IN THE SUPREME COURT OF JUDICATURE OF JAMAICA Judgment Book
IN CIVIL DIVISION
CLAIM NO. 2008 HCV 0873

| | | |
|---|---|---|
| BETWEEN | ROGER ARCHIBALD | CLAIMANT |
| AND | THE COUNCIL OF LEGAL EDUCATION | DEFENDANT |

Mr. David Batts and Miss Teri-Ann Brown instructed by Livingston Alexander and Levy for the Claimant

Mr. Michael Hylton O.J., Q.C. and Mr. Kevin Powell instructed by Michael Hylton and Associates for the Defendant

**Education – Student awarded a failing grade – Whether grade unreasonable - Whether court entitled to, or should intervene to change the grade**

**Judicial Review – Natural Justice – Student appealing to governing tribunal contesting a grade awarded to him by law school - Whether tribunal obliged to give an opportunity to the student to respond to the law school's reply to the appeal**

**Practice and Procedure – whether document exhibited to an affidavit of the Claimant may be treated as expert evidence**

IN CHAMBERS

**January 19, 20 & 26, 2009**

**BROOKS, J.**

Mr. Roger Archibald is an attorney-at-law registered to practice in New York and the Supreme Court of the United States of America. He wishes to extend his practice to the Commonwealth Caribbean. In pursuance of that he registered as a student of, and pursued a course at, the

Norman Manley Law School in Kingston. He was, however, given a failing final grade for one of his subjects.

Mr. Archibald appealed to the Council of Legal Education, which governs the Law School. He requested that his final grade be changed to a passing grade on the basis that, although he had received a failing grade 'D' on the first two, he received an 'A' on the last of the three assignments, comprising student assessment in that course. His entitlement, he says, was based on the fact that a reasonable approach to assessing marks requires the change. He also claims the change on the basis that the Law School's Senior Tutor assured him, before he submitted the last assignment, that if he did get an 'A' for that assignment, he would have passed the course.

Mr. Archibald is aggrieved by the Council's refusal of his request. He has brought this application for judicial review to have the court declare that the final grade should be changed and also that the failing grade awarded on his first assignment was wrongly awarded. Mr. Batts, on behalf of Mr. Archibald, asserts that the Council's treatment of Mr. Archibald amounts to grave injustice. The irony, he submits, is that it has been dispensed by an institution charged with teaching a respect for justice and fairness.

The Council resists the application on the basis that the final mark awarded was not unreasonable and that it was consistent with the standard

used, for many years, to assess the performance of students of the Law School. This standard, asserts the Council, should not be circumvented because of any individual case or because of any assertion by any individual tutor. In respect of the grade for the first assignment, the Council asserts that courts have traditionally declined invitations to become markers of assignment scripts and that this court, in resolving this matter, should act consistently with that principle.

The issues which arise to be resolved by this court have been agreed on by the parties. They are:

a. Whether Mr. Archibald was given a fair or any hearing so that he could present his appeal against the final grade;

b. Whether the conclusion that two 'D's and an 'A' amount to a failing grade is unreasonable, wrong in law and contrary to established academic practice;

c. Whether the failing grade awarded for the first assignment was manifestly wrong;

d. Whether Mr. Archibald held a legitimate expectation based on the assertion of the Senior Tutor and as a result the Council should not be allowed to resile from the position communicated by the Senior Tutor.

I shall address each issue in turn.

A. **Whether Mr. Archibald was given a fair or any hearing so that he could present his appeal against the final grade**

*The Complaint*

Although this issue was not mentioned in the introduction to this judgment, it is an important part of Mr. Archibald's present claim, that he was deprived of a hearing before the Council. He asserts that, in so doing, the Council did not act fairly and breached the principles of natural justice.

