is not a decision about an academic regulation or requirement, bringing an appeal of a withdrawal outside of the Committee’s jurisdiction – appeal dismissed**

Request to withdraw Notice of Withdrawal. The Student failed two comprehensive examinations in her Ph.D program, following which the Chair of the program requested termination of the Student’s registration. The Chair provided the Student with the option of voluntary withdrawal from the program rather than termination, and informed her that while termination could be appealed, voluntary withdrawal could not be appealed. The Student submitted a request to withdraw from her program, and it was accepted by the School of Graduate Studies. The Student then notified her program that she was considering an appeal of her withdrawal, arguing that she did not have adequate advice concerning her options at the time of her withdrawal. The Graduate Department Appeals Committee of the program found that there were no grounds to allow the Student’s appeal. The Student subsequently appealed to the Graduate Academic Appeals Board. The GAAB dismissed the appeal, noting that voluntary withdrawal was not a decision within the jurisdiction of the GAAB to decide and that it would also not allow the appeal on the merits. The Student then appealed to the Academic Appeals Committee. The Committee agreed with the GAAB’s decision. A withdrawal is a decision a student can make at any time during a program; it is not a decision about the application of an academic regulation or requirement. An appeal of a withdrawal is therefore a decision outside of the Committee’s jurisdiction, which in turn means that the Committee is precluded from ruling on the merits of the Student’s appeal. The Committee recommended that to the extent they do not currently exist, the University should consider ensuring that options for students to obtain advice on withdrawals are in place and clearly identified to the student at the time withdrawal is considered. Appeal dismissed.

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FILE:	<a href="#">Report #376</a>	Secretary:	Mr. Christopher Lang, Appeals, Discipline and Faculty Grievances
DATE:	October 14, 2014	Appearances:	For the Student Appellant: Ms. M.B., the Appellant (“the Student”)
PARTIES:	Ms. M.B. (the Student) v. the Department of Leadership, Adult and Higher Education, OISE, and School of Graduate Studies	For the Department of Leadership, Adult and Higher Education, OISE, and School of Graduate Studies:	Mr. Robert Centa, Counsel Professor A. Hildyard Professor T. Chambers Professor Luc de Nil, SGS
Hearing Date(s):	September 22, 2014		
Committee Members:	Professor Andrew Green, Chair Professor Avrum Gotlieb Mr. Andrew Girgis		

**OISE and School of Graduate Studies – reinstatement to program – jurisdiction – Student failed her comprehensive PhD examination three times – Student made a range of requests for relief including personal remedies and departmental policy changes – Committee’s powers do not extend beyond orders of an academic nature – departmental policies enacted after a decision may be relevant in an appeal in some circumstances, but here the changes did not demonstrate any unfairness to the Student – appeal dismissed**

Request for re-instatement to the program, along with personal remedies and Departmental policy changes. The Student failed her comprehensive PhD examination three times, and her registration was subsequently terminated. The Student appealed the termination to the Graduate Academic Appeals Board (GAAB), requesting a range of relief including development of policies at OISE, training of staff and faculty, revision to her status as a student, reinstatement to the program or transfer to another program, and waiver of accrued penalties and fines. The GAAB found that it lacked jurisdiction to grant many of the remedies requested, and concluded that the only issues within its jurisdiction were whether the decision to terminate the Student should be upheld and whether any recommendations should be made regarding student fees. The GAAB allowed the Student to continue the appeal through the Graduate Department Academic Appeals Committee (GDAAC) pursuant to SGS policies. The GDAAC dismissed the appeal. The Student then appealed again to the GAAB, which dismissed the appeal. The GAAB rejected the Student’s assertion that the Department had not adequately supervised and prepared the Student for the exams.

The Student then appealed to the Academic Appeals Committee. The Student requested personal remedies (including reinstatement to the program, reactivation of funding, a recommendation to expedite convocation, consideration for awards and grants, a declaration that she was suitable for candidacy, expedited ethical review, removal of adverse notations from her transcript, and a written apology from the advisory committee), departmental remedies (including that the Department establish a committee on equity and accessibility, the creation of a post-doctoral fellowship, and that she be the first recipient of the fellowship), and SGS remedies (involving the creation of a staff and incoming student training program).

The Committee dismissed the appeal on its merits and lack of jurisdiction. With respect to the Committee’s jurisdiction, its powers to grant a remedy encompassed only the request by the Student for reinstatement to the program and to remove notations about the termination from the Student’s transcript. The Committee’s powers did not extend to any of the other remedies requested by the Student; the Committee is limited to making orders of an academic nature and considering whether academic regulations have been applied correctly, consistently, and fairly. The Committee agreed with the GAAB that the Student was provided with adequate supervision and preparation by the Department, noting that the only inconsistency in the application of the Department’s policies was the provision of a third attempt at the comprehensive exam instead of the usual two, which was to the Student’s benefit. With respect to the Student’s request to have the advantage of any new policies put in place after her termination, the Committee stated that its function is to examine the application of policies existing at the time of the initial decision, also noting that new policies may shed light on any unfairness in the application of the existing policies and therefore in some circumstances may be relevant to an appeal. The Committee found that the Department’s policies did not change in a manner that demonstrated any unfairness to the Student or that would have led to any benefit to the Student. Appeal dismissed.

The Committee recommended that the SGS and the Department make processes around decisions such as termination and related appeals as clear as possible.

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FILE: [Report #381](#)  
DATE: April 28, 2016  
PARTIES: Dr. R.E. (the Student) v. the Faculty of  
Medicine

Secretaries:  
Mr. Christopher Lang, Director, and Ms. Tracey  
Gameiro, Associate Director, Office of Appeals,  
Discipline and Faculty Grievances

Hearing Date(s):  
February 10, 2016  
  
Committee Members:  
Ms. Sara Faherty, Chair  
Professor Paul Kingston  
Mr. Raiyyan Khan

Appearances:  
For the Student Appellant:  
Dr. R.E., the Appellant (“the Student”)  
Mr. Jordan Goldblatt, Adair Barristers, Counsel  
  
For the Faculty of Medicine:  
Dr. Glen Bandiera, Faculty of Medicine

Dr. Lisa Bahrey, Department of Anesthesia  
Dr. Mark Levine, Department of Anesthesia  
Ms. Sari Springer, Littler LLP, Counsel

**Faculty of Medicine – reinstatement to program – Student did not meet the standards of his Remediation Plan – Committee does not have the power to order a further period of Remediation – despite unfortunate miscommunications, changes made to the Plan were reasonable to maintain patient safety and did not prejudice the Student – appeal dismissed**

Appeal from the decision of the Faculty of Medicine Faculty Appeals Committee and the PGME Board of Examiners to dismiss the Student from his Residency Program. The Student failed to meet the standards of his Remediation with Probation period. The terms of the Remediation Plan were set out in a document that set forth numerous elements of remediation, which was subsequently modified at the request of the Board of Examiners. The Faculty of Medicine determined that the Student failed on the first two required measures, and therefore did not administer the third measure. The Board of Examiners accepted the Faculty’s conclusions and dismissed the Student.

The Student appealed to the Academic Appeals Committee. The Student identified six points in which the implementation of the Plan differed from the written agreement. The issue on appeal was whether aspects of the actual Remediation process were unjust and constituted substantial changes to the Remediation Plan, or whether they constituted changes at all. The Student asked for three remedies; namely, that the Committee determine that the Plan was not complied with, that he was entitled to a proper Remediation Program, and that he was entitled to a further period of Remediation. The Committee noted at the outset that the Student’s request to be granted a further period of Remediation fell outside the purview of the AAC, which can determine whether the Faculty’s policies were applied fairly and whether the Student was entitled to reinstatement in the program, but not whether he was entitled to a further period of Remediation. The Committee noted that despite some administrative errors and miscommunications from the Faculty surrounding the Remediation Plan, the miscommunication was insignificant and the Plan’s substantive goals were met. The Committee emphasized that modifications based on patient safety were well advised and could not form a basis for invalidating the Plan. Further, the Student did not demonstrate that the changes made to the Plan prejudiced him. The Committee also noted that though the miscommunication surrounding the Plan was unfortunate, the Student should have made an effort to resolve it, especially since the stakes were so high for him. The Committee concluded that the Student failed to achieve the medical expert grades and the necessary level of communication skills as set out in the Plan, and therefore that the Faculty’s Appeals Committee’s decision was reasonable. Appeal dismissed.

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FILE: [Report #382](#)  
DATE: April 28, 2016  
PARTIES: Ms. A.W. (the Student) v. the Toronto School of Theology

Secretaries:  
Mr. Christopher Lang, Director, Ms. Tracey Gameiro, Associate Director, and Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Hearing Date(s):  
April 11, 2016

Committee Members:  
Professor Andrew Green, Chair  
Professor Andrea Sass-Kortsak  
Mr. Alex Iovic

Appearances:  
For the Student Appellant:  
Mr. A.W., the Appellant (“the Student”)  
Mr. Geoffrey D. K. Wiebe, Counsel  
For the Toronto School of Theology:  
Mr. Robert A. Centa, Counsel  
Professor Alan Hayes  
Dr. Daniella Mallinick  
Professor Jaroslav Skira

**Toronto School of Theology – exemption from program requirements – Student wanted to transfer from the ThD program to the Faculty’s new PhD program without completing the application requirements – Student appealed to the Committee rather than pursuing further internal appeals, but this was not a basis for an adverse inference to be drawn against the Student – Student was arguing against the fairness of the policy itself, not the policy’s application, so the matter was outside of the Committee’s jurisdiction – Student did not take advantage of the opportunities available to him to transfer programs – appeal dismissed**

Request to transfer from the ThD program into the new PhD program in the research doctorate in theological studies without being required to complete two further courses. The Student did not apply to the bridging program designed to allow transfer into the new PhD program despite knowledge of this option, and instead wrote to the Director of the TST requesting to transfer from ‘ThD’ into ‘PhD’ nomenclature. The Student petitioned to the Advanced Degree Appeals Division of the TST, stating that he had not been permitted transfer in the nomenclature without being required to complete two further courses. At the hearing, the Student submitted evidence supporting his claims that he had substantially met the outcomes of the Required Courses given that he had authored an academic book, taught and designed an undergraduate course, and spent time in the learning community in Trinity College, and stated that it would have been a serious delay in his studies to have taken the courses. The Academic Appeals Committee of the GSC denied the Student’s petition, noting that the Student did not choose apply to the PhD program through the existing bridging option, and did not find the arguments made in support of his appeal persuasive. The matter was sent back to the Faculty to determine whether there was room for exploration of an accommodation within the existing bridging option.

The Student then appealed to the Academic Appeals Committee, requesting a declaration that he had met the academic requirements set out by the TST for transfer from the ThD into the PhD program through equivalency to the Required Courses, and directing the TST to transfer him into the PhD program immediately. The Committee noted the unusual manner in which the appeal came before it: the GSC decision did not decide on the merits of the Student’s appeal but instead sent the matter back to an earlier stage in the appeals process, and the Student then appealed to the Committee. The Committee also noted that no adverse inference should be drawn against the Student for coming before the Committee rather than pursuing further internal appeals.

With respect to the Committee’s jurisdiction to provide the remedy requested by the Student, the Committee noted that its role is not to change Faculty policy but rather to ensure that a policy was applied fairly and consistently. The Committee found that the Student was in effect arguing about the fairness of the Faculty’s policy, not about the fairness of the application of the policy to the Student. (See Reports #368, #359-1, and #371.) Despite some procedural fairness issues relating to the transparency and updating of the TST’s Handbook and processes, the Committee concluded that the Student was not treated unfairly. The Committee took into account the fact that the Student did not avail himself of his many opportunities to enter the bridging program, that he did not approach the TST to see if he could obtain an exemption from the requirements in a timely manner, and that he did not take advantage of the ample opportunities the TST provided him with to seek resolution of his appeal. The Committee also rejected the Student’s assertion that the process was procedurally unfair because of a lack of reasons by the Academic Appeals Committee of the GSC, noting that the GSC decision sent the matter back to an earlier stage in the appeals process and gave reasons for this decision. The Committee encouraged the TST and the Student to work together to seek if they could find a solution. Appeal dismissed.

FILE: [Report #388](#)  
 DATE: May 8, 2017  
 PARTIES: Mr. F.Z. (the “Student”) v. the Faculty of  
 Arts and Science/Woodsworth College

Secretary:  
 Ms. Krista Osbourne, Administrative Clerk and  
 Hearing Secretary, Appeals,  
 Discipline and Faculty Grievances

Hearing Date(s): March 28, 2017

Committee Members:  
 Ms. Sara Faherty, Chair  
 Professor Hugh Gunz, Faculty Panel Member  
 Mr. Mohammad Amin, Student Panel Member

Appearances:  
 For the Student:  
 Mr. Cormac Donovan, Student Lawyer, Downtown  
 Legal Services  
 Ms. Jennifer Fehr, Staff Lawyer, Downtown Legal  
 Services  
 The Student

For the Faculty of Arts and Science/Woodsworth  
 College:  
 Professor Anne-Marie Brousseau, Associate Dean,  
 Undergraduate Programs  
 Mr. Rob Centa, Paliare Roland  
 Ms. Emily Home, Paliare Roland, Articling Student

**Faculty of Arts and Science/Woodsworth College – grade appeal – valid reasons to miss exam – course conflict – commuting between campuses – no accommodation required for regular travelling obligation – Committee has jurisdiction to hear whether the reasons for an absence are valid – appeal dismissed**

Request to change a course grade from 70% to 80%. Student had enrolled in two courses which did not directly overlap in terms of timing, but occurred on two different campuses, so attending both would have been virtually impossible given the commute. At issue was whether this type of scheduling conflict was a valid reason for the Student missing his mid-term exam. If so, the Student requested that the weight of the mid-term exam be reallocated to his final exam so that his final grade could improve.

