

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #413 of the Academic Appeals Committee
May 10, 2021

To the Academic Board
University of Toronto

Your Committee reports that it held an electronic hearing, conducted by Zoom on Friday, March 26, 2021, at which the following members were present:

Academic Appeals Committee Members:

Mr. John Monahan, Chair
Mr. Stephane Martin Demers, Student Governor
Professor Douglas McDougall, Faculty Governor

Hearing Secretary:

Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances

For the Student Appellant:

Ms. S.R.K. (the "Student Appellant")

For the Toronto School of Theology ("TST"):

Ms. Catherine Fan, Counsel, Paliare Roland Rosenberg Rothstein LLP
Mr. Robert Centa, Counsel, Paliare Roland Rosenberg Rothstein LLP

I. Appeal

The Student Appellant appeals a decision of the TST Academic Appeal Committee ("TSTAAC"), dated May 12, 2020.

In its decision, the TSTAAC had dismissed an appeal brought by the Student Appellant, a doctoral student in the TST's Th. D. program. The TSTAAC found that the decision of the TST's Graduate Centre for Theological Studies ("GCTS") to terminate the Student Appellant's registration in the Th.D. program had been a reasonable one. That decision was communicated to the Student Appellant by means of a letter to her from the Director of the GCTS dated October 31, 2019.

The Student Appellant filed a Notice of Appeal of the decision of the TSTAAC on or about September 16, 2020.

According to the Student Appellant's written materials, after more than six years in the Th.D. program, the GCTS wrongfully terminated her registration as a student. She submits that the TST

failed to follow its own written policies when it assessed her performance on her third comprehensive examination (“comprehensive essay”) without first inviting her to defend the essay orally; when the TST did not allow her to write supplementary exams for two other comprehensive exams that she had failed; and when the TST failed to obtain her concurrence in its decision to appoint Professor Judith Newman as one of the two examiners for her second comprehensive examination.

The Student Appellant also submits that the decision to terminate her registration should be reversed given that she was suffering from mental health issues brought on by a series of losses up to and during the time of her examinations. Finally, and more generally, she submits that the TST was biased against her, because of such personal characteristics as her race, gender and cultural background, and that this persistent bias also exacerbated her mental health challenges.

For its part, the TST has responded by submitting that your Committee dismiss this appeal for the following reasons:

- (a) (The Student Appellant) did not request any accommodation for mental health conditions when she wrote her comprehensive exams and has not subsequently provided any proof of her need for accommodation at the time;
- (b) (The Student Appellant) agreed to the appointment of Dr. Newman as her second examiner;
- (c) There was no reason to administer the oral defence, because she had already failed her comprehensive exams; and
- (d) Neither the TST nor faculty members at the TST exhibited bias towards (the Student Appellant).¹

In her written reply to the TST’s response to her appeal, the Student Appellant submits that the Respondent, TST, failed to provide your Committee with either accurate or complete information about its engagement with the Student Appellant. This includes a number of samples of communication between her and officials of the TST that she contends substantiate her submission that the TST demonstrated a pattern of unfairness, administrative error, and bias towards her that contributed and/or exacerbated the significant mental health challenges she faced throughout her time in the school. She writes, for instance:

The student appellant is strongly appealing Academic Appeal Committee to hear and see how the student appellant has been struggling in this biased culture to clarify every negative assumption. How the student appellant can sustain mental health in this educational institution? That is the constant question the student appellant is asking for seven years of academic experiences in TST.²

For the reasons that follow, your Committee grants the appeal.

¹ TST’s Submissions, par. 6, p. 004.

² Student Appellant’s Reply, p. 12.

II. The Facts

The Student Appellant is an international student who first enrolled as a Th.D. student with the TST in 2012. Her area of focus was Pastoral and Practical Theology. Although she had completed three (3) Master's degrees in as many countries prior to her enrolment in the TST, this was the Student Appellant's first time to be enrolled in a doctoral program.

There are three components to the Th.D. program: coursework, comprehensive examinations, and a final thesis. The focus of this appeal is the Student Appellant's comprehensive examinations.

In the typical course of events in the Th.D. program, students complete their comprehensive examinations within three years of beginning their studies; they are able to apply for up to three, one-year extensions if unable to do so.

The Student Appellant, both at the hearing before your Committee and in her written submissions, acknowledges the challenges she faced adapting to living in a new country as a single-parent while also attempting to navigate a demanding post-graduate academic program.³

The Student Appellant submits she was also greatly affected by the illnesses and/or deaths of a number of her student colleagues during her time at the TST. One, who died in early 2016, was described by the Student Appellant as being "like (her) sister in blood."⁴ The Student Appellant submits that she was "desperate with the mental health condition" as a result of that individual's passing.⁵ Another student in the program would die from cancer in early 2019, when the Student Appellant was engaged in preparations for her comprehensive exams.⁶ The Student Appellant writes that "[T]he trauma (of that 2019 death) was unimaginable,"⁷ and she sought professional counselling to try and address it.⁸

More generally, the Student Appellant submits that these illnesses and deaths affected her mental well-being and compounded the other challenges she was experiencing in her life and in her studies.

In 2017, after already having had a number of extensions approved by the TST, the Student Appellant sought and obtained approval for a one-year leave of absence. The then-Director of the GCTS, Professor Skira, advised the Student Appellant in an e-mail dated October 24, 2017 that, upon returning from her approved leave, she would be entering her 6th year of study, and that she would have to successfully request an "extension to complete comprehensives" at that time.⁹ He further

³ For instance, see Student Appellant's Reply, p. 16.

