

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

REPORT NUMBER 253 OF THE ACADEMIC APPEALS COMMITTEE

October 30, 2000

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Monday, October 30, 2000, at which the following were present:

Professor Edward Morgan, Acting Chair
Professor Clare Beghtol
Mr. Ljupco Gjorgjinski
Ms Karen Lewis
Professor Kenneth Sevcik

Secretary: Ms Susan Girard

In attendance:

Mr. O., the appellant

For the School of Graduate Studies:
Ms Sari Springer, counsel
Professor Bernard Katz, Associate Dean, Division I

This is a motion brought by the respondent, the School of Graduate Studies ("SGS"), to quash the appeal on the grounds that the decision under appeal has already been accepted by the appellant, Mr. O.

The decision under appeal is that of the Graduate Academic Appeals Board (the "Board") dated February 15, 2000. That decision set aside the student's termination from the Ph.D. program in the Department of Slavic Languages and Literatures (the "Department"), and, in addition, set out procedures for the re-read of his papers in a course entitled SLA 1240S. Each of these will be addressed in turn.

Termination from the Ph.D. Program

In its decision of February 15, 2000, the Board made it clear that although the Department has been able to offer a thesis committee for the student, it is impossible for the University to supply a supervisor for his thesis from within the Department. The Board also noted that the University is not obliged to supply a supervisor from outside the Department. Accordingly, the Board ordered the student to be reinstated to the Ph.D. program on condition that he is willing to proceed without a supervisor. The Board also set out guidelines for the formation of the thesis committee, for providing the student with notice thereof, and for his acceptance or rejection of any proposed committee. It indicated that if a committee and/or supervisor could not be found, the student was free to proceed with his Ph.D. without either a committee or a supervisor. The Board was quite explicit in stating that the student's

reinstatement to the Ph.D. program was conditional on his acceptance of its terms. In the Board's words (pp. 24, 25):

If [he] accepts the Board's terms, the termination from the Ph.D. programme will be set aside...

*[he] shall have two weeks from the date of this decision to consider his position and advise the Dean as to whether he wishes to have the Dean proceed to attempt the formation of a committee on the above basis.
[emphasis added]*

The student was, of course, entirely free to reject these terms and pursue an appeal of the Board's ruling. On February 28, 2000, within two weeks of the Board's decision, the student wrote to the Dean of SGS stating, among other things, "In line with the decision of the Board I accept the proposal to start an attempt at constituting a Committee for my Ph.D. supervision." In the same letter, he complained about various aspects of the Board's decision with which he did not agree, but indicated that he had in any case decided to accept the Board's terms regarding supervision by a thesis committee. In his words, "Only an appeal could rectify the numerous errors of the decision, but now the emergency to finish my Ph.D. overrides such an option."

On March 28, 2000, the Dean of SGS again wrote to the student in order to update him on the efforts being made to secure a thesis committee. In this letter, the Dean indicated that two faculty members had agreed to serve on the thesis committee, and that a supervisor had not been found. The student responded to the Dean in a letter dated April 14, 2000, in which he said, "I accept the members of the supervisory committee proposed by Dean Marrus, and I am grateful to the SGS for its efforts in this regard." The student then went on in this letter to state his disappointment that a supervisor had not been found, and he expressed his hope that one might still be located. He also took the opportunity in this letter to request a tuition adjustment on the grounds that having been terminated from the Ph.D. program in March 1999 after paying a full year's tuition, he should be left with a balance to apply to his current tuition now that he has been reinstated.

On May 13, 2000, the student submitted his appeal to the Academic Appeals Committee of Governing Council (the "Committee"). In paragraph 1 of his Statement of Appeal, the student indicated that he was appealing "the conditions of my reinstatement into the Ph.D. program and the conditions of my supervision." These were, of course, the very conditions to which the student was required to consent in order to be reinstated to the Ph.D. program. The Committee finds as a fact that the student did consent to the terms set out in the Board decision of February 15, 2000. It was clear that these terms addressed the questions of a thesis committee and a supervisor as a single package, and it is equally clear that the student in his responses to the Dean of SGS accepted these terms as a package. It was not open to the student to accept the procedures established by the Board for constituting a thesis committee while not accepting the fact that there may be no thesis supervisor. These two items unambiguously went together in the Board's decision, and the student was aware that in accepting the Board's terms and becoming reinstated to the Ph.D. program he was accepting both the procedures for constituting a thesis committee as well as the fact that he might have to pursue his thesis without a specialist supervisor.

The appeal filed by the student on May 13, 2000 therefore contradicted his previous explicit acceptance of the Board's terms. In both his written and his oral submissions to the Committee, the student made it clear that he considers himself and SGS to have "mutually accepted" the terms of his reinstatement into the Ph.D. program. The Committee takes him at his word on this, as his statement does reflect the evidence before it. At the same time he wishes to revisit the basis on which the February 15, 2000 decision was made and the terms

which that decision imposed. In other words, having acted on and taken advantage of the Board's terms by consenting to them, he now wishes to have them reconsidered on appeal.