In his letter of appeal to the Council, Mr. Archibald, at the end of four pages of detailed recounting of the circumstances and advocating his stance, requested a change of his grade. He then went on to say, "[a]lternatively, I request that I be permitted to address the Council, in person, at its upcoming August meeting so that I may be able to answer any specific questions or inquiries that may arise as a result of this correspondence".

The Council granted neither request. Its response was in the form of a letter signed by the chairman of the Council, Mr. J. Emile Ferdinand. Mr. Ferdinand explained in that letter that he had "made enquiries" and had "discussed the matter with the senior administrators of all three Law Schools operated by the Council". The chairman then set out some findings of fact and conclusions which he had drawn therefrom. He then said:

> "The decision of the Examination Committee that you failed the course Criminal Practice and Procedure was in strict compliance with the rules, regulations and policies of the Council of Legal Education. In the premises, it will not be possible to accede to your request that your final grade...be amended from a failing grade ['D'] to a passing grade ['C'].
>
> **It will also not be possible to accommodate your request to be permitted to address the Council in person at its upcoming August meeting.**" (Emphasis supplied)

Mr. Batts submitted that the Council was wrong in refusing to grant Mr. Archibald's request for a hearing.

*Is the Council's decision subject to judicial review?*

There was no real contest that the decision-making process, as opposed to the decision, of the Council, is subject to judicial review. The Council is established by the Council of Legal Education Act. Regulations have been promulgated pursuant to the Act. These give direction to the Council and the persons falling under the Council's jurisdiction. It is my view that the Council's status is such that it has a public character which makes its actions subject to judicial review. See *Council of Civil Service Unions v Minister for the Civil Service* [1984] 3 All E.R. 935 and *R. v. Medical Council, ex parte Dr. Mohammed Baza* (1987) 24 J.L.R 443.

Although it is to the process of the inferior tribunal, that a court conducting judicial review, mainly directs its attention, the decision itself is also examined. This is to determine if it is so unreasonable that no tribunal could properly have arrived at that decision (the *Wednesbury* principle) (See

*Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 K.B. 223.

*Right to an oral hearing*

Mr. Batts submitted that there was a breach of the *audi alteram partem* rule, in that the Council did not give Mr. Archibald an "opportunity to challenge any untruth which may or may not have been spoken about him or any inaccuracy that may have been put forward" by the Law School's administrators. Learned counsel made it clear that he was not submitting that the Council was obliged to grant Mr. Archibald an opportunity to make an oral presentation. Counsel submitted that what was required was a fair hearing. In these circumstances, he submitted, a fair hearing meant that the Council ought to have given Mr. Archibald the opportunity to respond to the information which the Council had gleaned from Mr. Ferdinand's "enquiries" and "discussions with senior administrators".

Support for the principle that a physical appearance before the tribunal is not critical to ensuring a fair hearing, can be found in the case of *Nyoka Segree v Police Service Commission* (SCCA 142/2001 delivered 11/3/2005). There, Panton J.A. (as he then was) said (at page 24):

> "This court has said on several occasions...that the right to be heard is not confined or restricted to a viva voce hearing. The management of public affairs in this regard would be too hamstrung if all proceedings of this nature had to be viva voce."

Mr. Hylton Q.C., on behalf of the Council, cited the decision of the Privy Council in the case of *Auburn Court Limited v. The Kingston and Saint Andrew Corporation and others* (2004) 64 W.I.R. 210. In an appeal from this jurisdiction, their Lordships implicitly confirmed that the opportunity to be heard did not require an oral hearing. The guiding principle, they stated, was that the procedure should be fair. Even if an applicant had produced a written application, he should be given an opportunity to respond to any objection to that application. At paragraph 47 of the judgment, their Lordships stated:

> "It is obvious that the principle [of acting fairly] requires that, if an objector is to be heard by the committee, the committee ought to give the applicant an opportunity of being heard also. In a contest of that kind, one side cannot properly be heard without hearing the other."

