



**FOR INFORMATION**

**PUBLIC**

**OPEN SESSION**

**TO:** Academic Board

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

**CONTACT INFO:** [christopher.lang@utoronto.ca](mailto:christopher.lang@utoronto.ca)

**PRESENTER:** See Sponsor

**CONTACT INFO:**

**DATE:** May 20, 2016 for May 30, 2016

**AGENDA ITEM:** 13(b)

**ITEM IDENTIFICATION: Academic Appeals Committee, Individual Reports Spring, 2016**

**JURISDICTIONAL INFORMATION:**

Section 2.1 of the Terms of Reference of the Academic Appeals Committee describes the function of the Committee as follows:

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 to report its decisions, which shall be final, for information to the Academic Board. The name of the appellant shall be withheld in such reports.

Section 5.3.4 of the Terms of Reference of the Academic Board provides for the Board to receive for information Reports of the Academic Appeals Committee without names.

**GOVERNANCE PATH:**

- 1. Academic Board [for information] (May 30, 2016)**

**PREVIOUS ACTION TAKEN:**

The last semi-annual report came to the Academic Board on November 19, 2015.

**HIGHLIGHTS:**

The purpose of the information package is to fulfill the requirements of the Academic Appeals Committee and, in so doing, inform the Board of the Committee's work and the matters it considers, and the process it follows. It is not intended to create a discussion regarding individual cases or their specifics, as these were dealt with by an adjudicative body, with a legally qualified chair and was bound by due process and fairness. The Academic Appeals Committee's decisions are based on the materials submitted by the parties and are final.

**FINANCIAL IMPLICATIONS:**

There are no financial implications.

**RECOMMENDATION:**

For information.

**THE UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL**

Report #381 of the Academic Appeals Committee  
**April 28, 2016**

To the Academic Board  
University of Toronto

Your Committee reports that it held a hearing on February 10, 2016 at 1:30 pm, at which the following members were present:

Ms. Sara Faherty, Chair  
Mr. Raiyyan Khan, Student Governor  
Professor Paul Kingston, Faculty Governor

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

**Appearances:**

**For the Student Appellant:**

Dr. R [REDACTED] E [REDACTED], Student Appellant  
Mr. Jordan Goldblatt, Adair Barristers, Lawyers for the Appellant

**For the University at Toronto 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, Lawyers for the Respondent

**I. Appeal**

The Student appeals a decision of the University of Toronto, Faculty of Medicine Faculty Appeals Committee dated July 17, 2015, denying his appeal of the PGME Board of Examiners (BOE) March 30, 2015 decision dismissing him from the Anesthesia Program for failing to meet the standards of his Remediation with Probation period.

**II. Facts**

*History*

The Student Appellant entered the Anesthesia Residency Program at the University of Toronto in 2009 with the status of PGY2, or a post-graduate in his second year of residency. The PGY2

status was based on his having been an International Medical Graduate. He was a certified anesthetist in the Philippines and completed fellowship training in Japan, as well as having completed a year of fellowship in Australia. The Student Appellant was accepted through a specialist pathway program.

Despite his advanced status, the Student Appellant's path through the program was troubled. He was placed on a 6-month remediation plan in October of 2012, which was originally scheduled to end in April of 2013. That remediation plan was extended by one month, then by four months and then again by another month. It terminated in September of 2013. The Appellant was then placed on a medical leave, returning in May of 2014 to commence the remediation period that is the subject of this appeal.

The Student Appellant's prior history in the Program is not relevant to the questions raised by this appeal, as he correctly points out. None of the facts set forth regarding the period prior to May 2014 form the basis of your Committee's decision. However the previous arrangements do provide context to the issues raised below. They establish the Student Appellant's familiarity with remediation plans, and the Faculty's efforts to support him in completing the program.

#### *The May-October, 2014 Remediation Plan*

In May of 2014 the Student Appellant commenced a Remediation and Probation period. The terms of the Remediation plan were set forth in a document titled "Request for Remediation", dated April 16, 2014. The document includes a section titled "Plan," that sets forth numerous elements of remediation, including separate sections on *Goals and Objectives*, *Learning and Teaching Strategies*, and *Evaluation of Achievement*. The measurable steps included in the column titled *Evaluation of Achievement* include:

1. achieve a grade of "3" or higher in the areas of medical expert, communicator, and manager in 90% of the written evaluations in the final three months of the remediation period and achieve a grade of "3" or higher in the area of overall rating in 90% of those evaluations;
2. achieve an overall rating of "satisfactory" on *Reflection on Encounter Forms* evaluating sessions with a communications counselor, Dr. Dawn Martin; and
3. achieve an overall average score of greater than 65% correct across the 7 domains of the AKT 24 examination at the end of the period.