⁴ Student Appellant's Submissions, p. 11.

⁵ *Ibid.*

⁶ *Ibid.*, p 23.

⁷ Student Appellant's Reply, p. 27.

⁸ *Ibid.*

⁹ TST's Book of Documents, Tab 8, p. 38.

advised her that, assuming such a request was granted, the Student Appellant would then have to complete all of her comprehensive examinations during the year of her return, and that no more extensions to the deadline for completing her comprehensives could be granted after that year was over.

When she did return from her leave, in 2018, the Student Appellant met with her supervisory committee on or about September 25. The next day, she received an e-mail from her supervisor, Professor Wilson, with respect to extending the deadline for completing her comprehensive examinations. He advised her that it would be the final allowable extension and echoed what Professor Skira had already told her: that her comprehensive examination would have to be completed by the end of the summer of 2019. He wrote:

Just so we are all clear...this will be your final extension meaning you must finish your comps by the end of the summer 2019. Since you entered Fall 2012 you cannot lapse and ask for terminal reinstatement. Your program must be completed in ten years and you are now in your 6th.¹⁰

According to an e-mail dated February 26, 2019 from the Student Appellant to Professor Wilson, Professor Wilson had told her during her September 25, 2018 meeting with her supervisory committee to begin preparing her “biblical” comprehensive examination with Professor Dorcas Gordon.¹¹ According to the Student Appellant, she and Professor Gordon subsequently spent a great deal of time doing so, including “(exchanging) the materials and bibliography several times and (meeting) to discuss about the exam.” The Student Appellant had also read several related books recommended by Professor Gordon. At that time, she was getting “ready to write down the exam as it should finish before Easter.”¹²

The Student Appellant then indicates that her supervisor advised her that another meeting with her supervisory committee would be required to confirm the details for her comprehensive exams. That meeting was apparently held on or about February 28, 2019. According to the Student Appellant, “(i)n the meeting the registration form of the comprehensive exams was filled. When the form was filled, the contents, the titles, the order of the exam were totally changed.”¹³

Professor Wilson provided the Student Appellant with a copy of that completed form - the “Comprehensive Exam Registration (Pastoral)” form - in an e-mail dated February 28, 2019. In his cover note, he indicated that it included the proposed titles for the Student Appellant’s “comps”; although he did not draw her attention to it, the form also included the names of the professors slated to be the examiners for each of the Student Appellant’s three comprehensive examinations. The names of Professors Gordon and Taylor were listed as the examiners for the Student Appellant’s

¹⁰ TST’s Book of Documents, Tab 9, p. 39.

¹¹ Student Appellant’s Submissions, p 12.

¹² TST’s Book of Documents, Tab 11, p. 43.

¹³ Student Appellant’s Submissions, p. 12.

“Breadth” examination, TSP8002H. Professor Wilson then asked the Student Appellant for her student number and requested that she advise him if any changes were to be made.¹⁴

The next day, on or about March 1, 2019, the Student Appellant replied to Professor Wilson. She provided him with her student number, as he had requested, and then she wrote, under the sub-heading “Administrative Questions,” the following:

1. The most important thing to keep in mind (sic) the time limit: I know I need to complete my comps by the end of August 2019 as this is my second extension of my comps. I could have a supplementary time of three months just in case I need to take re-exam according to the hand book. But I want to finish it as soon as possible.¹⁵

In the same e-mail, the Student Appellant asked about the order of the exams she would be writing, discussed some scholars and scholarly works relevant to her exams and thesis, and proposed a small, but substantive change to the proposed title of her “Breadth” comprehensive exam – changing the word “Poetic” to “Theopoetic.” She then wrote: “Except these things, the filled Registration Form for the Comps seems to be okay for me.”¹⁶

At that point, the Student assumed that all of the preliminary administrative requirements related to confirming the details of her comprehensive examinations had been satisfied. In the e-mail, she asks for continued open communication with Professor Wilson – “I hope you bear with me at this time as I would like to ensure communication each other (sic)”¹⁷ – but, for all intents and purposes, the Student Appellant told your Committee that, from that point on, she was focused on preparing for the comprehensive examinations.

The Student Appellant told your Committee how stressful and anxiety-inducing these administrative changes and perceived missteps were to her at the time, but she continued to trust that the professors who, by then, had been supervising her for some seven years were all committed to helping her to succeed in her studies.

This was the background against which the Student Appellant wrote and submitted her three comprehensive examinations, all during the month of August 2019.

The first examination, her “Specialization” exam, was submitted by the Student Appellant on or about August 9, 2019.¹⁸ Professor Wilson wrote to the Student Appellant on or about August 12, 2019 to thank her for submitting the first paper.¹⁹ At that time, he indicated that it still needed to be determined who would be the best second examiner to join Professor Gordon in reviewing the

¹⁴ E-mail of February 28, 2019 submitted mid-hearing to the Committee by the TST.

¹⁵ TST’s Book of Documents, Tab 10, p. 40.

¹⁶ *Ibid*, p. 41.

¹⁷ *Ibid*.

¹⁸ TST’s Submissions, par. 20, p. 009.

¹⁹ Student Appellant’s Reply, p. 29.