The Faculty of Arts and Science challenged the jurisdiction of the Committee to grant the relief sought, citing section 11.1 of the Faculty of Arts and Science *Academic Handbook*, which states that academic appeals involving marking concludes “with the Dean’s Office being the final level of appeal.” The Committee agreed that this policy limited their jurisdiction to review the academic merit of a Student’s work, but since the Student’s issues concerned the rules for determining whether the reasons for an absence were valid it had jurisdiction to decide this appeal. Its role was to determine whether the Division’s policies were applied fairly, and the standard for their application is reasonableness.

The Committee found that what constitutes a valid reason for missing an exam is at the discretion of the course instructor, and referred to the course syllabus in their analysis. Nothing in the syllabus language suggested a specific process the instructor would follow to determine whether an absence was valid and so under these circumstances, the process was followed (consulting with officials) was reasonable. The Committee did not distinguish between course conflicts that involved a direct overlap and courses that do not overlap directly but are located so far away from each other that a commute makes it either unlikely or impossible for a student to attend both. A regular travelling obligation that made it impossible for a student to attend a course on a consistent basis would not be one that instructors are expected to accommodate.

The Student submitted documentation of his Narcissistic Personality Disorder, however, the Committee declined to give it weight since he had not asked for any academic accommodations related to a disability before or during the course. The Committee found that together, the course syllabus and the Faculty of Arts and Science policy on course conflicts led to the conclusion that the Student’s absence was reasonably found to be invalid, and there was no basis for moving the weight of his midterm exam to the final exam. Appeal dismissed.

FILE: [Report #391](#) (2017-2018)  
 DATE: December 8, 2017  
 PARTIES: Y.A. (“the Student”) v. the University of Toronto, Mississauga (UTM)

Secretary:  
 Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Appeals, Discipline and Faculty Grievances

Hearing Date(s): November 6, 2017

Appearances:  
 For the Student Appellant:  
 Mr. Y.A. (the Student)

Committee Members:  
 Ms. Sara Faherty, Chair  
 Professor Andrea Sass-Kortsak, Faculty Governor  
 Ms. Mala Kashyap, Student Governor

For the UTM:  
 Professor Michael Lettieri, Vice Dean, Undergraduate Programs  
 Ms. Renu Kanga Fonseca, Director, Student Recruitment and Admissions

**UTM – Undergraduate programs – attempt to drop a course after the add/drop deadline - request for refund of tuition fees - jurisdiction of Academic Appeals Committee to review fee policy - no jurisdiction to refund tuition fees – fee policy concerning add/drop dates is not unfair in a broader sense - appeal dismissed**

Student appeal from a decision of the Fee Consideration Committee at the UTM Registrar’s Office, which disallowed the Student’s request for a fee refund and reversal of charges placed on the Student’s account. The disputed charges

related to a year-long course that the Student dropped after the relevant add/drop deadline. The Student dropped the course after the last date to which he would have been entitled to get even a partial refund of his fees.

The Committee declined to review the Fee Consideration Committee’s ruling because Section 2.1 of the *Terms of Reference that govern the Academic Appeals Committee of the Governing Council* permits the Committee to “hear and consider appeals made by students against decisions of faculty, college or school councils (or committees thereof) in the application of academic regulations and requirements” and a decision by a registrarial fee refund committee is not a decision that applied an academic regulation to a student. The Committee’s decision is aligned with the fact that the Committee is limited to academic remedies (e.g. late withdrawal without academic penalty, reinstatement into a program) and not the kind of financial relief requested by the Student.

The Committee nonetheless considered the fairness of the practice of imposing add/drop deadline because, broadly understood, it is an academic regulation. There were two potential grounds for review. The first is that the policy was not applied consistently. On this ground, the Committee found that the goal of the add/drop deadline was not tied to a Student’s ability to predict whether they would succeed in the course, rather, it was to allow Students the opportunity to drop a course once they have an idea of what the course is about, whether they are able to understand and connect with the instructor, and the amount of time they should be expected to devote to the course. Even when a student encounters an unforeseen problem that arose after the add/drop deadline had passed, and the Committee permits late withdrawal without academic penalty, the Committee does not have the authority to reverse the associated tuition and fees (Report #302).

On the second ground of review, the fairness of the add/drop deadline as an academic regulation, the Committee agreed that the common understanding of the word “refund” tends to relate exclusively to money that has already been paid and that it would be clearer to expressly remind students who drop year-long courses that they will still be responsible for any future payments. Nonetheless, the Committee concluded that the policy was sufficiently communicated to the Student, and the University’s use of the term “refund” did not cause the Student to take an action he otherwise would not have taken. Appeal dismissed.

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FILE: [Report #397](#)  
DATE: July 10, 2018  
PARTIES: Ms. A. M. (the “Student”) v. the Faculty of  
Arts and Science

Hearing Date(s): June 1, 2018

Committee Members:  
Assistant Dean Sara Faherty (Chair)  
Professor Normand Labrie, Faculty Governor  
Mr. Aidan Fishman, Student Governor

Hearing Secretary:  
Ms. Krista Osbourne, Administrative Clerk, Appeals, Discipline and Faculty Grievances

Appearances:  
For the Student:  
The Student via video connection

For the Faculty of Arts and Science:  
Professor Melanie Woodin, Associate Dean, Undergraduate Issues and Academic Planning  
Mr. Thomas MacKay, Director, Faculty Governance & Curriculum Services

**Faculty of Arts and Science – student appeal to have program removed from transcript – retroactive changes to transcripts – purpose and function of student transcripts – no jurisdiction to order retroactive alteration to transcripts – no jurisdiction to intervene with the Registrar writing a letter explaining a transcript on behalf of a student - appeal denied**

Appeal by the Student of the Faculty’s refusal to remove a Biology & Physics Major Program from her academic record. The Student was originally awarded a three-year degree with a Major in Biology & Physics. She then completed additional credits, entitling her to a 4-year degree with a minor in English, a minor in Mathematics and a general major in Physics. Though the Faculty had added the major in Physics to her transcript retroactively, they refused to remove the Biology & Physics Major Program. The Committee found that the transcript was both accurate and meaningful because it reflected the complete history of the Student’s studies as they progressed. The Committee found that even though the Faculty had agreed to make retroactive additions to the Student’s transcript, it was open for it to do so based on the rules and requirements in place at the time of convocation. The Committee found that adding the Major in Physics enhanced the accuracy of the transcript, but removing a program would have the opposite effect, making the transcript less accurate because the Student would not have been eligible to graduate in 1991 without the Biology and Physics Major. The Committee went on to note that the Committee did not have jurisdiction to change the Student’s transcript (from a Minor in Math to a Major in Math) nor did it have jurisdiction to intervene if the Registrar of the Faculty offered to write a letter explaining an academic history on behalf of the Student. Appeal dismissed.

FILE:	<a href="#">Report #399</a>	Hearing Secretary:
DATE:	November 8, 2018	
PARTIES:	Ms. J.P. (the “Student”) v. Faculty of Arts and Science, Woodsworth College	Appearances: The parties did not attend.

Hearing Date(s): November 8, 2018

Committee Members:  
Hamish Stewart (Chair only)

**Woodworth College – whether a student is classified as “new” or “continuing” - refusal to register in classes – no jurisdiction of AAC on questions concerning financial relationship of student and University – appeal dismissed**

The Student appeals a decision of the Office of the Registrar, Woodsworth College, refusing to register her as a non-degree student for the Summer of 2017 and Fall 2018 terms owing to outstanding balances in her account with the University. The Registrar acted pursuant to the *Policy on Academic Sanctions for Students who have Outstanding University Obligations* (the “policy”<sup>0</sup>, section 3.3 which provides that registration will be refused for a student who has outstanding obligations. The Student argued that this section of the Policy did not apply to her because she was a “new” student, and not a “continuing” student. The Chair referred to section 2.1 of the AAC terms of reference, which provide that the AAC’s function is: “To hear and consider appeals made by students against decisions of a faculty, college or school councils (or committees thereof) in the application of academic regulations and requirements...” The Chair explained that applications of academic regulations and requirements typically concern the merit of a student’s work and the integrity of their academic record – such as course work, their standing in a program, or the reasonableness of a division’s decision in relation to an academic accommodation. The Chair concluded that the consequences of the Students’ financial relationship with the University for her ability to register; whether she was a “new” or “continuing” student was outside the jurisdiction of the AAC. Appeal dismissed.

FILE:	<a href="#">Report #359-1</a> (2011-2012)	Hearing Secretary:
DATE:	August 25, 2011	Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances
PARTIES:	H.M and M.Y. (the “Students”) v. School of Graduate Studies	

Appearances:  
For the Students  
The Students

Hearing Date(s): August 17, 2011

For the School of Graduate Studies:

Chair Only: Professor Hamish  
Stewart, Senior Chair

Mr. Robert A. Centa, Counsel, Paliare Roland  
Rosenberg Rothstein LLP  
Ms. Julia Wilkes, Articling  
Student, Paliare Roland Rosenberg Rothstein  
LLP

**NOTE: These reasons address the findings on the motion only. Reasons for the decision on the merits are reported in *H.M. and M.Y. v. School of Graduate Studies* ([Report # 363](#), February 7, 2012)**

**School of Graduate Studies – motion – admissibility of evidence of communication with University staff and counsel – evidence of communications inadmissible – settlement privilege – evidence of the fact of negotiations admissible if relevant – jurisdiction to grant remedy – request for removal of grades – request for waiver of tuition – request for compensation for costs incurred – request for compensation for losses and – request for an official apology – Academic Appeal Committee’s (“AAC”) powers limited to those granted expressly or by necessary implication in the Terms of Reference – s. 2.1 of the AAC’s Terms of Reference – purpose of s. 19 of Graduate Academic Appeals Board (“GAAB”) Terms of Reference is to enable GAAB Chair to determine a point of law that arises in connection with an issue that is otherwise within its jurisdiction – GAAB and AAC jurisdiction limited to considering whether academic regulations and requirements have been applied correctly, consistently, and fairly – jurisdiction does not include all the consequences flowing from an otherwise reviewable academic decision – jurisdiction of the AAC is limited to considering whether those academic regulations and requirements have been applied correctly, consistently, and fairly – GAAB and AAC remedial jurisdiction limited to orders of an academic nature and making recommendations regarding tuition – GAAB and AAC have no jurisdiction to award financial compensation or demand an apology – AAC has no jurisdiction to order production of documents prepared for the purpose of assisting the GAAB – AAC has no jurisdiction to order registration of students in upcoming academic year when hearing a preliminary motion on questions of law**

Motion brought by School of Graduate Studies (“SGS”) for direction concerning the jurisdiction of the Academic Appeals Committee (“AAC”) and the admissibility of some of the Students’ material. The Students appealed a decision of the Graduate Academic Appeals Board (“GAAB”) to the AAC seeking some 37 remedies, grouped into five categories: (1) academic remedies, (2) remedies relating to tuition and funding, (3) compensation for various costs incurred since 2007, (4) compensation for losses and damages flowing from the Department of Economics’ conduct, and (5) an official apology letter from the SGS and the University.

The SGS conceded that the AAC had jurisdiction to grant the remedies in the first category and jurisdiction to recommend the rebate or cancellation of fees, but no jurisdiction to grant any of the remaining remedies. The Chair observed that the AAC only has the powers given to it by the Governing Council, expressly or by necessary implication, in its Terms of Reference; it has no inherent jurisdiction. The Chair commented that some light may be shed on the AAC’s jurisdiction by examining the jurisdiction of those bodies whose decisions it reviews, in this case, the GAAB. Upon review of the AAC and GAAB’s Terms of Reference, the Chair concluded that the AAC’s jurisdiction is limited to considering whether academic regulations and requirements have been applied correctly, consistently, and fairly. The Students argued that s.19 of the GAAB’s Terms of Reference gives the GAAB, and by extension the AAC, the power to award financial compensation for losses flowing from academic decisions. The Chair did not accept this argument. The Chair observed that s.19 does not enable the GAAB Chair to decide any dispute arising under the law of Ontario or Canada as it would give him or her powers comparable to those of a Superior Court judge. The Chair noted that the purpose of s. 19 is to enable the GAAB Chair to determine a point of law and a point of privilege that arises in connection with an issue that is otherwise within its jurisdiction. As such, a GAAB Chair would not have the jurisdiction to decide an issue of law that was not otherwise properly before them. Similarly, s.19 does not give the GAAB, or the AAC, the power to award damages. Awarding financial compensation for the losses flowing from an erroneous or unfair application of academic regulations and requirements is not within the jurisdiction of the AAC, nor is requiring the SGS and the University of Toronto to apologize to the Students.

The Chair granted the Students’ permission to argue at the hearing on the merits for a recommendation concerning their tuition but not for the remedies sought under categories (2) – (5). The Chair stated that the AAC will not grant any of these non-permitted remedies. The Chair held that it had jurisdiction to grant some of the remedies grouped into

category (1): the removal of FZ grades, and the request for final exams taken while auditing courses to be marked. The remaining remedies grouped into category (1) were left to be decided at the hearing on the merits.