The Remediation program was modified, at the request of the Board of Examiners, in a letter dated April 29, 2014. The modifications included:

4. a remark that "baseline testing (e.g. written exam, simulator, oral exam) needs to be considered near the start of the remedial period," and
5. a request from the Board of Examiners for an interim progress report.

The Faculty of Medicine asserts that the Student Appellant needed to succeed in all three of these requirements independently in order to meet the standards of his Remediation Period. The Faculty determined that the Appellant failed on the first two measures, and explains that it did not administer the third measure because those failures rendered the test unnecessary.

In a decision dated March 30, 2015, the Board of Examiners accepted the Faculty of Medicine's conclusions, and dismissed the Student Appellant from the Faculty.

The Student Appellant appealed to the Faculty Appeals Committee on grounds that there had been material deviations from the Remediation Plan. The Faculty Appeals Committee heard the Student's appeal and dismissed it in a letter dated July 17 2015.

### *Deviation from the Remediation Plan*

At his hearing in front of the Academic Appeals Committee, the Student Appellant identified six points in which the Division's implementation of the Remediation plan differed from the written plan, as amended by the Board of Examiners:

1. The baseline testing recommended in the Board of Examiner's April 29, 2014 letter was never administered.
2. There was a lack of clarity regarding what constituted the crucial "last 3 months" of the remediation plan.
3. The "interim progress report" requested in the Board of Examiner's April 29, 2014 letter was dated September 10, 2014.
4. The Student Appellant was never placed on-call, as contemplated in the Remediation Plan.
5. Dr. Martin Ma, who was identified as a "non-evaluative mentor" in the Remediation plan did, in fact, complete some evaluations of the Student Appellant.
6. The Division did not collect evaluations for the Student Appellant every day that he worked in the Program. While the Division collected many daily evaluations, some supervising doctors acknowledged that they had not completed a written form on a given day.

### **III. Decision**

The role of the Academic Appeals Committee is to evaluate the decisions of the bodies it reviews and "consider[] whether the relevant academic regulations and requirements have been applied correctly, consistently, and fairly." (Motion Decision 359-1 of the AAC dated August 25, 2011) In this case, the relevant decision is the Faculty of Medicine's, Faculty Appeals Committee's July 17, 2015 decision, and determine whether that Committee followed its own policies consistently and fairly.

The Faculty Appeals Committee rejected the argument by the Student Appellant that the implementation of his remediation plan was so inadequate as to warrant an additional probation period. Your Committee does not find this conclusion unreasonable. Difficult as it is to terminate a student's progress, your Committee finds that the Faculty of Medicine has provided the Student Appellant with ample opportunities to improve and succeed, and it is now justified in dismissing him from the Anesthesia Program. While the Student Appellant argues that some elements of the remediation plan were not carried out as specified in the Remediation Plan, the individual Remediation Plan is not the equivalent of an academic regulation or policy. It seems inevitable that in a detailed plan that takes place over the course of several months, there will be some deviation from the details set forth in the original document. The Student Appellant has not established that any of those deviations were so significant as to render the remediation plan invalid. This was the primary finding of the Faculty Appeals Committee, and your Committee finds that conclusion to be reasonable and supported by the evidence.

The Student Appellant, citing *Kane v. Board of Governors of UBC*, [1980] 1 SCR 1105, took the position that he did not need to show that the alleged deviations did make a difference in the ultimate outcome, but only that they *could* have made a difference. We disagree. First, the rule set forth in *Kane* is not applicable to a medical faculty's implementation of an anesthesiologist's remediation plan. *Kane* addressed the outcome of a judicial tribunal under circumstances where the hearing process included a breach of natural justice. That is not the case here. The busy floor of a hospital is not a judicial tribunal. Here, there were, predictably, variations in the detailed day-to-day processes set forth in an abstract months- long remediation plan.