Student Appellant's second comprehensive examination, a decision that the Student Appellant had thought already confirmed on the registration form back in March. He also advised the Student Appellant that, whoever her examiners ended up being, "they (were) not likely to grade (her) other comprehensive exams until (her) first one (was) approved."²⁰

The two examiners that ultimately marked the examination – Professors Wilson and Reynolds – assigned it a 74. A pass mark is 77.

The second examination was submitted by the Student Appellant on or about August 27, 2019. At the time of its submission, the second examiner had not yet been confirmed. Ultimately, Professor Gordon was joined by Professor Newman; the mark they assigned the exam was 76.

The Student Appellant writes that, while she was awaiting "the feedback and the concrete results of the (two) submitted exams," as she thought she was supposed to do, she received an e-mail from the Director of the GCTS confirming that all three of her comprehensive exams would still need to be submitted by no later than August 31, 2019 in order for her to be able to remain in the Th.D. program.²¹ The Student reports that she found that message to be confusing, because it conflicted with advice previously given to her by her supervisor to await feedback on the first two exams before proceeding with the essay.²² The Student Appellant therefore wrote an e-mail to her supervisor, Professor Wilson, on the early morning of August 27, wherein she wrote:

After submitting two exams papers, I have waited for the comments on those papers from the professors as my understanding of the third paper of the comprehensive essay is a kind of bridge for the thesis proposal. I expect the comments on those papers would be helpful for my third paper. I also remember your mentioning that I would need to have approval of those two exam papers for the third paper.²³

Professor Wilson replied, in part:

Normally, at least in practice (it is not a written rule), you might have both comprehensive essays (sic) before the third is submitted, but because you are completing them all in such a short space of time, it appears now that that is not possible. Your situation is unusual: I have never had a student submit all three comprehensive essays in one month under the pressure of a termination deadline...In any case, comments from the first two need not affect your third comp...This comp is meant to show your ability to do research and think critically in your own area, homiletics, so it is looking for both breadth and depth. I hope this helps.²⁴

²⁰ *Student Appellant's Reply*, p. 29.

²¹ Student Appellant's Submissions, p. 14.

²² *Ibid.*

²³ TST's Book of Documents, Tab 21, p. 89.

²⁴ *Ibid.*

The Student Appellant, therefore, proceeded to complete the drafting of her third comprehensive examination, which took the form of a comprehensive essay; she submitted it on or about August 31, 2019.²⁵

Approximately one month later, on September 30, 2019, the GCTS Director at the time, Professor Shantz, wrote to advise the Student Appellant as follows:

The members of your Comprehensive Examination Committee have now had opportunity to evaluate all three of your examinations. Unfortunately, none of them meet the standards required for a passing grade. Normally, you would be allowed to write a supplemental examination for up to two of these; however, there is no provision to write three. A below standard grade on all three examinations is considered a failure.²⁶

Professor Shantz pointed to s. 8.5.2. (“Failure”) of the TST Handbook to explain this outcome:

In the event that the student fails to attain the minimum grade in any of the comprehensive examinations on the first attempt (oral evaluation included), he or she may take only one supplementary examination per comprehensive, which must be held within three months of that exam. A maximum of two supplementary examinations may be taken in total. In the event that the student fails the comprehensive exam committee will recommend to the GCTS the termination of a student’s registration in the program.²⁷

Professor Shantz then advised the Student Appellant that she had the option of transferring to the Th.M. program, and that she had “the right to consider an appeal of this result.”

III. The Standard of Review

The Faculty submitted that your Committee should not interfere with the decision of the GCTS to terminate the Student Appellant’s registration in the Th.D. program, nor by implication with the decision of the GCTSAAC to uphold that termination, unless the decision taken by the GCTS was unreasonable.

Further, when the Faculty writes in its submissions that “[t]here is no evidence to show that the TST or any faculty members exhibited bias – whether conscious or unconscious – toward [the Student Appellant],”²⁸ the Faculty is implicitly acknowledging that any relevant policies, processes or procedures with respect to the Student Appellant’s comprehensive examinations and the decision to ultimately terminate her registration from the Th.D. program must, under scrutiny, be shown to have been interpreted and applied fairly and without favour or prejudice to the Student Appellant.

²⁵ TST’s Submissions, par. 23, p. 009.

²⁶ Student Appellant’s Submissions, p. 26.

²⁷ *Ibid.*

²⁸ TST’s Submissions, par. 72, p. 026.

The Student Appellant – who was not represented by Counsel at the hearing before your Committee – did not opine directly on the appropriate standard of review for your Committee to apply.

Your Committee agrees with the Faculty that, as a general rule, it should defer to the expertise of the GCTS in determining who should be allowed to retain registration in the Th.D. program and who should see their registration terminated. Your Committee should only interfere with the decision to terminate the registration of the Student Appellant by the GCTS if that decision was an unreasonable one, or if it was made through a demonstrably unfair interpretation and/or application of the relevant policies, processes and procedures that were relied upon or invoked in its making.

IV. The Merits

The Student Appellant and the Faculty both provided arguments regarding the substantive merits of the Student Appellant’s appeal. These were presented as four (4) distinct grounds by the Student Appellant in her submissions and by the Faculty in its responding submissions. The merits of each ground are discussed below:

(i) The Student Appellant’s Mental Health

The Student Appellant submitted that your Committee should take into consideration the poor state of her mental health throughout much of her time spent as a student of the TST, including the period during which she was taking her comprehensive examinations in 2019.

