

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

REPORT NUMBER 283 OF THE ACADEMIC APPEALS COMMITTEE

October 16, 2003

To the Academic Board,
University of Toronto.

Your Committee reports that it held a meeting on Tuesday, September 16, 2003, at which the following were present:

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

Secretary: Mr. P. Holmes, Judicial Affairs Officer

Appearances:

For The Student:

Mr. M.N. (the Student)
Mrs. N.

For the University of Toronto at Scarborough (UTSC):

Associate Dean I. McDonald

This is an appeal from the decision of the Sub-Committee on Academic Appeals of UTSC dated November 12, 2002. That decision denied an appeal from a decision of the Academic Committee dated November 12, 2002, denying relief for the Student's failure in the course CSCD34H3, taken in the Winter Session, 2002. The Student received less than 40% of the marks available on the final examination, and therefore, under UTSC regulations, failed the course. The Student claimed relief on the grounds of illness at the time of the final examination, which was taken on the evening of April 30, 2002. His original petition asked for exemption from the "40% Rule", or alternatively, the right to rewrite the final examination without that rule applying to the rewritten examination. On the subsequent appeal, the Student simply requested permission to rewrite the final examination in the course, subject to the usual UTSC rules.

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Before your Committee, the Student asked that the relief of late withdrawal without academic penalty and of *aegrotat* standing be considered.

Your Committee notes that the Student in fact successfully repeated the course CSCD34H3, which is a compulsory course in his programme, in a subsequent term. The relief now requested is desired by the Student to improve his GPA and remove the failure from the face of the transcript. The relief originally requested is now, for practical purposes, irrelevant.

The Student has given evidence of a lengthy period of medical problems, but your Committee believes that it need consider only the situation as it existed approaching the end of April, 2002. As the Student approached the examination in CSCD34H3, he described being fatigued, feverish, suffering from a sore throat and shortness of breath. He wrote the examination in the evening, and visited his doctor the next day. Apparently, the doctor undertook no active treatment on that occasion. When the symptoms persisted for another week, the doctor prescribed an antibiotic and a ventilating puffer.

Your Committee heard the Student's evidence, and considered such corroborating evidence as there was. The latter was thin. Your Committee understands why the Sub-Committee, basing its decision only on the written material submitted by the Student, considered that the medical evidence did not meet University standards. However, the appeals procedure chosen by the University involves a rehearing process, and is not limited to a consideration of the correctness or otherwise of the decision below. Most importantly, at the higher levels, the student may make *viva voce* submissions to the appeal panel, and may, if the panel permits, otherwise augment the evidence filed below. The oral participation by the student may involve oral evidence, from the student or others, as well as argument, and the tribunal admitting that evidence may and should weigh it with all other evidence in coming to its conclusions.

The reasons for decision by the Sub-Committee on Academic Appeals do not reveal what evidence the Student gave as to his medical condition on the evening of the examination in question, or what was the Sub-Committee's evaluation of such evidence, if any, as he gave on that occasion. However, your Committee found that, on the basis of the evidence given before it, the Student established that he was ill at the time he was writing his examination, and that the illness had a sufficiently severe impact on his abilities during the period of the examination that the University should not rely on the result of that final examination to determine the result in the course.

The more difficult question is whether the deficiencies in the medical evidence supplied by the Student should, as a matter of policy, prevent your Committee from acting on its own finding of fact, and granting relief. The relevant medical note here is an example of so-called certificates the faculty members on your Committee at least have, in their academic administrative roles, seen many times before. Whatever regulations the University may pass, academics dealing with petitions will see them a multitude of times in the future. The student receives a terse, often almost completely uninformative note which does little more than confirm the date and fact of a visit, written by a busy doctor on a prescription blank or similar piece of notepaper. The student, even if he or she recognizes the deficiencies from the point of view of those who will consider a subsequent petition, may not be successful in persuading the doctor to prepare the more elaborate

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evaluation that University regulations contemplate, or indeed, may feel reluctant to challenge the sufficiency of what is proffered. For this reason your Committee will not consider itself debarred from acting on its own finding of fact, but will deal with these situations on their individual merits.