### *Remedy*

The Student Appellant asks, as a remedy, that this Tribunal determine that

1. his Remediation Program was not complied with,
2. that he is entitled to a proper Remediation Program, and that
3. this Committee determine that he is entitled to a further period of Remediation.

We note that the third request falls outside the purview of this body. The Academic Appeals Committee obtains its powers through its Terms of Reference from Governing Council. Under section 2.1 of its Terms of Reference, the Academic Appeals Committee is "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".

The powers of your Committee to grant a remedy may include a judgement as to whether the Faculty of Medicine's Appeals Committee's ruling that the Student Appellant's Remediation Program was complied with was supported by evidence, and whether he is therefore entitled to reinstatement in the program. Neither your Committee nor the Faculty of Medicine can determine whether the SA should receive a further period of Remediation. That decision can come only from the Board of Examiners.

There is little disagreement between the parties about the events that lead to this appeal. The disagreement lies in whether numerous 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 Appellant asserts the alleged deviations were "material, numerous,

and significant” and the Division insists that no mistakes were made, and what the Student Appellant perceives as deviations from the plan were, in fact, contemplated all along.

The Student Appellant identified six points in which the implementation of the Remediation plan differed from the Plan:

1. The baseline testing recommended in the Board of Examiner’s April 29, 2014 letter was never administered.
2. There was a lack of clarity regarding what constituted the crucial “last 3 months” of the remediation plan.
3. The “interim progress report” requested in the Board of Examiner’s April 29, 2014 letter was dated September 10, 2014.
4. The Student Appellant was never placed on-call, as contemplated in the Remediation Plan.
5. Dr. Martin Ma, who was identified as a “non-evaluative mentor” in the Remediation plan did, in fact complete some evaluations of the Student Appellant.
6. The Division did not have 100% of the daily evaluations for the Student Appellant. Some supervising doctors acknowledged that they had not completed a form on a given day.

***1. The baseline testing recommended in the Board of Examiner’s April 29, 2014 letter was never administered.***

The Student Appellant asserts that the baseline testing recommended in the Board of Examiners letter amending the Remediation Plan was never administered. The Faculty gave different explanations for this. To the Faculty Appeals Committee the Faculty acknowledged it had not performed baseline testing. At the hearing in front of your Committee the Faculty argued that it did not find baseline testing to be necessary because the Student Appellant’s technical skills and knowledge were not at issue, but rather his decision making under pressure was perceived as the problem. The Faculty also asserted that the daily questions asked on the floor by supervising doctors constituted that testing.

Your Committee believes the Faculty of Medicine should have communicated more clearly about whether or not it was going to administer the baseline testing. However we note that the Board of Examiners suggested only that the Faculty “consider” the test...it was not a requirement. The Student Appellant did not request more specific testing during the period, nor has he established that the failure to test him at the beginning of the remediation period affected his performance on the measures set forth in the Remediation Plan.

**2. *There was a lack of clarity regarding what constituted the crucial “last 3 months” of the remediation plan.***

There has never been consistent clarity regarding the time frame of the Appellant’s remediation and probation plan. The original documents are contradictory: the Division repeatedly uses the phrase “six months” to describe the term of the remediation plan, but the start and end dates listed (May 5 to October 3, 2014) identified a period of only 5 months. The same errors were reproduced in the September 10<sup>th</sup> interim report. This discrepancy was not addressed by the Division in its written submissions. On his part, the Appellant also failed to point out the discrepancy, and reported at the hearing that he had failed to notice the discrepancy until February of 2016. At the hearing the Division explained the discrepancy as a “typographical error,” insisting that the Remediation Plan was intended to occur, and in fact did occur, between May 3 and November 3<sup>rd</sup>.

The end and start times of the remediation period are important, because the Appellant was required to achieve a rating of “3” or better in 90 percent of the relevant categories (medical expert, communicator, manager, and overall rating) for the last three months of the period. Knowing whether the last three months were July 3- October 3 or August 3 – November 3 is necessary in order to make this critical calculation. To confuse matters even further, the Division submitted a *Department of Anesthesia University of Toronto In-Training Evaluation Report* that tracks neither of those time periods, but rather runs from July 1, 2014 to November 16, 2014. Other documents, aggregating survey results, were submitted for the periods from July 21 – August 12, 2014; August 13 – September 9, 2014; and September 9 – October 2, 2014. These documents also fail to track what we now understand to be the relevant time period: August 3 – November 3, 2014.