Your Committee is sympathetic to the Student Appellant’s description of how the illnesses and deaths of several friends and classmates affected her emotionally. Particularly for someone relatively new to Canada who is part of a small, specialized and close-knit academic program, it is understandable that strong emotional attachments might develop towards one’s colleagues. When one of those colleagues is felled by illness or death, the emotional toll may well be very heavy. In the case of the Student Appellant, the demise of multiple colleagues, including the passing in 2015 of a woman that the Student Appellant described as her “best friend” of several years, may well have caused significant trauma and suffering for her. It might be more surprising if the Student Appellant had not been deeply affected by such events.

However, whether the Student Appellant’s suffering amounted to an experience of a mental illness – such as depression or anxiety – that would invite accommodation under the Ontario *Human Rights Code* is not within the purview of your Committee to determine. No evidence of a medical diagnosis was submitted to your Committee to indicate that the Student Appellant was suffering from mental health challenges at the time she was preparing to sit her comprehensive examinations.

For its part, the TST submits that:

...at a minimum, (the Student Appellant) had the obligation to either:

- (a) Access supports, such as the University of Toronto's Accessibility Services, and request accommodations from the TST at the time, and/or
- (b) Provide documentation to support her need for accommodations on appeal

as part of her duty to participate in the search for accommodations.²⁹

In reply to a question from your Committee, the Student Appellant submitted that she was not aware of any resources available to her or to other students in her program if they were experiencing mental health challenges or crises such as depression and anxiety. She indicated that, if there was any information provided to her about such resources, perhaps as part of her original orientation to the TST, or perhaps as part of a student manual, she was not aware of it.

By contrast, the TST indicated to your Committee that course syllabi distributed to its students at the beginning of all their courses include information on how to access mental health support services.

Without having evidence of such syllabi before it, nor copies of any other documentation that was provided to TST students about mental health support services for students, your Committee is not in a position to opine on the sufficiency or insufficiency of whatever information was provided to the Student Appellant.

However, even if your Committee were to assume that the information provided to the Student Appellant could have been more comprehensive than it was, or presented in a way that was clearer and left more of an impact on the Student Appellant, it would not change the fact that the Student Appellant did not alert the TST to the problems she was experiencing due to the loss of her friend and colleagues, and that she did not request accommodation for any such problems.

In its submissions before your Committee, the TST did not dispute the Student Appellant's evidence about the serious and negative impact on her of her fellow students' illnesses and deaths. However, it did dispute that it should be prevented from terminating the Student Appellant's registration, because of that impact for the simple fact that the Student Appellant never apprised the school of her mental health struggles related to the deaths, nor to her related need for accommodation, because of those struggles.

To substantiate its argument, Counsel for the TST referred to *Matthews v. Chrysler Canada*,³⁰ a 2011 decision of the Ontario Human Rights Tribunal that reaffirms the long-recognized principle that a person seeking and deserving of accommodation for a disability under the Ontario *Human Rights Code* has a duty to bring their need for accommodation to the attention of those from whom they are seeking that accommodation. In writing an Interim Decision for the Tribunal, the Adjudicator, Douglas Sanderson, wrote in part:

²⁹ TST's Submissions, par. 47, p. 017.

³⁰ 2011 HRTO 1939. TST's Book of Documents, at Tab 18.

Jurisprudence regarding the duty to accommodate clearly establishes that all parties to the accommodation process have obligations. An employee seeking accommodation, for example, is responsible for initiating the process by stating the need for accommodation and must act in a reasonable and cooperative manner....Therefore, to establish the respondents were obliged to accommodate him, the applicant must provide evidence demonstrating that he identified his need for accommodation in relation to a requirement or factor that discriminated against him, directly or in effect, because of his disabilities.³¹

In *Matthews*, the Tribunal was considering accommodation-related responsibilities that arose in an employment setting for employees, employers and benefit providers, but Counsel for the TST submitted that the same general principle would apply to a student's duty to alert their educational institution to their need for accommodation under the Code.

The Student Appellant, when asked, did not offer any other cases for your Committee's consideration that would distinguish or contradict *Matthews*.

The Student Appellant told your Committee that she "believed that everyone at the school was aware of (her) grief" at or around the time she was preparing to complete her comprehensive examinations in late 2018 and 2019, although she acknowledged that she had not brought it to the specific attention of school authorities, nor asked for an extension of her deadlines because of that grief.

The Student Appellant also acknowledged during questioning from your Committee that she had never informed the TST that she was receiving professional counselling for her grief over her colleagues' deaths. She told your Committee that, during this period, she was simply "trying to do (her) best to focus on (her) examinations."

In the absence of any evidence to indicate that the Student Appellant had brought her need for accommodation on the basis of the mental health challenges she was facing to the attention of the TST, and in the further absence of evidence to suggest that the Student Appellant had provided any medical evidence to the TST regarding such need, your Committee finds that the TST did not have an obligation to accommodate the Student Appellant by providing her with more time to complete her comprehensive exams in 2019. Further, given that it was not under any such obligation, your Committee concurs with the TST that it would not be appropriate to interfere with the decision of the GCTS to terminate the registration of the Student Appellant in light of her examination results, nor with the subsequent decision of the TSTAAC to uphold that decision.