Counsel for SGS submits that the student is effectively prevented from pursuing an appeal in the face of his consent to the terms of the decision under appeal. We agree that he is attempting to do precisely what the Board in its February 15, 2000 decision aimed at preventing. The Board fashioned terms which would permit him to be reinstated to the Ph.D. program and would provide a workable solution to his dispute with the Department, on the condition that he consents to this solution. By consenting to and then challenging those very conditions, the student is attempting to both exploit and undermine the Board's solution. As the Ontario Court of Appeal said in *Pigott v. Pigott*, [1969] 2 O.R. 427, 428:

From these authorities it is clear that where a proposed appellant has taken steps and acted under and taken advantage of the judgment which he then tries to appeal, the Courts will not permit this and will quash the appeal and that is what will be done in this case.

We therefore agree that the student has by his own conduct and consent barred himself from pursuing the appeal against the Board's decision of February 15, 2000.

Re-read of SLA 1240S Papers

The argument of SGS with respect to the re-read of the student's papers in SLA 1240S is similar in principle to its argument with respect to his reinstatement in the Ph.D. program. The Board in its February 15, 2000 decision set out specific procedures for the re-read of the three papers written by the student in this course. The student could consent to these procedures and thereby have the re-read take place, or he could oppose these procedures and the re-read would not take place. If he opposed the procedures for the re-read established by the Board, he could, of course, appeal the decision of the Board setting out those procedures. The student has again attempted to do both.

As required in the Board's decision, the Associate Dean of Humanities wrote to the student on February 23, 2000 advising him that he had contacted the course instructor for SLA 1240S, and that the course instructor could not recall the relative weighting of the final paper and the exam. The Board's ruling had provided that, in such a circumstance, the student must be permitted to elect between 10 percent and one-third as a weighting for the first of the three papers to be re-read, with the weight of the other two papers to be adjusted accordingly. In his letter, the Associate Dean set out this option for the student and invited him to make his election as to the weighting of the papers. In addition, the Associate Dean provided a list of eight faculty members who would be qualified to serve as external readers for this course. As required by the Board, the Associate Dean invited the student to advise him if there were any names on this list that, in the student's view, were unsuitable for this task.

On February 28, 2000, the student wrote to the Associate Dean in response to his letter, advising that he had selected four names from the list of faculty members provided to him by the Associate Dean who were acceptable to him as external readers. In his letter, the student also stated that he chooses ten percent as the weighting for the first paper. The Board's procedures having been complied with, the re-read was therefore done by one of the agreed-upon external readers and on April 15, 2000 the Associate Dean wrote to the student to inform him of the result of the re-read.

On May 13, 2000, the student submitted his appeal of the February 15, 2000 decision of the Board. In paragraph 2 of the Statement of Appeal, he indicated that he was appealing "the procedures adopted at the re-read of my papers for SLA 1240S written for Professor Orwin."

These were, once again, the very procedures to which he was required to consent in order to pursue the re-read of the papers for this course. The Committee finds as a fact that the student did consent to the procedures established by the Board in its February 15, 2000 decision. He exercised the options put to him by the Associate Dean and actively participated in the process of choosing the potential external readers and in assigning a relative weighting to the papers to be re-read.

The appeal filed by the student on May 13, 2000 therefore contradicted his consent to and participation in the re-read process. The Committee is of the view that, having so consented to the procedures established in the February 15, 2000 decision, and having taken advantage of that decision by having the re-read done, the student cannot now pursue an appeal of those very procedures. His actions here are particularly problematic in that he waited until he received the results of the re-read before submitting his appeal and contending that the procedures set out by the Board were unacceptable to him.

As an aside, the Committee notes that in his oral submissions the student seemed to characterize his complaints with respect to the SLA 1240S papers as at least partially directed toward the results of the re-reading itself, and not toward the procedures adopted for the re-read. To the extent that this is the case, such a complaint is not properly the subject of this appeal. The present proceeding is an appeal of the February 15, 2000 decision of the Board and the procedures for the re-read established therein. Those procedures were accepted by the student and formed the basis of the re-read. The Committee is of the view that those procedures cannot now be contested after the fact.

Conclusion

The Committee unanimously agrees with SGS that the student's appeal must not proceed on either of its two grounds. He consented to and accepted the terms of his reinstatement into the Ph.D. program and cannot now appeal those same terms; and, likewise, he consented to and accepted the procedures established for the re-read of his papers in SLA 1240S and cannot now appeal those same procedures. The motion by SGS is granted and the appeal by the student of the Board's decision of February 15, 2000 is therefore quashed.

December 8, 2000