This sloppiness about dates and calculations would be a serious deficiency for the Division’s argument, but for three important points: first, the Appellant cannot point to *any* three month time period in which he reached the performance benchmarks set forth in the remediation plan. Second, the remediation had a separate and independent requirement for the Appellant’s continued enrollment: he needed to achieve an overall rating of “satisfactory” in 80% of the *Reflection on Encounter Forms* completed by Dr. Martin. There is no doubt that the Appellant failed to reach that benchmark. Finally, as the Faculty of Medicine’s Appeals Committee noted, the student “had the responsibility to raise concerns or seek clarification when the testing was not administered as [he] believed it should have been.” While it is unfortunate that the administration did not correct the error in the listed dates sooner, the significant factor is that the Student actually did have six months of Remediation. If the reverse were true, and the Division had listed a correct set of dates, but actually only provided a five month plan, then that error would have been material.

**3. *The “interim progress report” requested in the Board of Examiners’s April 29, 2014 letter was dated September 10, 2014.***

The Student Appellant feels that the fact that the interim progress report requested by the Board of Examiners was not produced until September 10, 2014, disadvantaged him because, coupled



with the lack of clarity of the time frame of the Remedial Plan it was difficult for him to determine whether a significant amount of time was left in the remedial period for him to make corrections. The Faculty of Medicine points out that the interim plan was directed to the Board, not the Student. In fact, because the remediation period did extend into October there was time for the Student Appellant to address issues raised in the interim report. Your Committee notes that the word “interim” does not mean “mid-point,” but rather refers to any intervening time. In any event, there is no evidence that timing of the interim report prejudiced the Student Appellant. We also note that the Student Appellant received daily oral feedback from the doctors supervising him on the floor of the hospital. The medical experts on the Faculty of Medicine Appeals Committee found this form of measurement and feedback to be “reasonable” and we agree.

**4. *The Student Appellant was never placed on-call, as contemplated in the Remediation Plan.***

The Student Appellant points out that he was never permitted to work independently by being placed on call, as called for in the Remediation Plan. The Faculty of Medicine responded that it failed to do so out of concerns for patient safety, given the Student Appellant’s lack of progress. The Faculty’s argument highlights the reality that the Remediation Plan, while set forth in detail, had to be altered as events unfolded. Your Committee cannot find that the Faculty was required to place patient safety in jeopardy in order to comply with the Remediation Plan. This is an example of the necessary tailoring of the plan. It would have been a better practice for the Faculty to directly inform the Student of its decision, but actually putting him on call and placing patients at risk could never have been required. In the end, the Student Appellant has not suggested that this alteration to the Plan affected his performance, or significantly altered the outcome.

**5. *Dr. Martin Ma, who was identified as a “non-evaluative mentor” in the Remediation plan did, in fact complete some evaluations of the Student Appellant.***

The Student Appellant perceives the fact that Dr. Martin Ma completed a daily evaluation of his work as another deviation from the Remedial Plan. The Faculty responded that the “non-evaluative mentor” does not participate in the final decision regarding a student, but that it does not, in fact, mean that he or she will not participate in the daily evaluations of students. If this is the case, it is unfortunate that the term “non-evaluative mentor” was not clearly explained to the Student Appellant. The Faculty also pointed out that Dr. Ma evaluated the Student Appellant because on the day in question his performance had been so weak that he felt it was a matter of protecting patient safety to point out the Student Appellant’s errors. Again, this Committee is not willing to require the Faculty of Medicine to compromise patient safety in order to comply with a remediation plan. If this was a deviation from the plan, the Student Appellant has not established that it prejudiced him, and in any event it was a justified deviation.

**6. *The Division did not have 100% of the daily evaluations for the Student Appellant. Some supervising doctors acknowledged that they had not completed a form on a given day.***

The volume of daily evaluations completed by doctors, providing detailed feedback on the Student Appellant's performance is high, but is not 100% complete. The Student Appellant points out that on some days the supervising doctors did not complete the paperwork evaluating his performance. The Faculty of Medicine sought their explanations. Some doctors replied that they had given the Student Appellant feedback in person, but had not filled out the forms; others said that they felt they had not had enough direct contact with the Student Appellant on a given day to fairly fill out the form. What is apparent from the evidence submitted by the Faculty of Medicine is that the Student Appellant received a high volume of written evaluations and an even more impressive amount of daily oral feedback on his performance. The doctors' explanations support the fact that the reality of working on a busy hospital floor means that the time constraints and pressures sometimes make the daily written feedback impossible. The Student Appellant received an intense amount of feedback, both orally in writing, throughout the remediation period.