The SGS submitted that some of the materials filed by the Students were inadmissible at the hearing on the basis that they were communications in furtherance of dispute settlement and therefore privileged. The SGS submitted in the alternative that this material was irrelevant. The Chair reviewed the law of privilege and relevance. In the Chair's view, privilege applies whether the settlement discussions took place with or without a mediator. The Chair noted that the fact that settlement discussions were underway, though not the content of those discussions, may be admissible if relevant. In 2009, the Students initiated a consultation process with the Department of Economics for advice and informal mediation. After receiving information from the Students, a professor made a proposal to the Students. One of the Students sought some clarifications. After receiving clarification, one of the Student wrote to the professor stating "This is to accept the offer." The Students did not register as had been suggested and several weeks later declined the offer and pursued an appeal. The Chair held that the discussions and information exchanged during this period were covered by settlement privilege. The dispute was contemplated by the Students at the time, though the appeal had not yet been launched. The nature of the offers made by the Department of Economics and the SGS supported the inference that the discussions were intended to be kept confidential. And in light of the structure of the discussions, and the fact that some of the proposals involved compromising usual University policies, it was wholly implausible to describe all of the discussions as the giving and receiving of academic advice, rather than as negotiation to resolve a dispute. The possibility that the Students may have accepted the offer and nonetheless proceeded with a grade appeal did not destroy the privilege. The 2009 negotiations were designed to settle a dispute about whether the Students could resume their studies. Even if this was not the precise dispute now before the AAC, those discussions were privileged and therefore inadmissible. The Chair further held that the content of these negotiations had no bearing on the issues currently before the AAC and thus were irrelevant and inadmissible. The fact that negotiations occurred was relevant, but only to explain why the Students were permitted to write tests while auditing courses. In 2010, another series of discussions took place between the Students and Counsel for the Department of Economics. The Chair concluded these discussions were privileged and therefore inadmissible. The fact that negotiations occurred was not relevant and was inadmissible.

Both before and during the motion, the Students made a number of requests of the Chair that were all declined. The Students requested documents, including notes, minutes, and statements, produced at or as a record of the GAAB hearing. The Chair refused to make the requested order. The Chair concluded that he had no power to compel anyone to produce documents, that the GAAB is not a court of record and that any documents prepared to assist the GAAB are immune from disclosure to the parties in the appeal to the AAC, and that the documents were irrelevant. The Students also requested the Chair order the SGS to register them immediately for the 2011/2012 academic year. The Chair declined to make the requested order, as it was not within the jurisdiction of an AAC Chair hearing a preliminary motion to decide questions of law.

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FILE:	<a href="#">Report #402</a> (2018-2019)	Appearances:
DATE:	March 29, 2019	Parties did not attend
PARTIES:	W.H. (the "Student") v. the Toronto School of Theology ("TST")	

Hearing Date(s): N/A (appeal conducted on the basis of written submissions to determine jurisdiction)

Committee Member:  
Professor Hamish Stewart, Senior Chair

**Toronto School of Theology – Student appealed termination of registration in Doctor of Theology Program – Minutes of Settlement waived Student's appeal rights – preliminary motion to determine jurisdiction of Academic Appeals Committee to hear appeal – absence of alternate appeal route does not give Academic Appeals Committee jurisdiction to hear appeal – appeal quashed**

The Student sought to appeal the termination of his registration in the Doctor of Theology Program (Program). The Chair asked for written submissions from the parties as to whether the Academic Appeals Committee (AAC) had

jurisdiction to hear the appeal. This preliminary motion to determine jurisdiction was heard by the Chair only, and by way of written submissions. The parties did not attend.

The Student was enrolled in the Program at the Toronto School of Theology (TST). In December 2016, the Student and TST executed Minutes of Settlement to resolve certain issues arising out of the Student’s performance in the Program and certain prior academic appeals. In the process of negotiating the Minutes of Settlement, both parties were represented by legal counsel. The Minutes of Settlement required the Student to complete his second major comprehensive examination with a minimum grade of A-, otherwise his registration in the Program would be terminated. The Minutes of Settlement further provided that the Student waived any right to appeal any decision to terminate his registration in the Program for any reason. The Student completed his second major comprehensive examination with a grade of B- and his registration in the Program was terminated by TST in accordance with the Minutes of Settlement.

TST submitted that the Minutes of Settlement deprived the AAC of jurisdiction to hear the Student’s appeal. The Student submitted that the AAC must have jurisdiction to hear his appeal because he had effectively exhausted his remedies within TST. The Student also submitted that the Minutes of Settlement were not enforceable because he could not contract out of his appeal rights within the University.

The Chair rejected the Student’s submission on jurisdiction stating that the AAC’s jurisdiction depends on its terms of reference, and is not created by the fact that no other University body has jurisdiction over a dispute between a student and a division of the University. The Chair explained that in the normal course of events, the Student would appeal the TST’s decision to terminate his registration to the Graduate Studies Council Academic Appeal Committee (GSCAAC); if that appeal was dismissed, he could then appeal to the AAC. The Chair further explained that the AAC lacked jurisdiction to hear an appeal directly from a decision made at a lower level than the council of a faculty, college or school. Accordingly, the Chair concluded that while the AAC would have jurisdiction to hear an appeal from a decision of the GSCAAC, it did not have jurisdiction to hear an appeal directly from TST’s decision to terminate the Student’s registration.

In light of the Chair’s conclusion that the AAC had no jurisdiction to hear the Student’s appeal, it was not necessary to decide whether characterizing the Minutes of Settlement as an aspect of the TST’s accommodation of the Student’s disability would give the AAC had jurisdiction to hear the appeal. Nevertheless, the Chair observed that it would be quite extraordinary for a university appeal body to consider the merits of an agreement that had been negotiated between a student and a division of the university where both parties were legally represented.

The Student’s appeal was quashed.

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FILE:	<a href="#">Report #406</a> (2019-2020)	Appearances:
DATE:	October 2, 2019	Parties did not attend
PARTIES:	F.K. (the “Student”) v. School of Graduate Studies	

HEARING DATE: N/A (appeal conducted on the basis of written submissions to determine jurisdiction)

Senior Chair:  
Professor Hamish Stewart

**Graduate Academic Appeals Board (“GAAB”) – Student successful at GAAB but appeals to seek additional remedies from Academic Appeals Committee (“AAC”) – GAAB decided Student inadequately supervised in preparing for comprehensive examinations and ordered University department to provide opportunity to take examination again with adequate supervision – Student seeking general damages, guaranteed transfer to another department and two years’ funding to complete PhD – as successful party Student cannot appeal remedy granted to AAC – remedies granted by AAC must relate to decisions concerning application of academic regulations and requirements to Students who are or were enrolled at the University – remedies do not extend to admissions decisions or providing financial compensation – AAC has no power to direct University to admit student, pay damages or provide funding – appeal quashed for want of jurisdiction**

The Student appealed a decision of the Graduate Academic Appeals Board (“GAAB”). The Student was successful before the GAAB but sought additional remedies from the Academic Appeals Committee (“AAC”). The Senior Chair of the AAC asked for written submissions as to whether the AAC had jurisdiction to hear the appeal.

The Student was enrolled in the Ph.D. program at the University’s Department of Leadership, Higher and Adult Education and had completed all requirements to achieve Ph.D. candidacy except the comprehensive examination. The Student failed the comprehensive examination, and her registration was terminated. The Student appealed to the GAAB, which found that the Student had been inadequately supervised during the process of preparing for the examination, and that this lack of supervision could have contributed to the failure. As a remedy, the GAAB ordered that the Department provide her with an opportunity to take the examination again, with adequate supervision. The GAAB rejected all of the Student’s other arguments. On appeal to the AAC, the Student sought general damages of \$500,000; guaranteed transfer to another department; and full funding for at least two years to complete her Ph.D.

The Senior Chair first noted that the GAAB had granted a remedy in relation to the Student’s allegations of inadequate supervision and as the successful party on that point, the Student could not appeal from that decision to the AAC. The Senior Chair further noted that the two cases cited by the Student in support of her position (*Lam v. University of Western Ontario*, 2019 ONCA 82; and *Stuart v. University of Western Ontario*, 2017 ONSC 6980) were not relevant to the issues at hand. Both cases concerned the appropriateness of the Superior Court of Justice hearing a student’s action against a university; the Senior Chair stated that neither case had any bearing on the jurisdiction of an internal university tribunal such as the GAAB or the AAC. The Senior Chair noted that section 2.1 of the AAC’s Terms of Reference provides that the AAC shall hear and consider appeals by students against decisions of faculty, college or school councils (or committees thereof) in the application of academic regulations and requirements. The Senior Chair stated that the issues heard, and the remedies granted by the AAC must relate to decisions concerning the “application of academic regulations and requirements” to students who are (or were) enrolled at the University; they do not extend to admissions decisions or to providing financial compensation. The AAC does not have the power to direct a University division to admit a student or the power to order the University to pay damages or to provide any particular level of funding to a student. The Senior Chair referred to the AAC’s Report 359-1, in which two students sought damages and other financial remedies. The Chair in that case wrote that the AAC’s jurisdiction does not extend to remedying all the consequences, whatever they may be, of a decision that the AAC does have jurisdiction to review. The Chair held that these words were equally applicable to the Student’s appeal.

The Student’s appeal was quashed for want of jurisdiction.

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FILE: [Report # 415](#) (2021-2022)

DATE: July 20, 2021

PARTIES: Ms. E.L. (“the Student”) v. School of Graduate Studies

Hearing Date(s):

June 17, 2021, via Zoom

Committee Members:

Professor Hamish Stewart, Senior Chair

Professor Ernest Lam, Faculty Governor

Ms. Susan Froom, Student Governor

Secretary:

Ms. Carmelle Salomon-Labbé, Associate Director,  
Office of Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

The Student

For the School of Graduate Studies:

Ms. Denise Cooney, Paliare Roland Rosenberg

Rothstein LLP

Professor Martin Pickavé, School of Graduate Studies

**UT – School of Graduate Studies – request for a reassessment of a major paper – Academic Appeals Committee (“Committee”) lacks jurisdiction to seek disclosure of another student’s work – no evidentiary basis to compare the quality of work between two students – the procedures followed by the Professor, the Department, the Graduate Department Academic Appeals Committee Graduate (“GDAAC”), and the Graduate Academic Appeal Board (“GAAB”) were appropriate – appeal dismissed**

The Student appealed a decision of the GAAB which dismissed her appeal from a decision of the Chair of the Department of Philosophy (“Department Chair”), declining to direct a reassessment of the Student’s major research paper in PHL2117. The Student’s principal remedy sought is an order from the Committee to the Department of Philosophy

(“Department”) to have her paper reassessed by two specific members of the Department. The Student also seeks the following additional remedies: (1) that the GDAAC disclose the number of rounds of voting that had occurred in order to reach the decision in her appeal; (2) that the Department Chair name or identify tenure track member(s) in the Department who are of Chinese ancestry during or after 2019; (3) that the Committee issue an order directing a specific classmate to disclose a copy of their major paper for comparison; (4) that the Committee summonses a witness; and (5) that matters related to systemic bias should fall within the jurisdiction of the University academic appeal bodies.

The Chair of the Committee (“Chair”) reviewed and decided whether the Committee had jurisdiction to grant any of the additional remedies sought by the Student. With regard to additional remedies one and two, the Chair noted that any questions regarding the “rounds of voting” or the number of members of the Department that are of Chinese ancestry is irrelevant to the appeal. Regarding the third additional remedy, the Chair noted that the GAAB and the Committee lack jurisdiction to seek disclosure of another student’s work and even if there was such jurisdiction, the Student did not provide any reasonable grounds to believe that reading the other student’s paper would have assisted the Committee in deciding the appeal; the Committee is not in a position to compare the quality of work between two students. Regarding the fourth additional remedy, the Committee accepts the Student’s description of the class discussion and therefore, the summons would not be necessary for the purpose of this appeal and finally, the Chair noted that the GAAB and the Committee do not and can not carry out investigations.

The Student’s request for a reassessment of her paper rested on three principal submissions: (1) her major paper was not properly assessed because of the Professor’s lack of expertise in the relevant field of study; (2) the Professor was biased against her Chinese ancestry; and (3) the other student whose work, in the opinion of the Student, was comparable in quality received an A and she did not. With respect to the first ground of appeal, the Committee noted that it does not reassess academic work on its merits and it sees no reason to doubt the judgement of eight members of the Department who read the paper and were all of the view that it deserved, at most, a mark of B. The Committee further noted that regardless of whether or not the Professor’s knowledge was inferior to the Student’s, it did not negate the Student’s responsibility to provide a clear explanation of the relevant concepts and relate them to the subject matter, something the Student did not do.

Regarding the second ground of appeal, the Student’s evidence of bias consisted of her recount of a class meeting and the content of some tweets attributed to the Professor regarding a shadow course. The Committee did not draw any inferences of bias from the Student’s description of the class meeting. The Committee found that it shows, at most, an awkward moment in class. The tweets that the Student attributed to the Professor were not authenticated, however, neither the Department nor SGS raised any issues pertaining to their authenticity. Therefore, the Committee proceeded on the basis that they were authored by the Professor. The Committee noted that the tweets did not indicate any bias towards the Student and furthermore, the Committee could not see how the Professor’s concerns of a shadow course could influence his assessment of the Student’s major paper. Regarding the third ground of appeal, the Committee has no evidentiary basis for comparing the Student’s work with the work of another student.

The Committee noted that the procedures followed by the Professor, the Department Chair, the GDAAC, and the GAAB were appropriate. Appeal dismissed.