*Should an opportunity to respond have been granted?*

In *Auburn Court* their Lordships found that there was no objection, before the tribunal, to Auburn Court's application for approval of its development plans. Their Lordships stated that the officials who attended the meeting of the tribunal were there to provide "the advice and information that the committee needed before the decision was taken". The nature of the proceedings was therefore important.

In order to determine whether fairness required giving Mr. Archibald an opportunity to respond to the information which Mr. Ferdinand had

secured, the court should consider what was being requested of the Council. What Mr. Archibald had requested was that his final grade be changed. He complained that an arrival of a final grade of 'D' from 2 'D's and an 'A' is mathematically flawed; that if it was based on different weights being given to the various assignments, that that was manifestly unfair, as no prior indication had been given to the students to that effect.

It is not known what information Mr. Ferdinand had secured, or indeed if there was any objection raised to Mr. Archibald's application. In his letter, Mr. Ferdinand gives the impression that there was no formal hearing. This is demonstrated by his statements; "I have made enquiries and I have also discussed the matter..." and "I do not accept that your remaining in the course...was the result of alleged assurances". The fact that there was not a formal hearing is not, by itself definitive but does merit consideration in determining the nature of the exercise conducted by Mr. Ferdinand.

Mr. Batts submitted that there were matters with which Mr. Archibald, if given an opportunity, could have assisted the Council in its determination. He cited three examples. The first was that Miss Carol Aina, the acting principal of the Law School at the time, had stated in her affidavit before this court, that Mr. Archibald had only attended 17 of the 29 classes held in the course. Mr. Batts submitted that if Miss Aina had been consulted

by Mr. Ferdinand concerning Mr. Archibald's attendance then it was likely that she would have related that information about Mr. Archibald's attendance, to his detriment. Mr. Batts continued by demonstrating that Miss Aina was in fact incorrect in her calculation of Mr. Archibald's attendance and that the fact was that he had attended 21 of the 29 classes.

Mr. Batts also submitted that, had he been given the chance, Mr. Archibald could have made it clear to the Council that he was unaware of a document, called a "Grade Computation Sheet", which was said to be used by the Law School to assess final grades. This was the actual situation, whereas Miss Aina seems to be of the impression, based on her affidavit, that all students were aware of the existence and effect of the sheet.

Finally Mr. Batts submitted that Miss Aina was of the view that the regulations precluded professionally trained students, such as Mr. Archibald was, who were pursuing the Law School's six-month qualifying course, from being set supplementary assignments. According to Mr. Batts that view was an erroneous construction of the regulations and that there was in fact "no bar to [Mr. Archibald] sitting "supplementals".

According to Mr. Batts, Mr. Ferdinand may have contacted Miss Aina, who may have expressed her view on these matters and yet Mr. Archibald "did not have the opportunity to contradict her."

Quite apart from the speculative nature of these submissions, I am not convinced that they sufficiently consider the issue to have been determined by the Council. The crux of that issue was whether, under the Law School's system two 'D's and one 'A' ought to result in a final grade of 'D'. I find that in conducting that exercise, there was no room for "objection" to Mr. Archibald's appeal. The administrators of the various law schools would have provided Mr. Ferdinand with information as to the system in operation, but in my view, there was nothing to which Mr. Ferdinand would have needed Mr. Archibald to respond. As in the *Auburn Court* case, I find that there was no breach of the requirement of fairness.

As in *Auburn Court*, there was a dispute of fact. Mr. Ferdinand sought to make a finding on that issue. It concerned, not whether Mr. Archibald had passed or failed the course, but whether he had remained in the course, based on the assurances of the Senior Tutor. That dispute, however, was not the pith of Mr. Ferdinand's task and even if he did receive contrary information from the persons from whom he made enquiries, his failure to request a response from Mr. Archibald, on that point, is not fatal to his decision-making process.

I therefore conclude on this issue, that there was nothing unfair about the process concerning Mr. Archibald's appeal.