Your Committee also notes that this issue could not be dispositive. Even if the Student Appellant had achieved this goal, he still had the separate and independent requirement of achieving an overall rating of "satisfactory" on *Reflection on Encounter Forms* completed by Dr. Dawn Martin.

#### *IV. Conclusion*

The Faculty of Medicine continues to insist that it did not make mistakes regarding the Student Appellant's Remediation plan. It might be more accurate to claim that the Faculty did not make mistakes in the *implementation* of the Remediation plan, while it may have made some immaterial mistakes in communicating about the Remediation Plan. To the extent there were flaws in the communication around the Remediation Plan, it is evident that the substantive goals of the Remediation Plan were met. Modifications based on patient safety were well advised, and cannot form a basis for invalidating the Plan.

We note, however, that every single instance of these communication issues could easily have been resolved by the Student Appellant himself if he had made any effort to do so. The Faculty *could* have communicated more effectively, the Student Appellant *should* have communicated more effectively—especially, as he points out, since the stakes were so high for him.

In the end, your Committee must agree with the more expert conclusion reached by the Faculty of Medicine's Appeals Committee. The Student Appellant did not reach the standards set forth in his Remediation with Probation period. He failed to achieve the necessary medical expert grades set forth in the Plan, and he failed to achieve the necessary level in his communication skills. Having failed to reach these benchmarks it was unnecessary for him to rewrite the AKT 24 examination. Despite some ultimately insignificant administrative errors, the substantive training and feedback the Student Appellant received during his Remediation period was clearly sufficient to meet the objectives of the remediation plan, and the Faculty of Medicine's Faculty Appeals Committee reasonably concluded, based on the evidence, that the Student's appeal was not substantiated.

**UNIVERSITY OF TORONTO**

**GOVERNING COUNCIL**

Report #382 of the Academic Appeals Committee  
**April 28, 2016**

To the Academic Board  
University of Toronto

Your Committee reports that it held a hearing on Monday, April 11, 2016, at which the following members were present:

Professor Andrew Green (Chair)  
Professor Andrea Sass-Kortsak, Faculty Governor  
Mr. Alex Ivovic, Student Governor

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

**Appearances:**

**For the Student Appellant:**

Mr. A.W. (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

**The Appeal**

This appeal relates to a decision of the Academic Appeals Committee of the Graduate Studies Council (“GSC”) of the Toronto School of Theology (“TST”) dated October 20, 2015 (the “GSC Decision”). The GSC Decision remitted the appeal of the Student back to an earlier stage in the appeal process. The Student had requested that the Academic Appeals Committee of the GSC allow him to “transfer from ‘ThD’ into ‘PhD’ nomenclature in the research doctorate in theological studies without being required to complete two further courses”.

## The Facts

The Student commenced the Th.D. doctoral program within the TST in September 2013. He took courses in 2013 and the Winter of 2014.

In February 2014, the Student wrote to Professor Skira, the Director of the Graduate Centre for Theological Studies of the TST, inquiring about switching from the Th.D. program into the proposed new Ph.D. program. The TST and the University of Toronto were developing the Ph.D. program with a view to it replacing the Th.D. program. The Student requested information about the process for switching to the new program, including when the 'two new required cohort courses' would be offered and if Th.D. students who had completed the Th.D. courses would have to take them. The Director replied that they would try to offer at least one of the courses in the Fall and that 'all students will need to do the Cohort courses and the Area Studies Course... it's not a simple transfer.' The Student also asked if students could take these required courses during or after their comprehensive exams. The Director replied that 'it may be that students could progress into comps while doing the required course(s), but that is an issue the heads of colleges would have to approve (and which is not my decision to make).'

In August 2014, the TST emailed students enrolled in the Th.D. program that it had launched a Bridge Program to allow eligible Th.D. students to transfer into a new conjoint Ph.D. program. The Bridge Program was open to students admitted into the Th.D. program for September 2013 and September 2014. The Ph.D. program had gone through many layers of approval including the Association of Theological Schools, the University of Toronto Quality Assurance Process, an external review, the University of Toronto Committee on Academic Policy and Programs, Academic Board of Governing Council and the Executive Committee of Governing Council. The approval process contemplated the need for a process for existing Th.D. students to transfer into the new Ph.D. program.

