

**UNIVERSITY OF TORONTO**

**GOVERNING COUNCIL**

Report # 369 of the Academic Appeals Committee  
**November 7, 2013**

To the Academic Board  
University of Toronto.

Your Committee reports that it held a hearing on Thursday, October 31, 2013, at which the following members were present:

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

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 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

**The Appeal**

This is an appeal from a decision of the Academic Appeals Board (“AAB”) of the Faculty of Applied Science & Engineering (“Faculty”) dated April 11, 2013 dismissing an appeal of the Student from a decision of the Faculty’s Committee on Examinations (“Committee”) dated November 21, 2012. The Committee had denied the Student’s petition to be allowed to return to the Faculty despite having been refused further registration for not meeting the Faculty’s required sessional average.

**Motions**

In their written materials for this appeal, both the Student and the Faculty made motions requesting confidentiality. In her Reply to the Faculty’s Response in this appeal, the Student made a motion requesting a confidentiality order to close the hearing, to keep the name of any

party undisclosed and to keep any exhibit confidential. The Chair of your committee informed counsel for the Student that the practice of your committee was not to provide the name of the student in any report but to use only initials and further that any documents relating to the appeal were kept confidential by the Office of the Governing Council. Mr. Pieters, counsel for the Student, indicated that this practice was acceptable to the Student.

In their Response to the appeal, the Faculty asked the Chair to redact from all recordings or publications relating to this appeal the names of all staff who acted on behalf of the Faculty. The reasons given by the Faculty were that each Faculty staff member “acted on behalf of and as a representative of the Faculty, only, and not in his/her individual capacity” and that in past appeals Faculty staff had suffered difficulties as a result of their involvement in matters relating to appeals. In addressing an identical motion from the Faculty, Chair of your committee Hamish Stewart in Report 367 dismissed the motion stating he “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 your Committee found that allegation to be unfounded.” While there is no direct allegation against a particular individual in this appeal, given the sensitive nature of the appeal and the references to advice provided to the Student, the Chair of your Committee grants this motion.

### **The Facts**

The Student began her studies in the Faculty in 2008. She successfully completed her first year. However, in the Fall of 2009 her average fell to 48%, below the 60% level which in the Faculty triggered probationary status. She was therefore placed on “PRO2” with the result that she was forced to withdraw from the program for eight months and on return to repeat the session for which she did not meet the required average. The Student made a number of petitions relating to this probationary status. The basis for her petitions was that in the Fall of 2009 a family member became ill with a mental illness. Each of these petitions was denied on the basis of lack of documentation. Further, in the summer of 2009 she was diagnosed with Mitral Valve Prolapse, a condition described by her as being exacerbated by anxiety.

While on probation, the Student met with an academic advisor who advised her that if she was struggling she should take a reduced workload. In the Fall of 2010, however, the Student returned to the program and took a full load. At some point in this school year, the Student states that she was diagnosed with anxiety and was prescribed medication. In the Winter term of 2011, the Student suffered anxiety during an exam. She petitioned the result of this exam and provided medical documentation. The petition was granted and she was given an assessed mark.

In Fall of 2011, the Student took a full load. However, she missed a final exam. She petitioned concerning this exam, providing medical documentation of a physical illness (not relating to anxiety). The Faculty allowed this petition, granting the Student a make up exam to be taken in the Winter term. The Faculty in the past had not granted any deferred exams. In this case, the Faculty stated it emailed students on January 20, 2012 indicating the deferred exams would be taken during two weeks in February. It subsequently emailed the Student on January 30, 2012 that her exam would be held on February 16, 2012. According to the Student, this deferred exam

fell during a week of midterms for her other courses and resulted in her missing a lab for one course.

As a result of her performance on the deferred exam, the Student's average for Fall 2011 was 59.4%. As this average was below the 60% rule, it would in general trigger the progressive probationary response by the Faculty. Given that the Student had been on probation because of poor performance in Fall of 2009, failing to make the 60% average for Fall 2011 would mean the Student would be denied further registration in the program. The Faculty, however, waived the 60% rule in this instance. At the hearing, the Faculty stated that it waived the rule given the timing of the deferred exam and that the Student's average was so close to the cut off.

The Student therefore continued in the program in the Winter of 2012. She petitioned one of her exams that term on the basis that she had suffered from an anxiety attack. Her petition was denied because while she had obtained medical documentation that she suffered from anxiety disorder, the documentation was insufficient as it was not obtained within 24 hours of the exam and did not provide sufficient evidence of the severity of the symptoms. On further appeal, the AAB upheld this decision, noting also that they were not provided with any evidence of a long-term diagnosed anxiety disorder that might have provided context for the appeal.

Her average for the Winter term of 2012 again fell below the 60% rule. Her average was 58.4%. As a result, the Faculty refused her further registration in the program. It is this decision that resulted in this appeal. The student petitioned the decision to the Committee. She asked to be placed on PRO2 status once more because of the workload that she had taken on (despite the advice of her academic advisor) and her wish to seek help through the disabilities office because of her anxiety and stress issues. The Committee in its decision dated November 21, 2012 denied the petition. Its complete reasons were:

Denied based on insufficient reasoning or invalid reason. The Faculty intervenes to accommodate petitions only in the most severe situations. Your claims do not meet the standard to offer remedies. Valid reasons to intervene with the awarding of final marks or academic credit are usually serious illness, injury or bereavement.