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FILE: [Report # 409](#) (2020-2021)  
DATE: August 17, 2020  
PARTIES: Mr. A.M. (“the Student”) v. University of Toronto  
Faculty of Law

Hearing Date(s):  
June 18, 2020, via Zoom

Committee Members:  
Professor Hamish Stewart, Senior Chair  
Professor Douglas McDougall, Faculty Governor  
Ms. Olivia Batt, Student Governor

Hearing Secretary:  
Mr. Christopher Lang, Director, Office of Appeals,  
Discipline and Faculty Grievances  
Ms. Krista Kennedy, Administrative Clerk and Hearing  
Secretary, Appeals, Discipline and Faculty Grievances

Appearances:  
For the Student Appellant:  
Mr. Marcus McCann, Counsel, Millard and Company  
LLP

For the Faculty of Law:  
Mr. Robert Centa, Counsel, Paliare Roland Rosenberg  
Rothstein LLP

UT – Faculty of Law – request to return to the program on a part-time basis with appropriate accommodations – duty to accommodate to the point of undue hardship – reasonable accommodation – jurisdiction – standard of review of correctness vs reasonableness – jurisdiction cannot be created by consent (*Phillips and Phillips v. The Queen*, [1983] 2 S.C.R. 161; *Canada (Attorney General) v. Haberman*, 2000 CanLII 15802 (Fed. C.A.) – the Committee’s function does not extend to invalidating the policies of a division, even if it is of the view that those policies are flawed or unfair – *Terms of Reference Academic Appeals Committee* (“Terms”) – although the Terms do not explicitly define the standard of review, the *Policy on Academic Appeals within Divisions (2005)* states that the “standard of review of an academic appeal is reasonableness.” – s. 17(1) and (2) of the *Human Rights Code* (“Code”) – *Academic Accommodations Policy* – academic accommodations contribute to academic integrity by attempting to ensure that the extraneous factor of disability does not affect a student’s reported results; they are not designed to guarantee that the student succeeds – it is not contrary to the Code to refuse an accommodation that would compromise academic integrity – Student had three unsuccessful, heavily supported, attempts at completing the first year of the program – no realistic basis in which the Student would be likely to succeed in the program regardless of accommodation – dissent – allowing the Student to continue part-time is a reasonable accommodation of his disability – the Student’s history has no bearing on whether part-time studies would now be an appropriate accommodation – the majority Committee agreed with the Academic Standing Committee – appeal dismissed.

This appeal stems from a decision of the Accommodations Committee to deny the Student the ability to resume his studies on a part-time basis. The Student appealed this decision with the Associate Dean of the Faculty which upheld the decision. The Student then petitioned to the Faculty’s Academic Standing Committee (“ASC”); the ASC dismissed his petition. The Student appeals to the Academic Appeals Committee (“Committee”). The Student is seeking an order permitting him to complete his remaining work for the first year of the program and then to resume studies at the Faculty on a part-time basis with appropriate accommodation.

A few procedural and legal issues arose at the Hearing in which the Chair reviewed and determined these without assistance of the other Committee members.

First is the issue as to whether the Committee has jurisdiction to hear or decide any issues pertaining to this matter. The Student submitted that the Committee has jurisdiction to review the decision of the ASC and the Division conceded that the Committee has jurisdiction. The Chair noted that the Faculty’s concession is not determinative because jurisdiction cannot be created by consent (*Phillips and Phillips v. The Queen*, [1983] 2 S.C.R. 161 at p. 164; *Canada (Attorney General) v. Haberman*, 2000 CanLII 15802 (Fed. C.A.) at para. 20). The Chair noted that the Accommodations Committee as well as the ASC were concerned about whether they had jurisdiction over the Student’s request. The ASC chose to proceed on the assumption that it had jurisdiction, therefore, the appeal to the Committee proceeded on the same assumption. In the Chair’s view, jurisdiction in this matter depends on the proper characterization of the Student’s request and the response by the Deans. There are three ways to characterize the request and response. First, the Student inquired into his status at the Faculty and, in response, the Dean provided the Student information about his status. In this view, there would be no application of any of the Faculty’s policies and there would be no decision to appeal from and thus, the Committee would lack jurisdiction over this matter. Second, the Student requested an accommodation and the Accommodations Committee had jurisdiction over that request even though the Student was no longer registered. In this view, the jurisdiction of the ASC and the AAC is straightforward. Third, the Student requested an accommodation and the Accommodations Committee did not have jurisdiction over that request because the Student was no longer registered. Thus, the AAC would also not have jurisdiction. The Chair found that the AAC does have jurisdiction over this appeal on either the second or third characterization of the Student’s request because the Faculty was applying its accommodation policy. Therefore, the Committee has jurisdiction over the Faculty’s response to the Student’s request.

The second issue relates to the appropriate standard of review. The Student requested that the Committee conduct a *de novo* review of the Faculty’s response to the Student’s request and determine whether that response was correct. The Chair indicated that although the Terms do not explicitly define the standard of review, the *Policy on Academic Appeals within Divisions (2005)* states that the “standard of review of an academic appeal is reasonableness.” The Chair found that the issue before the Committee is the reasonableness of the decision being challenged by the Student appellant, whether or not it exercises its powers to receive additional evidence. The Chair was extremely reluctant to hold that a decision made by the ASC should be reviewed for correctness rather than for reasonableness. The Chair found that if the Committee were to adopt a standard of review of correctness there would still be a strong element of reasonableness embedded in

that standard because the duty to accommodate is a duty of reasonable accommodation. The Chair found that the issue before the Committee is whether the Faculty’s overall response to the Student’s request was a reasonable application of the Faculty’s duty to accommodate in accordance with its accommodation policy.

Lastly, the Chair addressed the University’s duty to accommodate in accordance with the *Human Rights Code* (Code). The Chair outlined that the University is obligated to reasonably accommodate a person with a disability to the point of undue hardship. Section 17(1) of the Code indicates that the Student’s rights would not be violated if he is “incapable” of meeting the requirements to successfully complete the academic program, however s. 17(2) of the Code would direct the Committee not to find the Student “incapable” unless his disability “cannot be accommodated without undue hardship.” Whether or not academic integrity can be considered in determining undue hardship under s. 17(2), it is better considered in relation to “the essential duties or requirements attending the exercise of the right” under s. 17(1). Academic accommodations contribute to academic integrity by attempting to ensure that the extraneous factor of disability does not affect a student’s reported results; they are not designed to guarantee that the student succeeds. The University should not provide an accommodation that compromises academic integrity, whether or not doing so would amount to undue hardship, because it would not be possible to fairly assess a student’s performance under such an accommodation. An accommodation inconsistent with academic integrity is of no value in determining whether a student is capable of “performing or fulfilling the essential duties or requirements” of their academic program. It is not contrary to the Code to refuse an accommodation that would compromise academic integrity because, if a student is unable to succeed without such an accommodation, that student “is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.”

The Student raised two main issues in his appeal. The first is with respect to procedural fairness and the second is the duty to accommodate. The Student allegation surrounding procedural fairness was based on the fact that the Student did not get an opportunity to respond to the Faculty’s submissions or attend the ASC meeting to make oral submissions, while the Faculty was. The Committee found that the Faculty did not deny the Student procedural fairness because the procedure with respect to the Student’s petition was in accordance with the ASC’s rules. The Committee further held that its function does not extend to invalidating the policies of a division, even if it is of the view that those policies are flawed or unfair. Therefore, for the Committee to allow an appeal on the basis that a university division had acted unfairly even though it followed its own procedures would be tantamount to invalidating that policy and, as a remedy, would require the creation of ad hoc procedures on a case-by-case basis.

The second issue on appeal is the duty to accommodate. The question before the Committee is whether the Faculty’s refusal to offer the additional accommodations as requested by the Student was in accordance with its duty to reasonably accommodate his disability. The Committee was divided on whether the Faculty’s decision not to grant these accommodations was a reasonable exercise of its duty to accommodate. The majority of the Committee found that over the last number of years the Faculty had provided the Student with extensive accommodations, yet despite these accommodations, the Student could not complete the first year of the program. The majority Committee agreed with the ASC that the Student “has had three unsuccessful, heavily supported attempts at completing the first-year program... There is no realistic basis which we can have confidence that [the Student] is likely to succeed in the program even if undertaken on a part-time basis.”  
Appeal dismissed.

## FACULTY ASSESSMENTS

FILE: [Report #323](#)  
DATE: March 13, 2008  
PARTIES: Dr. C.B. (the Student) v. the Faculty of Medicine

Secretaries:  
Ms. Nancy Smart, Judicial Affairs Officer  
Ms. Mette Mai, Assistant Judicial Affairs Officer

Hearing Date(s):  
February 15, 2008

Committee Members:  
Professor Emeritus Ralph Scane (Chair)  
Professor Jan Angus  
Professor Douglas Reeve  
Ms. Lorenza Sisca  
Ms. Maureen Somerville

Appearances:  
For the Student:  
Dr. C.B. (the Student)  
For the Faculty of Medicine:  
Ms. Sari Springer (Counsel)  
Dr. David Tannenbaum  
Dr. K. Iglar

**Faculty of Medicine – reinstatement in program – dismissal from Family and Community Medicine Residency Training Program – policy that the Academic Appeals Committee cannot remark examinations or papers evaluated by examiners appointed by University also applies for clinical assessments – Academic Appeals Committee cannot interfere with the judgment of the Faculty on the grounds that the judgment was wrong if fairly arrived at – no evidence of bias or lack of objectivity – stress not considered a mitigating factor to poor academic performance when arising from awareness of adverse evaluations putting the student’s future at the University in jeopardy – family problems could not excuse performance difficulties noted – Breach of s.5.2.5 of the Guidelines for the Evaluation of Postgraduate Trainees of the Faculty of Medicine at the University of Toronto not sufficient ground to reinstate the Student in the program – Appeal dismissed – recommendation that the Faculty establish a formal mechanism for dealing with situations when the Board of Examiners is not scheduled to meet in the immediate future**

Appeal from a recommendation of the Residency Program Committee of the Department of Family and Community Medicine that the Student be dismissed from the Family and Community Medicine Residency Training Program. Student received adverse evaluations indicating he fell below the expected level of first year residents and that he had confrontational problems with staff and a lack of insight as to his problems. The Committee stated that the policy that it cannot remark examinations or papers that have been evaluated by the examiners appointed by the University also applies for clinical assessments that are part of the evaluation process and the Committee cannot interfere with the judgment of the Faculty on the grounds that the judgment was wrong, if it had been fairly arrived at. The Committee found no evidence of bias or lack of objectivity which might make the evaluations of the Student unreliable. The Committee stated that it will not consider stress and its secondary manifestations as mitigating factors to poor academic performance when the stress arises from a student’s awareness that she or he is receiving adverse evaluations which are putting the student’s future at the University in jeopardy. The Committee considered the stressful and distracting effects of family problems which afflicted the Student during the residency periods and found that they could not excuse the types of performance difficulties noted by the Faculty’s evaluators. The Faculty breached s.5.2.5 of the Guidelines for the Evaluation of Postgraduate Trainees of the Faculty of Medicine at the University of Toronto requiring that all periods of remediation must include a written mid-point evaluation. The Committee found that while deviation from a Board of Examiners stipulation as to a particular student is a grave matter, serious breaches do not necessarily warrant overturning an academic verdict. The Committee considered the other evidence submitted and found that the effect of the procedural breach by the Faculty was not a sufficient ground to reinstate the Student in the program. Appeal dismissed. The Committee recommended that if the Board of Examiners is to meet only at fairly distant intervals, the Faculty should establish a formal mechanism for dealing with situations, ordinarily dealt with by the full Board, which may arise when the Board is not scheduled to meet in the immediate future.

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FILE: [Report #371](#)  
DATE: March 27, 2014  
PARTIES: Mr. C.D. (the Student) v. the School of  
Graduate Studies

Hearing Date(s):  
N/A (appeal conducted on the basis of written submissions to  
determine jurisdiction)

Committee Members:  
Professor Hamish Stewart (Chair)

**School of Graduate Studies – grade appeal – jurisdiction – Student contested the policy applied to convert his grade from a University study abroad program – Student’s petition was about the fairness of the Faculty’s procedure itself, not about the fairness of the procedure’s application – Committee has no jurisdiction over the fairness of Faculty policy – appeal dismissed**

Request to remove or change a grade assignment, involving a jurisdiction determination. The Student participated in the Summer Abroad France program, for which students receive a University of Toronto undergraduate credit (not a transfer credit). The Student’s mark was graded out of 20; it was multiplied by five to convert it into a mark out of 100 to make it consistent with the University’s grading scale. Student was dissatisfied with the conversion of his grade. The Student petitioned the Faculty, arguing that the conversion formula did not adequately reflect the difference between French and U of T grading methods and, moreover, that the conversion formula was inconsistent with the agreement that he and other students had consented to by participating in the program. The Faculty dismissed the Student’s petition, rejecting the Student’s contention of inconsistency between the conversion formula used and that outlined in the course description, and noting that that the discrepancy between French and U of T methods did not apply to language courses aimed at international students. The Student then appealed to the Academic Appeals Committee (AAC), requesting a change or removal of the numerical grade assignment. The Faculty submitted that the AAC lacked jurisdiction over the appeal. The Committee cannot assess academic work and assign a grade; it can only determine if a policy was applied fairly and consistently. The Committee found that the Student’s appeal was about the fairness of the procedure, not about the fairness of the procedure’s application to the Student. The Student was arguing that the conversion formula was a bad policy, and Committee emphasized that it has no jurisdiction over the fairness of the Faculty policy itself. The Committee also found that the Faculty’s reasons for dismissing the Student’s petition adequately addressed the Student’s concerns, both procedurally and substantively, and noted that the Faculty is entitled to rely on earlier responses sent to the Student. Appeal dismissed.