Your Committee therefore denies this ground of appeal.

³¹ 2011 HRT0 1939. TST's Book of Documents, at par. 17.

(ii) *Alleged Bias Against the Student Appellant*

The Student Appellant alleges that, throughout her time as a student at the TST, she was underestimated, discounted and treated unfairly, because of bias against her as an international student of a different gender, race and cultural background than the majority of TST students. She writes in her submissions to your Committee:

As a doctoral student came (sic) from different culture, gender, race, I have often experienced my attitude and introverted ways of communication that rooted in my cultural ethos and ethics have been misunderstood as inferior in TST without considering equity of the cultural differences.

I have often experienced miscommunication, alienation, invisibility and forgottenness in the academic advices and the academic administration in TST.

Whenever I encountered these experiences in my academic works in the TST, my mental health was seriously threatened.

I have been encountered again and again in TST.

Encountering these negative assumptions made me desperate while I studied in TST. This is a kind of a vicious circle of stigma and trauma in the academic culture of TST I have experienced.³²

In reply, the TST indicates in its written submissions that, “[t]o the extent that this is a standalone ground of appeal and not a continuation of (the Student Appellant’s) first ground of appeal ... there is no evidence that would substantiate these allegations.”³³

Your Committee has no doubt that the Student Appellant is sincere in her belief that she has been treated unfairly by the TST because of her status as a racialized international student from a different cultural background than that of most other students, academic and administrators of the school. When asked by your Committee, the Student Appellant submitted that she could identify no other compelling explanation for what she perceives as a consistent pattern of TST faculty and administrators making “negative assumptions” about her, failing to support her in her studies, and suggesting that any academic struggles she encountered stemmed from “misunderstandings” on her own part. The Student Appellant asked your Committee rhetorically how, having experienced them not once, not twice, “but thirty or more times,” such behaviours could be ascribed to anything but “bias” against her, because of her gender, race and culture. Clearly, her subjective perceptions confirm to her that the TST treated her unfairly because of these various aspects of her identity.

Yet your Committee is only able to assess the merit or veracity of such serious assertions on the basis of substantiating evidence submitted by the parties. Both in writing and at the hearing, the Student Appellant enumerated a number of instances where she perceived that she had been singled out or treated unfairly, because of her cultural background, or where she had been victimized by

³² Student Appellant’s Submissions, p. 20.

³³ TST’s Submissions, par. 69, p. 024.

administrative ineptitude, but she did not submit any information to show or suggest that she had been treated any differently than any other students on the basis of her race, gender, cultural background, disability, or any of the other prohibited grounds of discrimination under the Ontario *Human Rights Code*.

One situation described by the Student Appellant in her written materials concerned an experience she had had early in her time at TST where she was asked to offer a personal opinion about controversial themes raised in a book, including “sexism, LGBTQ issue, racism, classism, disability and so on.”³⁴ The Student Appellant indicated that she had been “shocked” to be asked to provide her own opinion about such themes in public. However, there is no indication from any materials submitted that such a request from a professor was anything but commonplace at the TST. Such a request might have come into tension with the Student Appellant’s own expectations of what might be asked of her in a classroom setting – expectations perhaps borne of her own cultural background and reference points – but unless there is some indication that the TST treated her differently than other students *because of* personal and protected characteristics such as her race, gender and cultural background, her allegations of bias are unsubstantiated.

This absence of detailed or documentary evidence is particularly relevant when it comes to the Student Appellant’s experience regarding her comprehensive examinations, up to and including her subsequent termination from the Th.D. program by the TST. Your Committee would have been prepared to consider any evidence showing how the TST either applied different policies, practices and processes to the Student Appellant because of one or more prohibited grounds such as race, gender or cultural background. It would also have been prepared to consider any evidence showing how the TST had applied the same policies, practices and processes to the Student Appellant as it had to other students, but had interpreted them differently in her case, because of one or more of these prohibited grounds. However, no clear and compelling evidence was submitted to show either type of unfairness had been practiced against the Student Appellant.

Your Committee therefore denies this ground of appeal.

(iii) The Student Appellant’s Non-Agreement with the Appointment of a New Second Examiner for Her Second Comprehensive Examination

The Student Appellant submitted that your Committee should grant her appeal, because the appointment of the second examiner, Dr. Judith Newman, for her comprehensive examination was made unfairly, without her consent or agreement.³⁵

³⁴ Student Appellant’s Submissions, p. 11.

³⁵ *Ibid.*, p. 19.

In response, the TST submitted that, “to the contrary, (the Student Appellant) agreed to Dr. Newman’s appointment,” and further submitted that her appointment had taken place because the Student Appellant had “requested that a woman be appointed as her second examiner.”³⁶

The 2012 Handbook, at s. 7.13.1, indicates that, in the Pastoral department, “when the supervisory committee meets with the student at the end of the course stage, they will determine together three areas for the comprehensive examinations and two examiners...”³⁷

It was clear to your Committee that, as early as February 28, 2019, the Student Appellant’s supervisor, Professor Wilson, had sent to her, Professor Dorcas Gordon and Professor Glen Taylor a “Comprehensive Exam Registration (Pastoral)” form (“registration form”) that lists proposed examination topics as well as the names of Professors Gordon and Taylor as the Examiners for her second comprehensive examination, otherwise known as TSP8002H or her “Breadth” exam.³⁸ In the accompanying e-mail, Professor Wilson asks the Student Appellant “if there are any changes to be made at this time.”