Th.D. students who were admitted for 2013 or 2014 could either complete the Th.D. or apply to enter the Bridge Program. The August 2014 announcement of the Bridge Program stated that students who had entered the Th.D. in September 2013 had to meet certain 'admission' requirements including meeting a minimum GPA in their current program and the admissions requirements of the new Ph.D. program. Further, they 'must successfully complete' a minimum of eight courses including the two courses at the centre of this appeal. These two courses (the 'Required Courses') were TSJ5021 Research & Scholarship ("Research & Scholarship"), which was to be completed in the Fall 2014 semester, and TSJ5022 Area Studies and Course Design ("Area Studies"), which was to be completed in the Winter 2015 semester. The announcement set a deadline for application of September 12, 2014.

The Student continued with courses in the Fall of 2014 and Winter of 2015. Although the Student was eligible to enter the Bridge Program in the Fall of 2014 as he had entered the Th.D. program in September 2013, he did not apply under the program by the deadline. Instead on January 8 2015, the Student wrote to the Interim Director of the TST (Professor Skira) requesting to 'transfer from 'ThD' into 'PhD' nomenclature'. He stated that he had essentially met the

objectives of the Required Courses because he had authored an academic book and designed and taught an undergraduate course.

David Wagschal, the Administrator of the Graduate Centre, replied to the Student on January 9, 2015 that it was still possible to join the Bridging courses, taking Area Studies in the Winter 2015 term and Research & Scholarship in the Fall 2015 semester. He asked the Student to complete the enrollment form. The Student replied that given that extra courses were required and that he was at the comprehensive exam phase of the Th.D., "I will remain in the Th.D."

On March 4, 2015, the Student again wrote to Professor Skira as Interim Director of the TST asking for a response as to why the work he had done was not equivalent in learning outcomes to the Required Courses. On March 10, 2015 the Interim Director responded, stating that he misunderstood the nature of the earlier email and that as no decision had been made on that email, he viewed the email as a "petition to be exempted from program requirements". However, since the Student had not applied for the Bridging program, the Interim Director stated that the Student did not have any status and the Admissions Committee would make any decision on the transfer and admission. However, the Interim Director also noted that the Required Courses were required of all students and that he did not believe that it was possible to assess any potential equivalencies. He stated "these are just preliminary comments, and do not constitute an academic decision on my part. If you wish to pursue this, you will need to provide better justification for equivalencies in your petition to transfer and be admitted into the new PhD."

The Student did not apply to the Bridge program following this email. Instead, on March 25, 2015 the Student filed a notice of appeal with the Advanced Degree Appeals Division of the TST. The notice stated that the decision to be appealed was that "I have not been permitted to transfer from 'ThD' to 'PhD' nomenclature in the research doctorate without being required to complete two further courses". The Student stated that to enroll in the Bridge program would have delayed his studies and prevented him from maintaining the required two-year full-time residency. In addition to the arguments in his January 8 2015 letter, he noted that his time in the learning community in Trinity College satisfied the cohort requirement.

On October 20, 2015 the Academic Appeals Committee of the GSC released its decision. For the hearing, the Student had submitted a supporting letter from the Dean of Divinity of Trinity College that the Student 'has substantially met the outcomes' of the Required Courses and it would have been a serious delay in his studies to have taken these courses. At the hearing, the Student also had his supervisor (who is a former Dean of Divinity at Trinity College) support his position. The decision of the Academic Appeals Committee of GSC stated:

noting that the Appellant did not choose to pursue the avenue available through application to the conjoint PhD programme under the existing bridging option, and not finding his arguments made in support of his appeal persuasive, and determining that the channel of recourse had not been followed properly, the Panel refers the matter back to the appropriate parties involved in Step 2 of the channel of recourse (as described in section 14.2.1 of the "TST ThD and PhD Handbook").

In terms of whether the Student's work was equivalent to the Required Courses, the Academic Appeals Committee's decision stated "efforts to resolve this matter should first be undertaken at earlier steps in the channels of recourse". Further, noting that the Director had been on sabbatical, the Academic Appeals Committee concluded "the second step of the resolution process was not satisfactorily concluded" and "there remains room for exploration of an accommodation within the existing bridging program." They sent "the matter back to that step for fuller consideration of possible resolutions."