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## RECONSIDERATION

FILE:	<a href="#">Report # 418</a> (2021-2022)	Hearing Secretary:
DATE:	February 8, 2022	Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances
PARTIES:	Ms. M.M. (“the Student”) v. School of Graduate Studies	Appearances:
Hearing Date(s):	December 14, 2021, via Zoom	For the Student Appellant:
Committee Members:	Professor Andrew Green, Chair Professor Jan Mahrt-Smith, Faculty Governor Mr. Evan Kanter, Student Governor	Ms. Julia Wilkes, Adair Goldblatt Bieber LLP Ms. Marlie Earle, Adair Goldblatt Bieber LLP The Student
		For the School of Graduate Studies:
		Mr. Robert Centa, Paliare Roland Rothstein Rosenberg LLP

School of Graduate Studies – request to reconsider a previous decision of the Academic Appeals Committee (“AAC”) – Student argued that materials she received from a *Freedom of Information and Protection of Privacy Act* (“FIPPA”) request provided evidence that the grades she received in a course were unreliable and documents had been deliberately withheld – whether the AAC can reconsider its prior decisions rests on the application of the legal principle of *functus officio* – the principle of *functus officio* applies to the AAC – *Paper Machinery Ltd. V. J. O. Ross Engineering Corp. – Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848 – beyond the two exceptions to the principle of *functus officio*, the principle generally applies unless there is an explicit or implicit statutory power of reconsideration – the AAC does not have an explicit or implicit power to reconsider its prior decisions – the Terms of Reference emphasize that the AAC is the final decision-maker – AAC has very limited common law power to reconsider decisions – Student argued that an exception for fraud and breach of natural justice on the tribunal and such exceptions to *functus officio* are appropriate in the administrative law context – *Berge v. College of Audiologists and Speech Language Pathologists of Ontario*, 2019 ONSC 3351 and *Kennedy v. College of Veterinarians of Ontario*, 2021 ONSC 578 (Div Ct) do not find such a fraud exception in the context of an administrative tribunal – *Canadian Association of Film Distributors and Exporters v. Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) Inc.*, 2014 FCA 235 stated that there should be a reluctance to find new exceptions to the *functus officio* rules – no evidence of fraud or breach of natural justice – the AAC allows for a final resolution of appeals that gives parties certainty and provides a limit on the resources for any single appeal – parties can seek judicial review on procedural and substantive grounds – Request for Reconsideration dismissed – recommendation that the Division ensure steps are taken to provide students with timely and accurate information about their grades when they are appealed – recommendation that the governance process be engaged to determine whether the Terms of Reference should be clarified regarding reconsiderations

The Student sought a reconsideration of a decision of a prior panel of the Academic Appeals Committee (“AAC”) which dismissed her appeal. The Student argued that materials she received from a *Freedom of Information and Protection of Privacy Act* (“FIPPA”) request provided evidence that the grades she received in a course were unreliable and that certain members of the School of Public Health had deliberately withheld documents and/or misled the Graduate Academic Appeals Board (“GAAB”) and the prior panel of the AAC.

Issues pertaining to jurisdiction are a question of law that must be determined by the Chair alone. The Chair of this Panel of the Academic Appeal Committee (“Panel”) needed to determine whether the AAC has jurisdiction to reconsider its prior decisions and if so, in what circumstances, and if the AAC does have jurisdiction in certain circumstances, then should the Committee do so in this case. The Chair noted that whether the AAC can reconsider its prior decisions rests on the application of the legal principle of *functus officio*. With certain exceptions, an administrative tribunal, such as the AAC, that makes a final decision is *functus officio*, meaning that its work is done and it cannot change or reconsider its

decision. The Chair further noted that this principle rests on the need for finality in decision making and such finality provides certainty for the parties, allows for reliance on the decision, limits the burden on the administrative system, and allows a stable basis for judicial review or appeal. The Chair of the Committee referenced the Supreme Court of Canada's decision in *Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848 ("*Chandler*") in his analysis of the application of *functus officio* to administrative decision-makers. The Chair noted that based on the discussion found in *Chandler* the principle of *functus officio* applies to administrative tribunals such as the AAC based on the need for finality of proceedings but must be applied flexibly. There are two clear exceptions to the *functus officio* principle which are outlined in *Paper Machinery Ltd. v. J. O. Ross Engineering Corp.* [1934] SCR 186 and cited by the Supreme Court in *Chandler*; (1) the tribunal has made a "slip" in its decision such as a minor error in wording; and (2) the tribunal made an error in expressing its "manifest intention." The Chair noted that beyond these two exceptions, *functus officio* generally applies unless there is an explicit or implicit statutory power of reconsideration. The Chair stated that the AAC does not have an explicit or implicit power to reconsider its prior decisions because neither the University of Toronto's Governing Council bylaws nor the AAC's Terms of Reference provide the AAC with an explicit power of reconsideration. Furthermore, the Terms of Reference do not contain any procedures relating to reconsideration and emphasize that the AAC is the final decision-maker on appeals that have already been through appeal processes in different divisions.

The Student argued that in the context of court proceedings, courts have made an exception for fraud on the tribunal and such an exception to *functus officio* is appropriate also in the administrative law context. The Chair noted that *Berge v. College of Audiologists and Speech Language Pathologists of Ontario*, 2019 ONSC 3351 and *Kennedy v. College of Veterinarians of Ontario*, 2021 ONSC 578 (Div Ct) do not find such a fraud exception in the context of an administrative tribunal, and the Federal Court of Appeal, in *Canadian Association of Film Distributors and Exporters v. Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) Inc.*, 2014 FCA 235, stated that there should be a reluctance to find new exceptions to the *functus officio* rules.

The Student also pointed to a broader exception to the application of *functus officio* which, she argued, relates to a denial of "natural justice" or perhaps, more generally, unfairness. The Chair noted that the Supreme Court in *Chandler* stated that a tribunal must "start afresh" where "the error which renders the decision a nullity is one that taints the whole proceeding." In support of this, the Supreme Court cited cases which "involve a denial of natural justice which vitiated the whole proceeding." Furthermore, the Student provided cases that outline tribunals obtaining the power of reconsideration where there was a breach of procedural fairness. The Chair remarked that the case law seems unclear on this point. In two recent decisions of the Ontario Court of Appeal (*Jacobs Catalytic Ltd. v. I.B.E.W., Local 353*, 2009 ONCA 749 and *Stanley v. Office of the Independent Police Review Director*, 2020 ONCA 252), the Court found that there was no power of reconsideration even though the contexts encompassed potential breaches of procedural fairness. The Chair noted that the AAC allows for a final resolution of appeals that gives parties certainty and provides a limit on the resources for any single appeal. Parties can seek judicial review of these decisions on both procedural and substantive grounds. The Chair found that the AAC has no express statutory power to reconsider its prior decisions and has very limited common law power to reconsider decisions where there is a minor error that amounts to a "slip" or where the tribunal has made an error in expressing its intent.

In deciding whether the Panel should reconsider the AAC's original decision in this matter, the Chair noted that the Panel only needs to consider whether it has the power to reconsider the decision in this case because there was fraud or a breach of natural justice. The Panel found that (1) there was no evidence to support the allegations of fraud; (2) there was no evidence of any intent to mislead either the GAAB or the prior panel of the AAC; and (3) the proposed exceptions for the breaches of natural justice did not apply in this case. The Panel noted that the purpose of fairness is to ensure "administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker" (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para. 22). The Panel noted that none of the materials provided under the FIPPA request change any of the basic facts nor do they demonstrate any insufficiencies in disclosure by the time of the original AAC hearing to warrant reconsideration. Furthermore, the FIPPA materials only support the conclusion that the Student received the necessary materials to make her case. The Panel noted that there may be cases where a breach of fairness is so egregious that it gives rise to a power of reconsideration, however, this is not such a case. Furthermore, fairness can clearly be raised on a judicial review application.

Given that the Panel found that this case does not fit within the very limited circumstances permitting reconsideration, it is unnecessary to deal with the other two issues (delay and the merits of this appeal). Request for reconsideration dismissed.

The Panel recommended that (1) the Division ensure steps are taken to provide students with timely and accurate information about their grades when they are appealed; and (2) the governance process be engaged to determine whether the Terms of Reference should be clarified regarding reconsiderations.

## RECOMMENDATIONS

Leading Cases: 283, 292, 297, 307, 314, 328, 366

- [To Faculty/Division:](#) 292, 297, 328, 369, 385
- [To Faculty with respect to a specific student:](#) 307
- [To University:](#) 283, 314, 366

## RECOMMENDATION TO FACULTY/DIVISION

FILE: [Report #292](#)  
DATE: October 29, 2004  
PARTIES: Mr. L. (the Student) v. Woodsworth  
College

Hearing Date(s):  
October 7, 2004

Committee Members:  
Professor Emeritus R. Scane (Chair)  
Professor M. Beattie  
Professor C. Beghtol  
Dr. G. Halbert  
Mr. S. Neata

Secretary:  
Mr. P. Holmes, Judicial Affairs Officer

Appearances:  
For the Student:  
Mr. L. (the Student)  
Mr. L. (the Student's father)  
For Woodsworth College:  
Ms Y. Ali  
Ms S. Isbister  
Principal M. O'Neill-Karch

**Woodsworth – grade appeal – flaws in the training and “feedback” processes of the *practicum* – the position of the Student was not significantly different from that of other students in similar placements – teacher trainers not required to submit interim reports – recommendation that teacher trainers be required to submit an interim report to the Faculty, with a copy being given to the student – weight of required instruction unclear – recommendation that the weight of the instruction must be determined and published in advance if it is to be evaluated in determining final results – not probable that the Student would have passed the *practicum* had the procedural matters not existed – appeal dismissed – Faculty advised that the Student could retake the *practicum*, while retaining credit for other courses taken – recommendation that fees be waived should Student repeat the *practicum***

Appeal from a grade of “fail” in the *practicum* for the Certificate Program in Teaching English as a Second Language. The Student claimed that there were flaws in the training and “feedback” processes of the *practicum*, which adversely affected his performance, and deprived him of an opportunity to correct the faults identified. The Student claimed that the teacher trainer had rushed him through the programme and did not permit him to develop and use his own materials in his teaching. The Student also claimed that the teacher trainer did not give him current appraisals and that the Academic Coordinator had never visited his classroom. With respect to the training process, the Committee found that the time frame of the teaching period of the *practicum* was limited by the contract with the School Board and the teacher trainer's own plans for the class, and that the development of lesson plans was not an objective of the *practicum*. The Committee found no basis for finding that the position of the Student was significantly different from that of other students in similar placements. With respect to “feedback”, the Committee found that the Faculty did not require teacher trainers to submit interim reports. The Committee recommended that teacher trainers be required to submit an interim report to the Faculty, with a copy being given to the student. The Committee found that while it was not feasible for the Academic Coordinator to visit every student's classroom, a written interim report on each student would allow the Academic Coordinator to attend classes of the relatively few students who appeared to be in trouble. The Committee stated that it was unclear as to the weight, if any, of the four hours of instruction outside the teacher trainers' classrooms, but that if the instruction was to be evaluated in determining the final result of the *practicum*, the weight must be determined and published in advance. The Committee found that it was not probable that the Student would have passed the *practicum* had the noted procedural matters not existed. Appeal dismissed. The Faculty had advised the Committee that the Student could retake the *practicum*, while retaining credit for the other courses taken in the program. The Committee recommended that if the Student repeats the *practicum*, the course fees should be waived.

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FILE: [Report #297](#)  
DATE: May 9, 2005  
PARTIES: Ms. P (the Student) v. OISE/UT

Secretary:  
Mr. Andrew Drummond

Hearing Date(s):  
April 26, 2005

In Attendance:  
For the Appellant:  
Ms. K. Roach (Counsel)  
Ms. P. (the Student)

Committee Members:  
Prof. Emeritus Ralph Scane, Chair  
Prof. Clare Beghtol  
Mrs. Shari Graham Fell  
Mr. Stefan Neata  
Prof. Ian McDonald

For OISE/UT:  
Ms. R. Cambell (Counsel)  
Ms. L. Cowin  
Mr. J. Mazurek

**OISE/UT – request to repeat *practicum* session – first and second *practicum* sessions failed – performance affected by illness – allegation of bias – classroom skills adversely affected by illness – supervisors did not have opportunity to consider or mitigate effects of illness – Associate teacher was aware of failure of first *practicum* session – appropriate test of bias is “whether a reasonably informed bystander could reasonably perceive bias on the part of the adjudicator” – knowledge of previous failure might predispose adjudicator failing student again – same faculty advisor in both *practicums* – threshold test met for reasonable apprehension of bias – appeal allowed – minority opinion that but for the effects of illness the Student would still not have been able to overcome the defects in classroom performance and that flaws in the Student’s performance were already a matter of serious concern before the Student’s failure in the first *practicum* became known – appeal allowed – failure in the second *practicum* vacated and the Student allowed to repeat it – recommendation that the Faculty reconsider its appeal process regarding *practicums***

Request to repeat the second *practicum* session. The Student failed the first and second *practicum* sessions and therefore failed the year in the B.Ed programme. The Student claimed that her performance was adversely affected by her diabetes, which was diagnosed part way through the course, and that there was a lack of procedural fairness in her assessment, as the Associate teacher evaluating her discovered halfway through the *practicum* session that the Student had failed the earlier *practicum* session. The Committee considered the Student’s medical condition and found that her classroom skills were adversely affected by the effects of her illness and that her supervisors did not have the opportunity to consider or take steps to mitigate these effects. The Committee found that had the Student not been suffering from the fatigue associated with diabetes, she may have been able to pass the *practicum*. The Committee considered the allegation of bias and found that the Associate teacher was aware that the Student had failed the first *practicum* session, and that as per the Divisional Appeals Committee Decision, there should always be two independent assessments of a teacher candidate. The Committee stated that it is not necessary for the Student to prove, or for the Committee to find, that bias actually existed and entered into the decision to fail the Student in order to allow the appeal. The appropriate test approved by courts is “whether a reasonably informed bystander could reasonably perceive bias on the part of the adjudicator.” The Committee stated that an adjudicator’s knowledge of a previous failure might positively predispose the adjudicator to finding negative factors to justify failing the student again and discourage him or her from advancing positive arguments in favour of the student as forcefully as he or she might otherwise do. In addition to the Associate teacher, the Committee found that the faculty advisor in the second *practicum* was also the faculty advisor in the first *practicum*. The Committee found that the combination of these two sources of possible bias, operating in the assessment of a student whose then relevant skills would not provide much margin over a minimum pass and which were adversely affected by her illness, met the threshold test for reasonable apprehension of bias. A minority of the Committee found that, but for the effects of the illness on the Student’s performance, she would still not have been able to overcome the defects in her classroom performance and that the flaws in the Student’s performance during the second *practicum* were already a matter of serious concern before the Student’s failure in the first *practicum* became known. Appeal allowed. The Committee ordered that the failure in the second *practicum* be vacated and that the Student have the opportunity to repeat the *practicum* during the next round. The Committee stated its concern regarding the Faculty’s appeal process which does not allow a student appealing a failed first *practicum* to continue to the second until the appeal is determined. The Committee stated that it did not wish to form a conclusion on the matter but recommended that the process be reconsidered because it appears to create a financial disincentive to the exercise of a right to appeal.