In a reply e-mail to Professor Wilson the very next day, March 1, 2019, the Student Appellant responded quite thoroughly to the draft registration form and wrote in some detail about the proposed topics, her thesis proposal and related scholarship. She asks very specifically to amend the proposed title of the Breadth exam by replacing the word “Poetic” with the word “Theopoetic,” so that the resulting title of the Breadth exam would be *The Movement to the Theopoetic from the Reality of Women’s Experience: A Biblical Approach*. The Student Appellant then writes: “Except these things, the filled Registration Form for the Comps seems to be okay for me.”³⁹

Your Committee infers from this that the Student Appellant had consented to the roster of examiners listed on her registration form in late February.

Yet, by the late summer, while she was immersed in the stressful final stages of preparing for and writing her comprehensive exams and essay, the Student Appellant was engaged in e-mail correspondence with both Professor Wilson and Professor Gordon concerning who would replace Professor Taylor as co-examiner with Professor Gordon of the Student Appellant’s Breadth exam. Indeed, even after the Student Appellant had already written and submitted her Breadth exam, she and Professor Gordon were still exchanging e-mails about who would join Professor Gordon as the second examiner of the Student Appellant’s exam.⁴⁰

For her part, the Student Appellant submitted that she did not understand why she needed to change her examiners even after her registration form had been completed back in February. In her written

³⁶ TST’s submissions, par. 50, p. 018.

³⁷ TST’s Book of Documents, Tab 1, p. 009.

³⁸ E-mail of February 28, 2019, with attached form, submitted mid-hearing to the Committee by the TST, as the Student Appellant had referenced this email and form in their submissions during the hearing.

³⁹ TST’s Book of Documents, Tab 10, p. 041.

⁴⁰ See, for instance, TST’s Book of Documents, Tab 22.

submissions, she submits that she was “forced” to accept the change in the second examiner.⁴¹ When asked about this particular choice of words by your Committee during the hearing, the Student Appellant stated that the requirement for her to change her second examiner so late in the day was just one more example of what she considered to be “unreasonable changes” introduced without warning or explanation by TST administration, and that such changes added considerably to her stress.

It is unclear whether the person who actually initiated the change in the second examiner for the Breadth exam was Professor Wilson, Professor Gordon, or someone else altogether. But your Committee does not have any evidence before it to indicate that the Student Appellant had expressed her discontent with the examiners she agreed to in March, nor that she ever requested to change them. In fact, the Student Appellant, in her reply to the TST’s submissions, was adamant that she had done neither. She writes:

If the second examiners of the comprehensive exams needed to be changed, why these second examiners had not been appointed when the examination registration had been done on March 1, 2019? Nothing about the exams had been changed after March 1 after registration of the comprehensive examination in GCTS. Only the second examiners were in September 2019... The [S]tudent [A]ppellant did not agree with the irrelevant suggestion of changing the relevantly appointed second examiner for the exam TSP 8002H Breadth Exam. It is done without agreement from the [S]tudent [A]ppellant. Once again this is one of the grounds of this academic appeal.”⁴²

Notably, Professor Gordon’s e-mail comment that the Student Appellant had expressed a “concern to have a women (sic) reader”⁴³ – which is echoed in the submissions of the TST⁴⁴ - appears to be based on a misunderstanding of the Student Appellant’s earlier e-mail comment to her: “I do not have any idea with what I should do with this Bible Comp Exam paper for the second reader. This is a woman’s perspective.”⁴⁵ As the Student Appellant explained to your Committee at the hearing, by this comment, she was simply indicating that the topic of the paper itself had a substantive focus on “women’s experience,” and that the academic background and scholarship of the examiner should therefore align.

Your Committee was persuaded by the Student Appellant’s account that, rather than initiating or insisting on a change in examiner, she was trying to maintain her focus on the task before her at the time of these late-in-the-day exchanges about a new second examiner. Because of how focused she was on her work, and because the whole process of comprehensive examinations was new to her,

⁴¹ Student Appellant’s Submissions, p. 19.

⁴² Student’s Reply to TST’s Submissions, p. 24.

⁴³ TST’s Book of Documents, Tab 20, p. 085.

⁴⁴ TST’s Submissions, par. 50, p. 018.

⁴⁵ TST’s Book of Documents, Tab 19, p. 084.

she “just accepted what (her) Supervisor told her to do. He told her she required (a new) second examiner for the examinations.”⁴⁶

The Student Appellant tried to draw a distinction between “accepting” the advice of her supervisors, and “agreeing” to their suggestions. In an e-mail to the Student Appellant of August 27, 2019, Professor Wilson wrote:

“Professor Gordon has approached Prof. Newman to be the second reader of your biblical comp, as she felt that having a woman with feminist leanings might be helpful. Is that agreeable to you? I have not heard as to whether Prof. Newman has agreed.”⁴⁷

Notably, in reply, the Student Appellant wrote:

“If you mean (Prof. Judith Newman at Emmanuel College), I have not had any class with (her). I have written my Bible comp paper on the Gospel Luke. In my knowledge, she teaches Hebrew testament, right?