The TST Th.D/Ph.D. Handbook contemplated three steps for the Student's appeal: an informal resolution with the Director of the Graduate Centre for Theological Studies (Step 1), an initial appeal to the Department 'if necessary' (Step 2) and an appeal to the AAC (Step 3). However, there was some confusion about what the 'second step' entailed or even if it existed. On November 3, 2015, in response to an email from the Student, the Director of TST informed the Student that the TST Academic Council held off considering next steps in the appeal until December as a new policy may then be adopted on transferring credits into the PhD program.

On November 27, 2015, the Student launched his appeal to your Committee. In this appeal, the Student seeks an order:

1. Declaring that he has met the academic requirements set by TST for transfer from the Th.D. into the Ph.D. program through equivalency to the Required Courses; and
2. Directing the TST to transfer him into the Ph.D. program immediately.

On December 18, 2015, the TST wrote to the Student informing him that the Academic Council had commissioned Professor Hayes who was Director of the TST to act on its behalf in place of the Step Two that was referred to in the GSC Decision. It noted that if the appeal was not resolved through meeting with Professor Hayes, the Student would have a right to appeal to a new TST appeals committee. Further, it noted that the Student had a right to appeal to your Committee.

## **Decision**

This appeal comes before your Committee in a somewhat unusual manner. The GSC Decision did not decide on the merits of the Student's appeal but instead sent the matter back to an earlier internal stage in the appeals process. The Student appealed the GSC Decision to your Committee. Counsel for the Student rightly noted, and counsel for TST helpfully agreed, that no adverse inference should be drawn against the Student for coming before your Committee rather than pursuing further internal appeals in the circumstances of this case.

A central issue in this appeal is the jurisdiction of your Committee to provide the remedy requested by the Student. As noted by Chair Hamish Stewart in Motion Decision #359-1:

The purpose and function of the AAC, according to s. 2.1 of its Terms of Reference, is to decide "appeals made by students against decisions of faculty, college or school

councils (or committees thereof) in the application of academic regulations and requirements". Its jurisdiction is therefore limited to considering whether those academic regulations and requirements have been applied correctly, consistently, and fairly. Its remedial jurisdiction is limited to making orders of an academic nature; such as allowing a student to withdraw late without academic penalty, granting aegrotat standing, granting a request to write a deferred examination. It is well-recognized that the AAC has no jurisdiction to re-read a paper or examination to consider the merits of the grade assigned, or to review decisions about admissions."

Further, as noted in Report #368, "it is not the jurisdiction of this Committee to change Faculty policy but rather ensure that it was applied fairly and consistently."

In this case, a key question is whether the appeal related to an unfair application of a policy or regulation or to a claim that a policy or regulation was unfair. The TST created the Bridge program to allow eligible Th.D. students to transfer into the Ph.D. program. The Bridge program included a requirement to complete the Required Courses. It did not include any provisions about substituting for the Required Courses. There were provisions for advanced standing for previous studies and advanced placement. These provisions, however, relate to substituting courses for required courses. The Student, however, does not wish to substitute courses for the Required Courses but other activities that he has undertaken including writing a book and creating and teaching a course. While the Student notes that he wrote his book and created and taught the course while at the TST, these activities were not course work. The TST did not provide for such equivalencies for the Bridge program.

In Report #371 Chair Hamish Stewart addressed a jurisdictional issue relating to the conversion of a grade a student received while on exchange in France. The Faculty had a grade conversion scale. The Report states:

The Student's central complaint in this case is that the conversion formula does not adequately reflect the difference between French and U of T grading scales. The Faculty says it does. This is in essence a disagreement about the wisdom of the procedure, not about the fairness of its application to the Student. On p.4 of his submissions, the Student makes precisely this point: "I deemed the policy itself is 'unfair'". But the AAC has no jurisdiction over the fairness of the policy. The AAC cannot change the Student's grade or otherwise modify his transcript on the basis that the procedure for converting Institut grades to U of T grades is unfair or unwise.