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FILE: [Report #328](#)  
DATE: January 21, 2009  
PARTIES: Ms. S. A. (the Student) v. UTM

Hearing Date(s):  
December 19, 2008

Committee Members:  
Assistant Dean Renu Mandhane, Chair  
Professor Elizabeth Cowper  
Mr. Ken Davy  
Professor William Gough  
Professor Louise Lemieux-Charles

Secretaries:  
Ms. Nancy Smart, Judicial Affairs Officer  
Ms. Mette Mai, Assistant Judicial Affairs Officer  
Ms. Bonnie Goldberg, Representative of the Judicial  
Affairs Office

In Attendance:  
Ms. S. A., the Student  
Professor Gordon Anderson, UTM

**UTM – late withdrawal without academic penalty – emotional difficulties related to father’s hospitalization – late petitions allowed despite unusual and lengthy passage of time – University regulations known – withdrawal should have been considered due to failure in another course – appeal dismissed – recommendation to clarify Divisional policy on potential conflicts of interest in relation to academic appeals**

Request to withdrawal late without academic penalty from four courses due to personal circumstances. The Student claimed she performed poorly due to emotional difficulty related to her father’s hospitalization in Iran following a car accident. Three petitions were filed, all approximately four years after the Student completed the courses. The Committee agreed that UTM appropriately allowed the Student to petition for late withdrawal without academic penalty despite the unusual and lengthy passage of time. The Committee agreed with the Divisional Appeal Board’s decision to reject the Student’s submission that she was unaware of University regulations because she had petitioned and was granted the opportunity to write a special deferred exam in a different course during the relevant time period. The Committee agreed with the Divisional Appeal Board’s decision that because the Student had failed another course in the fall of the relevant time period, she should have realized that she would be unable to successfully complete the academic year and considered dropping the rest of her courses. One of the panel members on the Divisional Appeals Board had also been an instructor in one of the Student’s courses at issue in the appeal. The Committee recommended that UTM clarify its policy on potential conflicts of interest in relation to the students and faculty members selected to hear academic appeals so as to prevent possible future appearances of bias. Appeal dismissed.

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FILE: [Report #369](#)  
DATE: November 7, 2013  
PARTIES: Ms. S.M. (the Student) v. the Faculty of  
Applied Science and Engineering

Hearing Date(s):  
October 31, 2013

Committee Members:  
Professor Andrew Green (Chair)  
Professor Hugh Gunz  
Mr. Rastko Cvekic

Secretaries:  
Mr. Chris Lang, Director, Appeals, Discipline and  
Faculty Grievances  
Ms. Sinead Cutt, Administrative Assistant, Appeals,  
Discipline and Faculty Grievances

Appearances:  
For the Student Appellant:  
Ms. S.M., the Appellant (“the Student”)  
Selwyn Pieters, Counsel for the Student

For the Faculty of Applied Science and Engineering:  
Professor Thomas Coyle, Chair of the Examinations  
Committee  
Professor Peter Herman, Chair of the Examinations  
Committee  
Ms. Barbara McCann, Faculty Registrar

**Faculty of Applied Science and Engineering – reinstatement to program – Student was refused further registration due to an average below the Faculty’s requirements – Student argued that her heavy workload and anxiety/stress issues warranted a remedy – Committee noted the high bar set to obtain relief in order to maintain the integrity of the Faculty – Committee took into account evidence of the Student’s positive mental health progression – Committee took into account the fact that the Faculty had previously provided relief to**

**the Student based on the same events at issue in this appeal – Faculty staff names can be redacted when the nature of the case is sensitive and the staff are directly involved – appeal allowed**

Request to re-register after not meeting the Faculty’s required sessional average. The Student’s average fell below the required average of 60% three times. The first time the Student was put on probationary status (“PRO2”). The second time, the 60% rule was waived given the fact that the Student’s average was very close to the cut off and that the timing of her exam (which she had deferred for medical/psychological reasons) that contributed to the low average was during a week in which midterms were held and school was ongoing. The next semester the Student’s average again fell below 60% and the Faculty refused further registration. The Student petitioned to be placed on PRO2 status again, citing her heavy workload (which she had been advised against taking) and anxiety/stress issues. The Faculty Committee denied the Student’s petition because of its insufficient reasons to warrant a remedy.

The Student then appealed the Faculty’s decision to the Academic Appeals Board, providing a further description of the illness of her family member and her own struggles with anxiety and stress. The AAB dismissed the Student’s appeal, finding that no rule, regulation, policy or principle was applied to the Student unfairly.

The Student then appealed to the Academic Appeals Committee, asking that the 60% rule be waived and that she be reinstated in the program. The Committee allowed the appeal. It emphasized that the Faculty’s progressive probationary program provides students with the opportunity to recover from a poor academic performance, and noted that a high bar is set to obtain such relief in order to maintain the integrity and standards of the Faculty. The Committee noted that the Student had admittedly taken on a full course load despite some advice otherwise, and had provided evidence of anxiety issues but had not sought accommodation through Accessibility Services. The Committee took into account the fact that the Faculty had provided relief from the 60% rule for the Student in the previous semester, noting that the events that made up the basis for relief then were the same events that were the basis for this appeal (the scheduling of the deferred exam during the academic year). The Committee also took into account evidence of the Student’s severe anxiety issues and evidence from the Student’s psychologist that she was progressing well, and the Student’s willingness and financial ability to take a lighter course load. The Committee therefore found that it would have been reasonable for the AAB to grant relief from the 60% rule. Appeal allowed.

The Committee recommended that the Faculty consider whether there are further steps it could take to aid students in the context of mental health concerns, especially relating to placing a statement on each examination relating to what to do in the event of illness or distress during the exam.

The Committee granted the Faculty’s motion to redact the names of Faculty staff who acted on behalf of the Faculty in the case, noting that though there was no direct allegation against a particular individual in this appeal, the sensitive nature of the appeal and the references to advice provided by staff to the Student warranted redaction (see Report #367 for an earlier decision regarding redacting the names of Faculty staff).

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FILE: [Report #385](#)  
DATE: July 26, 2016  
PARTIES: Ms. V.T. (the Student) v. the Faculty of Arts and Science  
  
Hearing Date(s):  
May 27, 2016  
  
Committee Members:  
Ms. Sara Faherty, Chair  
Professor Jan Mahrt- Smith  
Mr. Alex Ivovic

Secretary:  
Krista Osbourne, Administrative Assistant, Office of Appeals, Discipline and Faculty Grievances  
  
Appearances:  
For the Student Appellant:  
Ms. V.T.  
  
For the Faculty of Arts and Science:  
Professor Anne-Marie Brousseau, Assistant Dean, Undergraduate

**Faculty of Arts and Science – deferred examination – Student missed five term evaluations for various medical, legal, and personal problems – Faculty’s refusal to accept the Student’s Verification of Student Illness of Injury form was reasonable given the gaps between the doctor’s examination and the completion of the form – appeal dismissed**

Appeal from the decision of the Academic Appeals Board of the Faculty of Arts and Science refusing the Student's request for a deferral of three examinations and the completion of two missed term tests. The Student cited multiple legal, personal, and health issues to explain her failure to write the evaluations. The Faculty refused to accept the Student's Verification of Student Illness or Injury form due to the gap in time between the date of the doctor's examination of the Student and the dates of the missed exam; the form was completed by the examining physician nine months after the Student's illness and amended again eight months later. The Student first appealed the Faculty's refusal to grant her deferrals for the five examinations to the Committee on Standing, then to the Academic Appeals Board, and then to the Academic Appeals Committee.

The Committee found that the Faculty's rule that a medical visit must be close in time to the missed exam to be reasonable. The doctor's examination occurred on March 18<sup>th</sup>, and the missed exams took place between April 3<sup>rd</sup> and 24<sup>th</sup>, leaving a 23-day gap between the Student's verified illness and missed exam. The comments regarding the Student's inability to write the test on her exam days were added to the form one year and five months after the medical examination. The Faculty's Calendar set forth its policies on deferred examinations and medical documentation in great detail, and it emphasizes that the physician's report must establish that the patient was examined and diagnosed at the time of the illness, not after the fact.

The Committee noted that the Student did not try to register with Accessibility Services until the day of her first missed term test, and emphasized that Accessibility Services did not support the Student's petition. The Committee also took into account the Student's apparent confusion regarding the instructions given to her by Accessibility Services, and the lack of a clear Faculty rule regarding an acceptable amount of time between the date of a doctor's examination and the date of the missed exam. The Committee concluded that though the Faculty's complex and nuanced rules and policies around accommodations places a burden on students, ultimately the Student's failure to provide reliable evidence, coupled with the fact that Accessibility Services did not support her petition, made it difficult to accept her arguments.

The Committee also noted that the Student's legal problems began at the beginning of the term in question, and though it expressed sympathy for the Student's personal difficulties, the Committee concluded that the Student's difficulties were not unforeseen and did not significantly worsen at the time of her missed exams.

The Committee stated that it believed the Student and the doctor had acted in good faith, but noted the problems inherent in the Student's Verification of Student Illness or Injury form made the form insufficient to establish the Student's right to a deferral. The Committee concluded that the decision of the Academic Appeals Board was reasonable. Noting the Faculty's tailored approach to cases and its lack of a rigid timeframe, the Committee recommended that the Faculty provide clearer reasons with respect to the criteria considered in determining whether a medical visit is sufficiently close in time to the relevant exam date in different cases. Appeal dismissed.

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## RECOMMENDATION TO FACULTY WITH RESPECT TO A SPECIFIC STUDENT

FILE:	<a href="#">Report #307</a>	Secretary:	
DATE:	January 23, 2006	Dr. Anthony Gray	
PARTIES:	the Student Appellant v. the Faculty of Applied Science and Engineering	In Attendance:	
Hearing Date(s):	January 19, 2006	For the Student:	the Appellant Mr. Ronald Bohm, counsel for the appellant
Committee Members:		For the Faculty of Engineering:	
Assistant Dean Bonnie Goldberg, Chair		Mr. Rob Centa, counsel for the Respondent, the Faculty of Applied Science and Engineering	
Dr. Pamela Catton		Ms. Barbara McCann, Registrar, Faculty of Applied Science and Engineering	
Professor Yuki Johnson		Professor Kim Pressnail, Applied Science and Engineering	
Dr. Joel Kirsh		Ms. Ella Lund-Thomsen, Counsellor, Faculty of Applied Science and Engineering	
Ms. Coralie D'Souza			

**Faculty of Applied Science and Engineering – request to increase grades from examination period – alternative request to increase sessional average and for courses taken in following term be counted – grade appeal – illness before and during exam period – remedy of assessed grade appealed – Student charged under *Code of Behaviour on Academic Matters* – Student allowed to attend courses pending resolution of charges and appeal – motion to compel the University to produce information not considered because information not relevant – minority opinion that information was relevant but satisfied that Faculty provided sufficient information – observation that Faculty is ill-advised to allow a student to continue in a program, when contesting a Faculty decision that the student has not met academic standards – Committee troubled by Faculty policy of assessed or inferred examinations – Faculty policy applied fairly and properly – Faculty took into account illness – Committee does not add percentages to grades to unlock academic barriers – Faculty provided constructive relief – appeal dismissed – remedy of retroactive withdrawal without academic penalty from the term restored – recommendation that Faculty arrange academic accommodations**

Request to increase the grades from the examination period by 10%. In the alternative, The Student requested that his sessional average be increased 1.8% to obtain the requisite 60%, so that he could proceed to fourth year, and that the five courses he took in the following term be counted. The Student had become ill with acute maxillary sinusitis before and during the exam period. The Faculty granted the student assessed grades for the exams written and not written during the term. Following allegations that the Student committed an academic offence during a mid-term examination, the Student submitted a second petition to the Faculty, on the grounds of the academic sanction imposed and personal and financial concerns. The Faculty had granted the Student retroactive withdrawal from the term. The Student chose not to accept that remedy, appealing the decision and refuting the imposition of the academic sanction. Accordingly, the Faculty charged the Student under the *Code of Behaviour on Academic Matters*. The Faculty allowed the Student to attend courses pending the resolution of the charges under the *Code* and the appeal. The parties agreed that if the appeal was dismissed, the student would receive no credit for the courses. The Student brought a motion for an order compelling the University to produce additional information about the student's performance in the courses he was taking pending the resolution of his appeal, and an adjournment to consider the information. The Committee deliberated *in camera* regarding the relevance of the grades. The Committee found that the student's academic performance subsequent to the events at issue in the appeal were not relevant and therefore there was no need to compel the production of the information or to make a determination as to whether the agreement between the parties was followed. A minority of the Committee found that the grades were relevant to the deliberations, but was satisfied with the information provided by the Faculty. The Committee observed that it was an ill-advised interim arrangement for a student to be allowed to continue in a program when contesting a Faculty decision that he has not met its academic standards. The Committee found that that the Faculty took into account the Student's illness through its formula and its adherence to its own guidelines and provided the relief it would provide to any other student in the program. The Committee stated its discomfort with the mechanistic nature of assessing grades by formula when a student is unable to perform due to reasons beyond his control. The Committee stated that it was troubled that the Faculty persists in providing accommodation in the form of assessed or inferred examinations rather than supplemental examinations, but found that

the Faculty applied its policy fairly and properly in regard to this accommodation. The Committee found that in the normal course of its duties, it does not add percentages to grades to craft an average that would unlock an academic barrier to proceeding in a program. With reference to the second petition, the Committee found that, in revisiting its original decision, the Faculty provided constructive relief to the Student. Appeal dismissed. Divisional remedy of retroactive withdrawal without academic penalty from the term affirmed. The Committee ordered that the Student was to receive no credit for the courses taken in the following term. The Committee recommended that the Faculty arrange academic accommodations for the Student given that he had missed the first few weeks of the term.