However, as I have worked with Prof. Gordon for my bible comp, and I have met her since I came to TST, **I trust she could find out the best second reader for my bible comp paper. I have already decided to follow her suggestion.**

I would like you to tell her to do what she thinks right to do.”⁴⁸ (Emphasis added)

In the TST’s written submissions, they cite the Student Appellant’s exchange with Professor Gordon the next day, after Professor Gordon had “explained that (the Student Appellant’s) comprehensive exam was a biblical paper and that Dr. Newman was a faculty member with the Bible program area.” The TST notes that the Student Appellant replied, “Thanks for your explanation. **I understand it.**” (Emphasis added) The TST submits that, with these simple words, the Student Appellant was “again indicating that she agreed that Dr. Newman should be the second reader for her second comprehensive exam,” and that, “(t)o the extent that s. 7.13.1 of the applicable policies and regulations required (the Student Appellant’s) consent to appoint Dr. Newman as a second examiner, the TST complied with those policies when it did so.”⁴⁹

In reply to direct questioning, the Student Appellant told your Committee that, when she wrote the words “I understand it” to Professor Gordon, what she had meant was “I trust in you.” The Student Appellant emphasized that she was relying on her professors to do right by her. After some seven years in the Th.D. program working with the professors in her supervisory committee, the Student Appellant felt at the time that they had developed a relationship of trust. For that reason, the Student

⁴⁶ Student’s oral submission.

⁴⁷ TST’s Book of Documents, Tab 21, p. 088.

⁴⁸ *Ibid.*, p. 087.

⁴⁹ TST’s Submissions, par. 52 and 53, p. 019

Appellant did not signal her disagreement with the suggestion that Professor Judith Newman would act as the second examiner of her Breadth examination when her name was proposed.

Your Committee considers that to be a reasonable response by the Student Appellant, particularly given the tight timelines under which she was working to submit all of her comprehensive examinations at the time. However, your Committee also finds that it was no less reasonable for the TST to infer that the Student Appellant had agreed with the proposal of Professor Newman as an alternate second examiner for the Breadth paper when she indicated to Professor Wilson on August 27th that she had “decided” to follow Professor Gordon’s suggestion for a second examiner.

Your Committee was convinced that it caused stress and confusion for the Student Appellant to learn in August that the examiners she thought had been agreed upon back in late February or early March had not yet been confirmed. Your Committee was not presented with any compelling submissions to explain why it appears the TST waited until the late summer to advise the Student Appellant that they needed to identify an alternative to Professor Taylor to examine her Breadth examination. Certainly, that news did not create ideal circumstances under which the Student Appellant had to complete her examinations. However, your Committee is not of the view that these unexpected challenges were so daunting that the Student Appellant could not have more clearly indicated her disagreement with the prospect of Professor Newman serving as the second examiner of her Breadth exam if, indeed, she did not consent to her appointment.

In another context during the hearing, the Student Appellant stated that “using words is very, very important,” particularly for someone, like her, who has spent much of her life studying homiletics. Your Committee concurs. That is why her words indicating that she had made the decision to trust Professor Gordon’s decision-making with respect to a second examiner matter are tantamount to agreeing with that decision. Ideally, the appointment of Professor Newman as the second examiner would have been confirmed much sooner than after the Breadth examination had already been written. Nonetheless, the TST complied with both the letter and spirit of s. 7.13.1 of the Handbook by obtaining the Student Appellant’s consent to appoint Professor Newman to that role.

Your Committee therefore denies this ground of appeal.

(iv) The Denial to the Student Appellant of the Opportunity to Orally Defend her Comprehensive Essay or Write Supplementary Examinations

The Student Appellant submits that the TST Handbook indicates that the assessment of a Th.D. student’s third and final comprehensive examination (the “comprehensive essay”) should include an evaluation of both the written work itself and an obligatory oral defence of the work. As she writes:

“According to the regulation in the handbook, TSP8003 Comprehensive Essay and Oral Examination should include the mark of the Oral Examination as it is regarded the oral defence of the Comprehensive Essay. The regulation is written when the Comprehensive is submitted, the date for taking the Oral Exam should be set. The mark of the comprehensive essay should

include the oral exam. But the mark 74 was given (to her comprehensive essay) without (her having taken) the oral exam.”⁵⁰

In advancing this argument, the Student Appellant points to s. 8.3.2. from the 2018 version of the TST Handbook, which provides:

“... In the Pastoral and Practical Theology and Theological Studies program areas, however, the grade for the third comprehensive examination **includes the oral assessment...**” [Emphasis added]⁵¹

There are additional provisions in the TST Handbook which also appear to confirm the intrinsic interconnectedness of the comprehensive essay and the oral defence of that essay.

For instance, s. 8.6.3 provides:

“The comprehensive examinations comprise two examinations, and **one comprehensive essay which is defended orally.**” [Emphasis added]⁵²

Immediately thereafter, s. 8.6.3.3., which describes the purpose and intended scope of the comprehensive essay, is even entitled “**8.6.3.3. The comprehensive essay and oral defence.**”⁵³ [Emphasis in original] Again, this would suggest that the two elements – the essay and its oral defence – are inextricably linked.