**B. Whether the conclusion that two 'D's and an 'A' amount to a failing grade is unreasonable, wrong in law and contrary to established academic practice**

In his letter of complaint, Mr. Archibald asserted that, he ought to have been awarded a final grade of 'C'. He asserted that the "final grade inexplicably assigned to me was without mathematical or equitable foundation". He repeats that complaint here.

*The statement of Professor Murumba*

Mr. Batts laid much store by a letter from a Professor Samuel Murumba, in advancing the arguments on this point. The letter was exhibited to an affidavit filed by Mr. Archibald. The affidavit also exhibited Professor Murumba's extensive and impressive *curriculum vitae*. Professor Murumba is a Professor of Law at the Brooklyn Law School. He has taught at law schools in Uganda, Australia and the United States of America. His experience spans over thirty years.

Mr. Hylton objected to the use of Professor Murumba's letter as part of the evidence. Learned Queen's Counsel submitted that the professor's letter sought to express an opinion. On that basis, the submission continued, the procedure concerning expert evidence, as set out in part 32 of the Civil Procedure Rules (CPR), ought to have been followed. Even if the professor

is taken to be stating a fact as to the practice in other jurisdictions, continued Mr. Hylton, the statement "is inadmissible hearsay".

Mr. Batts objected to learned Queen's Counsel's approach and submitted that the court should not accede to it. Mr. Batts pointed out that the evidence was closed, cross-examination had been waived and the document was before the court. He said no question of admissibility could arise at the stage of closing arguments.

Mr. Batts is on good ground. The Court of Appeal in *Cherry Dixon-Hall v Jamaica Grande Limited* (SCCA 26/2007 (delivered November 21, 2008)) considered circumstances very similar to these ( medical reports were admitted into evidence by consent). The court ruled that once the documents had been admitted into evidence the question of admissibility was no longer an issue. In his judgment Panton, P. at pages 9-10, stated:

> "I am somewhat puzzled as to why the learned judge thought it necessary to devote so much of her judgment to determining-
>
> (a) whether Dr. Williams was an expert witness; and
> (b) whether his evidence was admissible,
>
> Dr. Williams' reports were admitted into evidence by consent of the parties. The question as to their admissibility was therefore not an issue, unless there was some legal provision which barred their admission. I see nothing in Rule 32 of the Civil Procedure Rules, 2002 which forbids the admission of the reports. Of course, the question of relevance is always important; but it could not be said that the opinion of a doctor in this situation was inadmissible...In the circumstances therefore, I am of the view that the learned judge was in error in holding that the evidence was inadmissible...The reports having been admitted into evidence, [the judge] was obliged to assess them to determine what weight should be given to them"

I find that that guidance applies completely, in these circumstances. I must consider the contents of Professor Murumba's letter.

After briefly outlining his qualifications, Professor Murumba stated:

> "It is my considered opinion that, **in the absence of an express rule to the contrary**, two (2) grade "D's" and an "A" in a three component course equal to at least a passing grade. This is the view held in academic circles in the law schools in which I have taught for thirty years." (Emphasis supplied)

*The Grade Computation Sheet*

In outlining the law school's grading system Miss Aina stated that the "Council uses and has always used the literal grade system as opposed to the numerical grade system. She went on, in paragraph 19 of her first affidavit, to explain that all tutors marking examinations and assignments were to use a "Final Grade Computation Sheet issued by the Council". She exhibited to the affidavit, a copy of the sheet.

The Grade Computation Sheet "sets out a computation formulated on the variables in four grades (A-D) with five questions or with three assignments". An examination of the sheet concerning three assignments makes it clear that any student who was awarded two or more 'D's in such a course would be awarded a final grade of 'D'.

I find that there was no discrimination against Mr. Archibald in the award to him of a final grade of 'D' for his attempt at the Criminal Practice and Procedure course. The grading standard, on the evidence, has been used

for the thirty-five years of the existence of the law school. It is not a manifestly unfair system. Indeed, it could be said with justification, that if a student had failed two out of three assignments he ought to be deemed to have failed the course, despite the fact that the third grade was an 'A'.