The Student appealed this decision to the AAB. She provided further description of the illness of her family member and of her own struggles with anxiety and stress. She also provided a medical form dated March 1, 2013 signed by a psychologist. On the form, the psychologist placed the Student in the 'moderate' category of illness, which according to the form means the student "may be able to fulfill some academic obligations but performance considerably affected e.g. able to attend some classes, decreased concentration, assignments may be late." The psychologist's note states that the Student is 'exhibiting symptoms of depression and anxiety. Although she is progressing well, she would benefit from her school's cooperation in assisting her through a successful recovery.'

In its decision dated April 11, 2013, the AAB dismissed the Student's appeal. It found that "no rule, regulation, policy or principle was applied to you unfairly." After noting it had reviewed all the information including the evidence from March 2013, "the Board felt that no new reasoning

was presented, and that the additional evidence submitted was not sufficient to justify the exceptional request. The Board feels it is unfortunate that your current academic status does not allow you to continue in the program but views that state as a condition of multiple previous 'last chances' granted through the Faculty's progressive probationary structure and through several granted petitions in your past sessions."

The Student subsequently appealed to your Academic Appeals Committee. The Student asked that the 60% rule be waived and that she be reinstated in the program. At the hearing, Mr. Pieters stated that given the timing of this appeal, the Student was asking to be reinstated as of January 2014. The Student argued that the appeal should be allowed on medical and compassionate grounds.

### **Decision**

The Faculty has a progressive probationary program to aid students struggling to meet the program requirements. Its progressive nature provides these students with the opportunity to recover from a poor academic performance in a session. The Faculty has at times provided relief to students from the application of this program. It is important to ensure, however, that a high bar is set to obtain such relief in order to maintain the integrity and standards of the Faculty.

In this case, the AAB was faced with a student who was clearly struggling with the program, who had admittedly taken on a full course load despite some advice otherwise, and who had provided evidence of anxiety issues but had not sought accommodation through Accessibility Services. The Faculty had granted petitions of the Student in the past but the AAB decided that in this case the Student did not warrant the very exceptional remedy of a waiver of the 60% rule.

At the same time, however, the Faculty had provided relief from the 60% rule for this Student for the Fall 2011 term. The waiver for the Fall 2011 term in fact related to events that occurred during the Winter 2012 term that is the basis of this appeal. The Student wrote the deferred exam during a week in which midterms were held and school was on-going. According to the Faculty, this timing was part of the reason for the waiver of the 60% rule for the Fall 2011.

During the hearing, the Faculty noted that 2011/12 was the first year in which it granted deferred exams. It initially stated that such deferred exams would be held during the 2012 Winter reading week but then emailed students that the deferred exams would be held in a two week period which included reading week but also a week of term. The Faculty stated that because of student concerns, it has since changed its process going forward such that timing of deferred exams will now be set in consultation with the student.

The Faculty felt that the scheduling of the Student's deferred exam during midterms provided in part a basis for relief relating to the Fall 2011 term. The Student argued that this timing also impacted her performance in the Winter 2012 mid-terms, particularly given her documented severe anxiety issues which the Faculty does not dispute, and caused her to miss a lab in a different course. The Faculty during the hearing stated that if a student reached the point of a petition for a waiver of the 60% rule it was generally unlikely in light of past performance that

his or her performance would improve unless something changed dramatically. In this instance, given the transitional issues for the Faculty in setting deferred exams and its subsequent changing of its policy in the face of student concerns, the evidence of the Student's severe anxiety issues and the evidence from the Student's psychologist that the Student is 'progressing well' and from the Student that she is willing and now financially able to take on a lighter course load, your committee believes it would have been reasonable for the AAB to also grant relief from the 60% rule for the Winter 2012 term.

In light of the Student's request to be placed on PRO2 status in her initial petition to the Examination Committee, your committee allows the appeal with the student to be placed on PRO2 status with a return in January 2014 and the student repeating the Winter 2012 session. While not making it a condition of this status, your committee strongly recommends that the student work with both her academic advisor and the University's Accessibility Services to find a workload along with any necessary accommodations that provide her with the best opportunity to succeed in the program.

There was considerable discussion in this appeal of the difficult issue of the responsibilities of both the university and the student in the context of mental health concerns. During the hearing, the Faculty clearly stated that it recognized students' need for accommodation and set out a range of initiatives it takes to inform students of the University's Accessibility Services. At the same time the Student in this instance did not take advantage of these services even though it seems likely she would have benefited from them. Surprisingly, she neither sought out these services of her own volition nor apparently was pointed towards these services by the Faculty in their dealings with her. It is unfortunate that neither party recognized the possibility of accommodation in this instance. Your committee is of the view that the Faculty may wish to consider whether there are further steps it could take to aid students in such situations. Further, the Student experienced severe anxiety issues during exams, which led to a range of petitions and disputes over documentation. To the extent that the Faculty does not have such systems in place, it would be useful to consider procedures to aid in these types of situations such as placing a statement on each examination of what to do in the event of illness or distress during the exam (as is done in other parts of the university to aid in identifying to the student the time sensitive nature of addressing the concerns) or training of invigilators in recognizing and addressing student distress.

The appeal is allowed.