In this case, the medical note does corroborate that the Student visited his doctor on the day following the examination in question, and that about a week later, the Student was still suffering from a condition that required intervention with medication. It does no more than that, but your Committee is satisfied that that is sufficient, along with the Student's evidence before it, to justify it in granting relief without fear that the University's academic standards are being compromised.

In its reasons for decision, the Sub-Committee on Academic Appeals placed weight on the fact that the Student had written examinations in three other courses during the period April 26 to May 2, 2002, all of which he had passed successfully, and with respect to which he was not seeking relief. The Sub-Committee referred to this as "the problem of selectivity". The nature of this "problem" was not spelled out further, but your Committee interprets the passage as suggesting that some form of adverse inference should be drawn against the Student. Presumably, if the Student could pass these other courses during the period of his alleged illness, the illness could not have been so severe as to justify relief in the course failed. Conversely, if the illness was sufficiently severe, the Student might be expected to ask for relief with respect to all courses which would be adversely affected. Your Committee is not only unconvinced by "selectivity" arguments, but regards them as unfair. A student may well have been adversely affected by illness and still pass the examination. Your Committee does not believe that a Student who accepts the favourable results and decides to leave well enough alone with respect to them is being in any way unreasonable, nor does it believe that such student is being inconsistent or unreasonable in appealing other results which were unfavourable.

The question of the appropriate relief now arises. As the Student has retaken and passed the course, the relief originally sought now makes no sense. Your Committee feels that the appropriate relief is to grant the Student *aegrotat* standing. UTSC argues that the requirement that the Student be found to be "unable to complete course requirements within a reasonable time" is not met, but your Committee does not so find. The illness affected the final examination, and the Student could not complete that examination requirement until he was successful on a petition. Until this decision he has not been successful, and events have made completion of the course taken in 2002 unnecessary. The remedy will remove the results of the 2002 course from the GPA of the Student, will not compromise the standards of the University, and will accurately reveal to a person evaluating the Student's transcript the true state of affairs.

Your Committee also wishes to comment on the general problem of insufficient medical certificates. These waste a great amount of University resources. At the original level of consideration of petitions, students must often lose out on relief that would otherwise have been available if those considering the petitions had full information. At the same time, those determining the petitions must often feel frustrated when appeal tribunals reverse them on the basis of evidence that was in practice not available to them, as is the case here. Further wastage takes place where the student must go to higher appeal levels to bring in the evidence that the

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original certificates failed to give. This appeal to your Committee alone used up many hours of faculty, student, administrative staff and alumni time. The introduction of the standardized University Student Medical Certificate is a great advance, as it guides health care professionals through the areas that the University considers essential in properly considering relief. However, it will probably require a second trip to the professional to get it signed, as the student attending on the occasion of the illness will probably not have one in pocket at the time. It also assumes the medical professional's goodwill to take the time to complete the more elaborate document.

It is true that calendars spell out certificate requirements, and urge the use of the standardized certificate. However, it is no news to anyone with university experience that all students do not read calendars, at least in a timely way. Your Committee wishes to urge a more proactive role for registrars' offices or other locations where students are expected to hand in petitions for relief. Your Committee is not suggesting anything elaborate. "Counter staff" might be trained to glance over a petition when it is received. If the petition is based on medical grounds, they could alert the student to the University's expectations as to the required detail for certificates. They could warn the student that chances of success will be seriously jeopardized if certificates are not complete. They could then hand the student the standard university certificate. There should be no attempt to be judgmental in the particular case. That is about all that could reasonably be expected. For large divisions, such as UTSC, even this could be a substantial additional burden on staff, but the possibility of saving resources downstream seems considerable, to say nothing of the possibility that some students may not lose out on relief to which, with full information, they would probably receive.

In summary, the appeal is allowed. The grade of "F" recorded in the course CSCDS4HS in the Winter Session, 2002, will be vacated and replaced with a grade of AEG. The sessional and cumulative GPA of the Student shall be adjusted if necessary in accordance with UTSC regulations.

Paul J. Holmes
Secretary

Ralph Scane
Senior Chair

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