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## RECOMMENDATION TO UNIVERSITY

FILE: [Report #283](#)  
DATE: October 16, 2003  
PARTIES: Mr. M.N. (the Student) v. UTSC

Secretary:  
Mr. P. Holmes, Judicial Affairs Officer

Hearing Date(s):  
September 16, 2003

Appearances:  
For The Student:  
Mr. M.N. (the Student)  
Mrs. N.

Committee Members:  
Professor Emeritus R. Scane (Chair)  
Mr. M. Ahmad  
Professor R. Elliott  
Mrs. S. Scace  
Professor J. Thiessen

For UTSC:  
Associate Dean I. McDonald

**UTSC – late withdrawal without academic penalty – alternative request for *aegrotat* standing – illness affecting exam performance – deficient medical evidence – oral submissions established illness – not debarred from acting on finding of fact due to deficient medical evidence – unfair negative conclusions regarding “the problem of selectivity” – not unreasonable for a student adversely affected by illness to accept favourable examination results nor inconsistent to appeal other unfavourable examination results – requirement for granting *aegrotat* standing met – appeal allowed – grade of “F” vacated and replaced with grade of AEG – recommendation that the University take a more proactive role in reviewing the submission of medical documentation when accepting petitions**

Request for late withdrawal without academic penalty from one course. Alternatively, the Student requested that *aegrotat* standing be considered. The Student failed the course after receiving less than 40% of the marks available on the final examination. The Student had passed the examinations in three other courses during the examination period. The Student successfully repeated the course in a subsequent term and requested the remedy in order to improve his GPA and remove the failure from the transcript. The Student claimed that he was suffering from a sore throat and shortness of breath which affected his performance on the examination. The Committee found that while the Student’s medical evidence was deficient, his *viva voce* submissions did establish that he was ill at the time he was writing his examination, and that the illness had an impact on his abilities during the examination period. The Committee considered whether the deficiencies in the medical evidence should prevent the Committee from acting on its own finding of fact. The Committee found that it would not debar itself from acting on its own finding of fact, because a student may not be successful in persuading the doctor to prepare the evaluation that University regulations contemplate, or may feel reluctant to challenge the sufficiency of what is proffered. The Committee found the Divisional Appeals Committee’s negative conclusions regarding “the problem of selectivity” to be unfair. The Committee stated that it does not believe that a student who was adversely affected by illness during an examination period is unreasonable in accepting a favourable examination result, nor does it believe that such a student is being inconsistent or unreasonable in appealing other examination results which were unfavourable. The Committee found that the requirement for granting *aegrotat* standing was met. The Student was unable to complete course requirements within a reasonable time because the illness affected the final examination, he could not complete that examination requirement until he was successful on a petition and, once successful, events had made completion of the course unnecessary. Appeal allowed. The Committee ordered that the grade of “F” be vacated and replaced with a grade of AEG. The Committee recommended that the University take a more proactive role in reviewing the submission of medical documentation when accepting petitions.

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FILE: [Report #314](#)  
DATE: March 9, 2007  
PARTIES: The Student Appellant v. the Faculty of Arts and Sciences

Secretary:  
Dr. Anthony Gray, Judicial Affairs Officer

Hearing Date(s):  
February 20, 2007

In Attendance:  
For the Student:  
the Student Appellant

For the Faculty of Arts and Science:

Committee Members:  
Professor Emeritus Ralph Scane, Senior Chair  
Professor Jan Angus  
Mr. Kristofer Coward  
Professor William Gough  
Ms. Maureen Somerville

Ms Sari Springer (Counsel)  
Ms Elaine Ishibashi, Associate Registrar  
Professor Suzanne Stevenson, Acting Vice-Dean,  
Undergraduate Education and Teaching

**Faculty of Arts and Science – late withdrawal without academic penalty – litigation related to family and illness of family members – demands imposed by lawsuit known by drop date – date of Trial not sufficient excuse for default – increased stress from relatives' illness occurred after default – penalty imposed on assignment sufficiently clear and severe – consideration of general policy regarding and approach to late withdrawal without academic penalty in light of University admitting younger students – Committee found that policy should not be revised as a result of this case – minority opinion that policy should be amended and appeal allowed – appeal dismissed – recommendation that University review policy with respect to academic support for younger students**

Request for late withdrawal without academic penalty from one course. The Student failed the course. The Student claimed that she was overwhelmed by time demands arising out of assistance to her father's litigation, and emotional stress as well as time demands arising from the serious illness of her aunt and grandmother. The Student claimed that if the course instructor had been more severe with the lateness penalty imposed on the first assignment handed in late then she would have dropped the course. The Committee considered the Student's submissions and the University and Committee's approach to the policy on late withdrawal without academic penalty as described in Report #264. The Committee found that the demands imposed by the lawsuit were known by the Student by the drop date and that the date of the Trial did not provided sufficient excuse for the Student's default with respect to the first three papers. The situation with regard to the aunt and grandmother was known, and while their health had deteriorated, increasing the stress upon the Student, the circumstances occurred after the Student had so severely defaulted in the course that her situation was almost certainly irreparable. The Committee found that the penalty imposed on the first assignment was sufficiently clear and severe so that no reasonable student could have been lulled into a sense of security with respect to the instructor's approach to time defaults. The Committee considered whether the general policy on late withdrawal without academic penalty should be revisited in order to allow relief to younger first year students. The Committee found that it should not attempt to revise a policy that has been generally applied by so many Academic Appeals Committee panels and by the Divisions. The minority found that the policy should be amended and that relief should be granted. Appeal dismissed. The Committee recommended that the University undertake a review of its policies with respect to the admittance of younger students and to consider whether the University should be more proactive in reaching out to younger students.

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FILE: [Report #366](#)  
DATE: July 8, 2013  
PARTIES: Ms. S.A. (the Student) v. School of Graduate Studies

Secretary:  
Ms. Natalie Ramtahal, Coordinator, Appeals,  
Discipline and Faculty Grievances

Hearing Date(s):  
June 19, 2013

Appearances:  
For the Student Appellant:  
Ms. S.A., the Appellant ("the Student")

Committee Members:  
Professor Andrew Green, Chair  
Dr. Avrum Gotlieb  
Ms. Mainawati Rambali

For the School of Graduate Studies:  
Mr. Robert Centa, Counsel  
Professor Luc de Nil, Vice-Dean, School of Graduate Studies  
Ms. Jane Alderdice, Director, Quality Assurance and Governance, School of Graduate Studies

**School of Graduate Studies – request to withdraw Notice of Withdrawal – Student withdrew from program when asked to terminate her registration – Student argued that she did not have adequate advice with respect to her options – Committee found that withdrawal from a program is not a decision about an academic regulation or requirement, bringing an appeal of a withdrawal outside of the Committee's jurisdiction – appeal dismissed**

Request to withdraw Notice of Withdrawal. The Student failed two comprehensive examinations in her Ph.D program, following which the Chair of the program requested termination of the Student's registration. The Chair provided the Student with the option of voluntary withdrawal from the program rather than termination, and informed her that while termination could be appealed, voluntary withdrawal could not be appealed. The Student submitted a request to withdraw from her program, and it was accepted by the School of Graduate Studies. The Student then notified her program that she was considering an appeal of her withdrawal, arguing that she did not have adequate advice concerning her options at the time of her withdrawal. The Graduate Department Appeals Committee of the program found that there were no grounds to allow the Student's appeal. The Student subsequently appealed to the Graduate Academic Appeals Board. The GAAB dismissed the appeal, noting that voluntary withdrawal was not a decision within the jurisdiction of the GAAB to decide and that it would also not allow the appeal on the merits. The Student then appealed to the Academic Appeals Committee. The Committee agreed with the GAAB's decision. A withdrawal is a decision a student can make at any time during a program; it is not a decision about the application of an academic regulation or requirement. An appeal of a withdrawal is therefore a decision outside of the Committee's jurisdiction, which in turn means that the Committee is precluded from ruling on the merits of the Student's appeal. The Committee recommended that to the extent they do not currently exist, the University should consider ensuring that options for students to obtain advice on withdrawals are in place and clearly identified to the student at the time withdrawal is considered. Appeal dismissed.

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## **PRIVILEGE**

Leading cases:

**359-1**

FILE:	<a href="#">Report #359-1</a> (2011-2012)	Hearing Secretary:
DATE:	August 25, 2011	Mr. Christopher Lang, Director, Office of
PARTIES:	H.M and M.Y. (the “Students”) v. School of Graduate Studies	Appeals, Discipline and Faculty Grievances
		Appearances:
		For the Students
		The Students
Hearing Date(s):	August 17, 2011	
		For the School of Graduate Studies:
		Mr. Robert A. Centa, Counsel, Paliare Roland
		Rosenberg Rothstein LLP
Chair Only:	Professor Hamish Stewart, Senior Chair	Ms. Julia Wilkes, Articling Student, Paliare Roland Rosenberg Rothstein LLP

**NOTE: These reasons address the findings on the motion only. Reasons for the decision on the merits are reported in *H.M. and M.Y. v. School of Graduate Studies* ([Report # 363](#), February 7, 2012)**

**School of Graduate Studies – motion – admissibility of evidence of communication with University staff and counsel – evidence of communications inadmissible – settlement privilege – evidence of the fact of negotiations admissible if relevant – jurisdiction to grant remedy – request for removal of grades – request for waiver of tuition – request for compensation for costs incurred – request for compensation for losses and – request for an official apology – Academic Appeal Committee’s (“AAC”) powers limited to those granted expressly or by necessary implication in the Terms of Reference – s. 2.1 of the AAC’s Terms of Reference – purpose of s. 19 of Graduate Academic Appeals Board (“GAAB”) Terms of Reference is to enable GAAB Chair to determine a point of law that arises in connection with an issue that is otherwise within its jurisdiction – GAAB and AAC jurisdiction limited to considering whether academic regulations and requirements have been applied correctly, consistently, and fairly – jurisdiction does not include all the consequences flowing from an otherwise reviewable academic decision – jurisdiction of the AAC is limited to considering whether those academic regulations and requirements have been applied correctly, consistently, and fairly – GAAB and AAC remedial jurisdiction limited to orders of an academic nature and making recommendations regarding tuition – GAAB and AAC have no jurisdiction to award financial compensation or demand an apology – AAC has no jurisdiction to order production of documents prepared for the purpose of assisting the GAAB – AAC has no jurisdiction to order registration of students in upcoming academic year when hearing a preliminary motion on questions of law**

Motion brought by School of Graduate Studies (“SGS”) for direction concerning the jurisdiction of the Academic Appeals Committee (“AAC”) and the admissibility of some of the Students’ material. The Students appealed a decision of the Graduate Academic Appeals Board (“GAAB”) to the AAC seeking some 37 remedies, grouped into five categories: (1) academic remedies, (2) remedies relating to tuition and funding, (3) compensation for various costs incurred since 2007, (4) compensation for losses and damages flowing from the Depart of Economics’ conduct, and (5) an official apology letter from the SGS and the University.

The SGS conceded that the AAC had jurisdiction to grant the remedies in the first category and jurisdiction to recommend the rebate or cancellation of fees, but no jurisdiction to grant any of the remaining remedies. The Chair observed that the AAC only has the powers given to it by the Governing Council, expressly or by necessary implication, in its Terms of Reference; it has no inherent jurisdiction. The Chair commented that some light may be shed on the AAC’s jurisdiction by examining the jurisdiction of those bodies whose decisions it reviews, in this case, the GAAB. Upon review of the AAC and GAAB’s Terms of Reference, the Chair concluded that the AAC’s jurisdiction is limited to considering whether academic regulations and requirements have been applied correctly, consistently, and fairly. The Students argued that s.19 of the GAAB’s Terms of Reference gives the GAAB, and by extension the AAC, the power to award financial compensation for losses flowing from academic decisions. The Chair did not accept this argument. The Chair observed that s.19 does not enable the GAAB Chair to decide any dispute arising under the law of Ontario or Canada as it would give him or her powers comparable to those of a Superior Court judge. The Chair noted that the purpose of s. 19 is to enable the GAAB Chair to determine a point of law and a point of privilege that arises in connection with an issue that is otherwise within its jurisdiction. As such, a GAAB Chair would not have the jurisdiction to decide an issue of law

that was not otherwise properly before them. Similarly, s.19 does not give the GAAB, or the AAC, the power to award damages. Awarding financial compensation for the losses flowing from an erroneous or unfair application of academic regulations and requirements is not within the jurisdiction of the AAC, nor is requiring the SGS and the University of Toronto to apologize to the Students.