As far as Professor Murumba's stance is concerned, I lay emphasis on the qualification which he made to his opinion, namely, "in the absence of an express rule to the contrary". The Law School does have an express rule to the contrary, which it has, on Miss Aina's evidence, always used. The fact that Mr. Archibald did not, on his evidence, know of the existence of this sheet or of the rule, prior to the commencement of these proceedings, does not alter their status or effect.

The grading system, I find, is not unreasonable, wrong in law or contrary to established academic practice.

**C. Whether the failing grade awarded for the first Assignment was manifestly wrong**

As part of his complaint here, Mr. Archibald also asserts that he ought not to have received a failing grade on his first assignment.

It should perhaps be pointed out here, that the scripts for these assignment answers are submitted without the student's name. An identification number is used in order to ensure neutral and unbiased

marking. The second aspect to be noted is that the scripts are marked by two separate examiners. Both awarded Mr. Archibald a failing grade.

With respect to this issue, Professor Murumba stated in his letter that he had examined both the first and last assignments. He opined:

> "My conclusion is that the issues were identified and the law applied appropriately and hence neither paper deserved a failing grade. Indeed, it is my view that, while opinions might differ as to the outcome, a failing grade on assignment # 1 was so unreasonable that no reasonable examiner could have failed it."

Mr. Batts strenuously urged that the 'D' awarded to Mr. Archibald for that assignment could not be supported on any reasonable ground. Learned counsel invited the court to assess the paper itself and to either alter the mark to a passing grade (which would automatically give Mr. Archibald a passing final grade) or to direct the Council to afford Mr. Archibald a review of that assignment, by other assessors, under the regulations.

*Should the court review the script?*

Mr. Batts referred to a number of authorities which address the extent to which courts will agree to adjudicate on academic matters. He cited the case of *Clark v University of Lincolnshire and Humberside* [2000] 3 All ER 752 which I found to be of assistance. In that case, a student of a University, falling under the aegis of a statute rather than a royal charter, complained about the mark that she had been awarded on an examination paper. The Court of Appeal held that, although it had jurisdiction, the issue was one for

which the court would not assume the task of adjudication. In assessing the status of the court's jurisdiction on the point, Sedley L.J. pointed out that the university had no charter and no provision for a Visitor. It therefore, he said, was "simply a statutory corporation with the ordinary attributes of legal personality and a capacity to enter into contracts within its powers".

The learned judge, at paragraph 12 of his judgment, explained why the court would decline its jurisdiction to adjudicate on the issue:

> "The arrangement between a fee-paying student and [the defendant university] is...a contract...Like many other contracts, it contains its own binding procedures for dispute resolution...Unlike other contracts, however, disputes suitable for adjudication under its procedures may be unsuitable for adjudication in the courts. **This is because there are issues of academic or pastoral judgment which the university is equipped to consider in breadth and in depth, but on which any judgment of the courts would be jejune and inappropriate**....It is a class [of issues] which undoubtedly includes, in my view, such questions as what mark or class a student ought to be awarded or whether an ægrotat is justified." (Emphasis supplied)

Sedley, L.J. went on to explain that the point did not turn on the question of the exclusive jurisdiction of the Visitor, but that it concerned "the distinction as a sensible allocation of issues capable and not capable of being decided by the courts". He pointed out that some matters which the courts would have happily remitted to a Visitor, "would still not be susceptible of adjudication as contractual issues in cases involving higher education institutions", where there was no such official.

The *Clark* case was a claim based in contract rather than one for judicial review. Despite that, I find it relevant to this issue. I find that this court should not review the script to determine whether a higher grade should have been awarded, or whether it should be referred back to the Law School, for assessment by a second examiner. That the court has jurisdiction in respect of the matter, is clear. The court is, however, not privy to what was the content of the lectures given during the course, the requirements of the examiner or the standards of the Law School. To attempt to mark an assignment in those circumstances would, indeed, be inappropriate.