The essence of the Student's argument is the same in this case. The Student is in effect arguing it was unfair not to count his activities, including the publishing of a book and creating and teaching a course, to be equivalent to completing the Required Courses. There are arguments why such a policy of equivalencies would be fair including a recognition that such activities may lead to deeper learning in certain cases. Equally, there are arguments why such a policy might be unfair, such as that there is no consistent, fair way to assess such equivalencies. Notably, the GSC did not recommend a policy to allow such equivalencies when considering the issue with respect to Th.D. students not eligible for the Bridge program.

However, the key for this appeal is that the TST did not allow such equivalencies. It created the Bridging program to allow certain students in the Th.D. program to transfer to the Ph.D. program if they wished. It clearly stated that the students had to apply for the program and must complete the Required Courses. The Student knew of this requirement as far back as February 2014. The Student did not apply for the Bridge program nor seek other accommodations such as taking the Required Courses and the comprehensive exams at the same time. The TST has not granted such an exemption to other students, as it does not grant these types of exemptions. There was no unfairness in the application of policies or regulations in not permitting the Student such equivalencies. In fact, allowing such an exemption in this case would be unfair to the students who did apply for the Bridging program and completed the Required Courses. Further, the Student will be competing against students from the TST with a Ph.D. because he chose not to enter the Bridging program.

There was considerable discussion at the hearing about procedural fairness. Your Committee would like to express its disappointment with the TST process. As the Student pointed out, the Handbook was not updated to reflect the current structure of the TST, the Academic Appeals Committee sent the matter back to what may have been a non-existent step in the process and, at least when the Director was on sabbatical, the same person may have been responsible for the two initial stages of the appeal. Your Committee strongly recommends that the TST undertake a review of its appeal process to ensure that its processes are fair and transparent for students.

However, given the facts of this case, your Committee does not believe the Student was treated unfairly. The Student did not avail himself of his many opportunities to enter the Bridging program. The Student was clearly aware in February 2014 of the nature of the Bridging program including the Required Courses and the concerns about potentially not being able to sit his comprehensive exams while taking courses. He did not approach the TST to see if he could obtain an exemption to allow him to take the courses and the comprehensive exams at the same time. He did not enter the program in the Fall of 2014, although that would have given him the opportunity to seek an accommodation in a more timely manner. He did not apply to the Bridge program and give greater support for his request for exemption in January 2015 and instead clearly stated he would stay in the Th.D. program. He was provided with the opportunities to invoke mediation including with the Director of the TST who had returned from sabbatical, to seek discussions with the Director following the Academic Appeals Committee decision (and if they fail, return to the Academic Appeals Committee) or to come before your Committee. As we noted above, we draw no adverse inference against him that he made a particular choice – to bring this appeal to your Committee. However, the TST did provide him with ample other opportunities to seek resolution of his appeal, including altering the process when it was clear the process as written was not possible.

Further, the Student stated that the process was procedurally unfair because of a lack of reasons by the Academic Appeals Committee. In particular, counsel for the Student noted that the issue is of great importance to the Student and so, under *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, the Student is deserving of more than minimal fairness. Counsel for the Student also pointed to *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 to the effect that a complete



absence of reasons is a breach of procedural fairness. However, your Committee finds that there was not a complete absence of reasons from the Academic Appeals Committee. The Academic Appeals Committee sent the matter back to an earlier stage in the appeal process. The Committee gave reasons for this decision – that the Student had not entered the Bridging program and the earlier steps had not been properly followed and ‘there remains room for exploration of an accommodation within the existing bridging option.’ As noted above, your Committee finds that there was no policy that would have allowed the accommodation that the Student was requesting. However, returning to earlier steps in the process may have led to alternate accommodations.

Even if we were to find that there were no reasons provided below, as noted in Report #350 the Student was able to proceed to the next step and was able to obtain a hearing before your Committee. At most a finding that there were no reasons would militate in favour of sending the matter back to the Academic Appeals Committee to reconsider and provide reasons. However, neither party felt remitting the matter to the Academic Appeals Committee was the appropriate remedy and your Committee agrees in this case as there was no evidence that a policy or regulation was applied unfairly.

Finally, at the hearing both sides stated that they would be willing to talk about possible avenues for resolving the Student’s concerns about his degree. The Student seems clearly to be a strong, hard-working scholar. Your Committee strongly encourages the TST and the Student to work together to see if they can find a solution to the Student’s concerns.

The appeal is dismissed.