The Chair granted the Students' permission to argue at the hearing on the merits for a recommendation concerning their tuition but not for the remedies sought under categories (2) – (5). The Chair stated that the AAC will not grant any of these non-permitted remedies. The Chair held that it had jurisdiction to grant some of the remedies grouped into category (1): the removal of FZ grades, and the request for final exams taken while auditing courses to be marked. The remaining remedies grouped into category (1) were left to be decided at the hearing on the merits.

The SGS submitted that some of the materials filed by the Students were inadmissible at the hearing on the basis that they were communications in furtherance of dispute settlement and therefore privileged. The SGS submitted in the alternative that this material was irrelevant. The Chair reviewed the law of privilege and relevance. In the Chair's view, privilege applies whether the settlement discussions took place with or without a mediator. The Chair noted that the fact that settlement discussions were underway, though not the content of those discussions, may be admissible if relevant. In 2009, the Students initiated a consultation process with the Department of Economics for advice and informal mediation. After receiving information from the Students, a professor made a proposal to the Students. One of the Students sought some clarifications. After receiving clarification, one of the Student wrote to the professor stating "This is to accept the offer." The Students did not register as had been suggested and several weeks later declined the offer and pursued an appeal. The Chair held that the discussions and information exchanged during this period were covered by settlement privilege. The dispute was contemplated by the Students at the time, though the appeal had not yet been launched. The nature of the offers made by the Department of Economics and the SGS supported the inference that the discussions were intended to be kept confidential. And in light of the structure of the discussions, and the fact that some of the proposals involved compromising usual University policies, it was wholly implausible to describe all of the discussions as the giving and receiving of academic advice, rather than as negotiation to resolve a dispute. The possibility that the Students may have accepted the offer and nonetheless proceeded with a grade appeal did not destroy the privilege. The 2009 negotiations were designed to settle a dispute about whether the Students could resume their studies. Even if this was not the precise dispute now before the AAC, those discussions were privileged and therefore inadmissible. The Chair further held that the content of these negotiations had no bearing on the issues currently before the AAC and thus were irrelevant and inadmissible. The fact that negotiations occurred was relevant, but only to explain why the Students were permitted to write tests while auditing courses. In 2010, another series of discussions took place between the Students and Counsel for the Department of Economics. The Chair concluded these discussions were privileged and therefore inadmissible. The fact that negotiations occurred was not relevant and was inadmissible.

Both before and during the motion, the Students made a number of requests of the Chair that were all declined. The Students requested documents, including notes, minutes, and statements, produced at or as a record of the GAAB hearing. The Chair refused to make the requested order. The Chair concluded that he had no power to compel anyone to produce documents, that the GAAB is not a court of record and that any documents prepared to assist the GAAB are immune from disclosure to the parties in the appeal to the AAC, and that the documents were irrelevant. The Students also requested the Chair order the SGS to register them immediately for the 2011/2012 academic year. The Chair declined to make the requested order, as it was not within the jurisdiction of an AAC Chair hearing a preliminary motion to decide questions of law.

## **EVIDENCE**

Leading cases:

**359-1**

FILE:	<a href="#">Report #359-1</a> (2011-2012)	Hearing Secretary:
DATE:	August 25, 2011	Mr. Christopher Lang, Director, Office of
PARTIES:	H.M and M.Y. (the “Students”) v. School of Graduate Studies	Appeals, Discipline and Faculty Grievances
		Appearances:
		For the Students
		The Students
Hearing Date(s):	August 17, 2011	
		For the School of Graduate Studies:
		Mr. Robert A. Centa, Counsel, Paliare Roland
		Rosenberg Rothstein LLP
Chair Only:	Professor Hamish Stewart, Senior Chair	Ms. Julia Wilkes, Articling Student, Paliare Roland Rosenberg Rothstein LLP

**NOTE: These reasons address the findings on the motion only. Reasons for the decision on the merits are reported in *H.M. and M.Y. v. School of Graduate Studies* ([Report # 363](#), February 7, 2012)**

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that was not otherwise properly before them. Similarly, s.19 does not give the GAAB, or the AAC, the power to award damages. Awarding financial compensation for the losses flowing from an erroneous or unfair application of academic regulations and requirements is not within the jurisdiction of the AAC, nor is requiring the SGS and the University of Toronto to apologize to the Students.

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Both before and during the motion, the Students made a number of requests of the Chair that were all declined. The Students requested documents, including notes, minutes, and statements, produced at or as a record of the GAAB hearing. The Chair refused to make the requested order. The Chair concluded that he had no power to compel anyone to produce documents, that the GAAB is not a court of record and that any documents prepared to assist the GAAB are immune from disclosure to the parties in the appeal to the AAC, and that the documents were irrelevant. The Students also requested the Chair order the SGS to register them immediately for the 2011/2012 academic year. The Chair declined to make the requested order, as it was not within the jurisdiction of an AAC Chair hearing a preliminary motion to decide questions of law.

## STANDARD OF REVIEW

Leading cases: **409**

Appeal allowed:

Appeal dismissed: **409**

FILE: [Report # 409](#) (2020-2021)  
DATE: August 17, 2020  
PARTIES: Mr. A.M. (“the Student”) v. University of Toronto  
Faculty of Law

Hearing Date(s):  
June 18, 2020, via Zoom

Committee Members:  
Professor Hamish Stewart, Senior Chair  
Professor Douglas McDougall, Faculty Governor  
Ms. Olivia Batt, Student Governor

Hearing Secretary:  
Mr. Christopher Lang, Director, Office of Appeals,  
Discipline and Faculty Grievances  
Ms. Krista Kennedy, Administrative Clerk and Hearing  
Secretary, Appeals, Discipline and Faculty Grievances

Appearances:  
For the Student Appellant:  
Mr. Marcus McCann, Counsel, Millard and Company  
LLP

For the Faculty of Law:  
Mr. Robert Centa, Counsel, Paliare Roland Rosenberg  
Rothstein LLP

**UT – Faculty of Law – request to return to the program on a part-time basis with appropriate accommodations – duty to accommodate to the point of undue hardship – reasonable accommodation – jurisdiction – standard of review of correctness vs reasonableness – jurisdiction cannot be created by consent (*Phillips and Phillips v. The Queen*, [1983] 2 S.C.R. 161; *Canada (Attorney General) v. Haberman*, 2000 CanLII 15802 (Fed. C.A.) – the Committee’s function does not extend to invalidating the policies of a division, even if it is of the view that those policies are flawed or unfair – *Terms of Reference Academic Appeals Committee* (“Terms”) – although the Terms do not explicitly define the standard of review, the Policy on Academic Appeals within Divisions (2005) states that the “standard of review of an academic appeal is reasonableness.” – s. 17(1) and (2) of the *Human Rights Code* (“Code”) – *Academic Accommodations Policy* – academic accommodations contribute to academic integrity by attempting to ensure that the extraneous factor of disability does not affect a student’s reported results; they are not designed to guarantee that the student succeeds – it is not contrary to the Code to refuse an accommodation that would compromise academic integrity – Student had three unsuccessful, heavily supported, attempts at completing the first year of the program – no realistic basis in which the Student would be likely to succeed in the program regardless of accommodation – dissent – allowing the Student to continue part-time is a reasonable accommodation of his disability – the Student’s history has no bearing on whether part-time studies would now be an appropriate accommodation – the majority Committee agreed with the Academic Standing Committee – appeal dismissed.**

This appeal stems from a decision of the Accommodations Committee to deny the Student the ability to resume his studies on a part-time basis. The Student appealed this decision with the Associate Dean of the Faculty which upheld the decision. The Student then petitioned to the Faculty’s Academic Standing Committee (“ASC”); the ASC dismissed his petition. The Student appeals to the Academic Appeals Committee (“Committee”). The Student is seeking an order permitting him to complete his remaining work for the first year of the program and then to resume studies at the Faculty on a part-time basis with appropriate accommodation.

A few procedural and legal issues arose at the Hearing in which the Chair reviewed and determined these without assistance of the other Committee members.

First is the issue as to whether the Committee has jurisdiction to hear or decide any issues pertaining to this matter. The Student submitted that the Committee has jurisdiction to review the decision of the ASC and the Division conceded that the Committee has jurisdiction. The Chair noted that the Faculty’s concession is not determinative because jurisdiction cannot be created by consent (*Phillips and Phillips v. The Queen*, [1983] 2 S.C.R. 161 at p. 164; *Canada (Attorney General) v. Haberman*, 2000 CanLII 15802 (Fed. C.A.) at para. 20). The Chair noted that the Accommodations Committee as well as the ASC were concerned about whether they had jurisdiction over the Student’s request. The ASC chose to proceed on the assumption that it had jurisdiction, therefore, the appeal to the Committee proceeded on the same assumption. In the Chair’s view, jurisdiction in this matter depends on the proper characterization of the Student’s request and the response by the Deans. There are three ways to characterize the request and response. First, the Student inquired into his status at the Faculty and, in response, the Dean provided the Student information about his status. In this view, there would be no application of any of the Faculty’s policies and there would be no decision to appeal from and thus, the Committee would lack jurisdiction over this matter. Second, the Student requested an accommodation and the Accommodations Committee had jurisdiction over that request even though the Student was no longer registered. In this view, the jurisdiction of the

ASC and the AAC is straightforward. Third, the Student requested an accommodation and the Accommodations Committee did not have jurisdiction over that request because the Student was no longer registered. Thus, the AAC would also not have jurisdiction. The Chair found that the AAC does have jurisdiction over this appeal on either the second or third characterization of the Student's request because the Faculty was applying its accommodation policy. Therefore, the Committee has jurisdiction over the Faculty's response to the Student's request.

The second issue relates to the appropriate standard of review. The Student requested that the Committee conduct a *de novo* review of the Faculty's response to the Student's request and determine whether that response was correct. The Chair indicated that although the Terms do not explicitly define the standard of review, the *Policy on Academic Appeals within Divisions (2005)* states that the "standard of review of an academic appeal is reasonableness." The Chair found that the issue before the Committee is the reasonableness of the decision being challenged by the Student appellant, whether or not it exercises its powers to receive additional evidence. The Chair was extremely reluctant to hold that a decision made by the ASC should be reviewed for correctness rather than for reasonableness. The Chair found that if the Committee were to adopt a standard of review of correctness there would still be a strong element of reasonableness embedded in that standard because the duty to accommodate is a duty of reasonable accommodation. The Chair found that the issue before the Committee is whether the Faculty's overall response to the Student's request was a reasonable application of the Faculty's duty to accommodate in accordance with its accommodation policy.

Lastly, the Chair addressed the University's duty to accommodate in accordance with the *Human Rights Code* (Code). The Chair outlined that the University is obligated to reasonably accommodate a person with a disability to the point of undue hardship. Section 17(1) of the Code indicates that the Student's rights would not be violated if he is "incapable" of meeting the requirements to successfully complete the academic program, however s. 17(2) of the Code would direct the Committee not to find the Student "incapable" unless his disability "cannot be accommodated without undue hardship." Whether or not academic integrity can be considered in determining undue hardship under s. 17(2), it is better considered in relation to "the essential duties or requirements attending the exercise of the right" under s. 17(1). Academic accommodations contribute to academic integrity by attempting to ensure that the extraneous factor of disability does not affect a student's reported results; they are not designed to guarantee that the student succeeds. The University should not provide an accommodation that compromises academic integrity, whether or not doing so would amount to undue hardship, because it would not be possible to fairly assess a student's performance under such an accommodation. An accommodation inconsistent with academic integrity is of no value in determining whether a student is capable of "performing or fulfilling the essential duties or requirements" of their academic program. It is not contrary to the Code to refuse an accommodation that would compromise academic integrity because, if a student is unable to succeed without such an accommodation, that student "is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability."

The Student raised two main issues in his appeal. The first is with respect to procedural fairness and the second is the duty to accommodate. The Student allegation surrounding procedural fairness was based on the fact that the Student did not get an opportunity to respond to the Faculty's submissions or attend the ASC meeting to make oral submissions, while the Faculty was. The Committee found that the Faculty did not deny the Student procedural fairness because the procedure with respect to the Student's petition was in accordance with the ASC's rules. The Committee further held that its function does not extend to invalidating the policies of a division, even if it is of the view that those policies are flawed or unfair. Therefore, for the Committee to allow an appeal on the basis that a university division had acted unfairly even though it followed its own procedures would be tantamount to invalidating that policy and, as a remedy, would require the creation of ad hoc procedures on a case-by-case basis.

The second issue on appeal is the duty to accommodate. The question before the Committee is whether the Faculty's refusal to offer the additional accommodations as requested by the Student was in accordance with its duty to reasonably accommodate his disability. The Committee was divided on whether the Faculty's decision not to grant these accommodations was a reasonable exercise of its duty to accommodate. The majority of the Committee found that over the last number of years the Faculty had provided the Student with extensive accommodations, yet despite these accommodations, the Student could not complete the first year of the program. The majority Committee agreed with the ASC that the Student "has had three unsuccessful, heavily supported attempts at completing the first-year program... There is no realistic basis which we can have confidence that [the Student] is likely to succeed in the program even if undertaken on a part-time basis."

Appeal dismissed.