I do not give much weight to Professor Murumba's opinion on this point. I accept Mr. Hylton's observation that Professor Murumba has not demonstrated that he has any familiarity with criminal law matters in general or Jamaican Criminal Law issues in particular, in order to say, with credibility, that the issues raised in the assignment were properly addressed.

*Delay in making the application*

There is another basis on which the application to review the script should be refused. It is that when Mr. Archibald received notice of the failing grade on the first assignment he requested a review of the grade, pursuant to regulation 12 of the regulations concerning examinations and assignments. The review process was followed. The review Committee

refused the application. The decision of the Committee was final. Mr. Archibald has not demonstrated that the Committee acted outside of its jurisdiction or so unreasonably that its decision ought to be reviewed.

In any event, the decision of the Committee was made well over three months before this application for judicial review was filed. Clearly, Mr. Archibald was not aggrieved by the decision of the Committee at the time that it made its decision, as he made no effort to have it reviewed at the time.

**D. Whether Mr. Archibald held a legitimate expectation based on the assertion of the Senior Tutor and as a result the Council should not be allowed to resile from the position communicated by the Senior Tutor**

The last issue is whether the Council is bound to give Mr. Archibald a passing grade, based on the assurances of the Senior Tutor. For the purposes of this assessment, Mr. Archibald's evidence, as to what the Senior Tutor, Mr. Rambarran Mangal, told him after he had received his grade for the second assignment, will be treated as unchallenged. Mr. Mangal did not attend to be cross-examined on his affidavit. Miss Aina attempted to show that Mr. Archibald should have known better. She sought to ascribe to Mr. Archibald, knowledge of the contents of the Final Grade Computation Sheet issued by the Council. This was based on surmise on her part and I accept his evidence that he did not know of either its existence or its contents before getting his final grade. He therefore would have had no basis on

which to doubt Mr. Mangal's assurances that "if I did excellently on the final assignment I would be alright".

Mr. Archibald deposed that he relied on that assertion. He says that based on it, he had been induced to remain in Jamaica and complete the course. He further asserted that the assurance "created a legitimate expectation that an excellent grade on the final assessment would result in a pass". He says that he incurred financial loss in relying on the assurance given by Mr. Mangal, for had he known that he had already failed the course he probably would not have stayed in Jamaica but would have returned to his practice in the United States.

I accept Mr. Hylton's submission that the *Auburn Court* decision is definitive of this issue. In *Auburn Court* there was an allegation of an assurance by a KSAC official, that the applicant's development plans would have been approved. Although there was a dispute as to fact as to whether the assurance had been given, their Lordships dealt with the principle thus:

> "There is no evidence that Mr. White had been authorised to say that approval either had been given or would be given for the development. The power of decision as to whether or not to approve the development was vested by the statutes in the relevant authority. As section 10 of the Building Act makes clear, it is to the building authority that every person who proposes to erect a building must give notice and every person who erects a building without previously having obtained the written approval of the building authority commits an offence. The definition of the expression "building authority" in s 2 of the Act states that it means the Council of KSAC or such other body as may be, by Order of the Minister, substituted for KSAC for the purposes of the Act. The question whether planning permission is to be given to develop land is a matter for the

> Council...Mr. White was an official of KSAC which...consists of the Mayor and the Councillors. His function was to advise the Council. It was not his function to take decisions which are to be taken by the Council in terms of the statute." (Paragraph 21)

I respectfully apply the principle expounded by the learned Law Lords, to the instant case. I find that the Senior Tutor had no authority to give an assurance that there would be a deviation from the principles set out in the Final Grade Computation Sheet. Only the Council was authorized to make that change. It had not done so in its thirty-five years of the existence.

Counsel for both parties brought to the court's attention that there had been two departures, over the years, from the established procedure applicable when students failed. The exceptions were identified during the discovery process. In neither case, however, was a passing grade given to a student who had failed, using the grading system. In one case, the student was allowed to re-do only the failed course and received exemption from the others. In the second case, the student was allowed to do a supplemental assignment. These departures from the norm do not assist Mr. Archibald at this stage; he seeks to have his grade altered.

*Entitlement to a supplementary assignment*

Before parting with this issue, I should deal with one further aspect of Mr. Batts' submission on the point. Learned Counsel submitted that Mr. Archibald was entitled to be offered the opportunity to write a

supplementary assignment. Mr. Batts asserted that regulation 6, applicable to professionally trained students, although not so stating, must be interpreted in that light when it is read in conjunction with regulation 5 (1), which concerned the regular two-year students. Regulation 6 states:

> "A student who fails any subject shall be required to repeat the course of training and to rewrite all assignments."

According to Mr. Batts, regulation 8 which is applicable to those students, allow for the incorporation of regulation 5(1). Regulation 8 states:

> "The provisions of the REGULATIONS FOR THE LEGAL EDUCATION CERTIFICATE and the REGULATIONS FOR THE CONDUCT OF EXAMINATIONS AND ASSESSMENTS shall apply to students enrolled for the six-month course to the extent that they are not inconsistent with these Regulations."

Regulation 5(1) (a) provides for supplementary assignments:

> "Where the Regulations for the Certificate provide that in relation to any subject, assessment shall be made of the work of a student, and at the end of the third term a student fails to obtain a satisfactory assessment in not more than two subjects, the Examination Sub-Committee may recommend to the Examination Committee that in relation to such subject or subjects the student be permitted to do supplementary assignments for completion and delivery to the Registrar before August 15 in any year."

On Mr. Batts' submission regulation 6 would read as follows:

> "A student who fails any subject **(after writing supplementary assignments)** shall be required to repeat the course of training and to rewrite all assignments."

In my view, regulation 5(1) does not apply to the professionally trained student. The regulation speaks to "the end of the third term". That concept is alien to the programme for the professionally trained student, who does a six-month course. There is also a vast difference in the number of

subjects undertaken by two-year students and those done by the professionally trained students. Two subjects is a much higher percentage of the course-load for the professionally trained student than it is for the others. Indeed Mr. Archibald was only pursuing four subjects. I find that regulation 6 is complete and definitive of the issue. Mr. Batts' attempt to incorporate regulation 5 (1) into regulation 6 is a strained interpretation of the latter.

In any event, as previously pointed out, Mr. Archibald's application to this court is not to be allowed to do a supplementary examination; it is to have his grade altered. He fails on this issue also.

I find that Mr. Mangal's actions cannot bind the Council. Mr. Archibald's grade, being consistent with the grading system, must stand.

**Conclusion**

Mr. Archibald's application to have this court direct that his final grade be altered must fail. He has not demonstrated that the decision-making process of the Council in considering his application was flawed or unreasonable. He need not have been consulted by the Council when it sought to determine whether his grade ought to have been altered. I find that, given the task assigned to the Council, there was nothing unreasonable about its refusal to amend Mr. Archibald's grade.

There was also nothing improper about the system of arriving at final grades or indeed the marking of Mr. Archibald's first assignment script. This court will not undertake the marking of scripts despite the fact that it has the jurisdiction so to do.

Finally, the assertions made by the Senior Tutor were incapable of binding the Council to a course of departure from its established standard. The Senior Tutor was not authorized to make the assertions which he did.

Mr. Archibald's application must be refused.

The orders of the court are:

1. The applications contained in the Fixed Date Claim form dated 22nd February, and filed herein are hereby refused;
2. Costs to the Defendant to be taxed if not agreed;
3. Special costs certificate granted.