Likewise, s. 8.6.3.3.3, the Handbook provision specifically about the oral defence, states:

“...**The grade for the third examination includes an assessment of the oral defence** and is reported according to the procedure outlined in s.8.3.2.”⁵⁴ [Emphasis added]

Finally, s. 8.6.3.3.4., which is focused on the Final Evaluation, indicates that:

“**After the defence, the Student Appellant will be excused while the examiners (a) determine a letter and number grade for the comprehensive essay with oral defence,** and (b) consider the results of the comprehensive examinations as a whole (i.e., the two examinations, comprehensive essay, and oral defence), determining whether the student has successfully completed the comprehensive stage...”⁵⁵ [Emphasis added]

The TST acknowledges that “[i]f (the Student Appellant’s) interpretation of the policies was correct, there remained a path for her to complete the Th.D. program even after she failed the first three

⁵⁰ Student Appellant’s Reply, p. 22.

⁵¹ TST’s Book of Documents, Tab 2; Student Appellant’s Submissions, p. 25.

⁵² *Ibid.*

⁵³ *Ibid.*, p. 26.

⁵⁴ *Ibid.*, p. 27.

⁵⁵ *Ibid.*

written components of her comprehensive exams. However, these policies should not be read in isolation.”⁵⁶

Instead, the TST submits that the Handbook provisions relied upon by the Student Appellant should be read alongside s. 8.5.1. and s. 8.5.2., which the TST contends also bear directly on this situation. The 2018 versions of those provisions read as follows:

S. 8.5.1: Minimum grade average. In order to advance to the thesis proposal stage of the program, a student must achieve at least a minimum B+ grade in each comprehensive exam (including the oral evaluation), with an overall average of at least an A- (3.7 GPA).

S. 8.5.2: Failure. In the event that the student fails to attain the minimum grade in any of the comprehensive examinations on the first attempt (oral evaluation included), he or she may only take one supplementary examination per comprehensive, which must be held within three months of that exam. A maximum of two supplementary examinations may be taken in total. In the event that the student fails the comprehensive exam committee will recommend to the GCTS the termination of a student’s registration in the program.⁵⁷

The TST submits that, in the case before us, because the Student Appellant was reasonably deprived of an opportunity to offer an oral defence of her comprehensive essay, because she had failed to obtain at least a B+ in each of her first two comprehensive exams as well as in the written component of her comprehensive essay, and because the Handbook only entitles a student to write two (2) supplementary examinations rather than three (3), it was not necessary to administer the oral defence. They write: “It was not necessary to administer the oral defence given her demonstrated academic weakness over the earlier components.”⁵⁸

Counsel for the TST also argued that your Committee should accept the TST’s interpretation of s. 8.5.1. and s. 8.5.2. of the Handbook “at face value.” Your Committee concurs with that as a general principle for understanding the provisions of the Handbook, but it does not share Counsel’s interpretation of those particular provisions, nor, taken in context, does it consider such an interpretation to be a reasonable one. Your Committee also fails to understand why those two provisions should be taken “at face value” any more than others in the Handbook, including those cited by the Student Appellant, should be.

Your Committee is of the opinion that, on its face, s. 8.5.1. indicates that there is to be one grade assigned to each of the three comprehensive exams written by a student hoping to move on to the thesis stage of their program of study in the Th.D. program, and that the grade for the third of those examinations is to be *inclusive of* the oral evaluation. Your Committee believes that to be the plain meaning of the parenthetical phrase “(including the oral evaluation).”

⁵⁶ TST’s Submissions, par. 57, 58, p. 021.

⁵⁷ TST’s Book of Documents, Tab 2, p. 020.

⁵⁸ TST’s Submissions, par. 74, p. 027.

Similarly, in s. 8.5.2., which indicates that a student “may take only one supplementary examination per comprehensive,” your Committee finds that the parenthetical phrase “(oral evaluation included)” refers to the oral evaluation that is a required element of the third of the three comprehensive exams.

Your Committee finds that these interpretations of the parenthetical provisions of ss. 8.5.1. and 8.5.2 are fully consistent with the plain meaning – or “face value” - of the several other provisions in the Handbook that were either raised by the Student Appellant or considered by your Committee at the hearing. Provisions such as 8.3.2., 8.6.3., 8.6.3.3., 8.6.3.3.3. and 8.6.3.3.4., *inter alia*, all make abundantly clear to your Committee that the third of the three comprehensive exams – which takes the form of a comprehensive essay – includes an oral defence, and that the third essay is to be graded in part on its written content, and in part on an oral defence of that content.

Counsel for TST argued that the purpose of ss. 8.5.1. and 8.5.2 is to establish the parameters for determining whether or not a student will move on to the thesis stage of their doctoral studies, whereas the purpose of s. 8.3.2 is to lay out the evaluation procedures specific to the Pastoral, Practical Studies and Theological Studies program areas. The TST submitted that their distinct purposes explain why it may *appear* that they treat the oral defence differently.

This argument was underscored when the Faculty member on your Committee asked Counsel for the TST whether the stage of evaluation in the Th.D. program, known commonly as the Comprehensive Examinations, had three components or four components. In other words, was the oral defence an intrinsic element of the comprehensive essay, or were the comprehensive essay and a subsequent oral examination to be considered the third and fourth elements of a four-component evaluation? Counsel for the TST replied “It depends.”

Respectfully, your Committee does not agree that it does. Rather, to ascribe different intentions to similar language and inter-related provisions in nearby sections of the same Handbook is not reasonable. And, if the parenthetical provisions in ss. 8.5.1. and 8.5.2. are read to mean that the grade given for a student’s third comprehensive exam – that is, the comprehensive essay – is *inclusive of* an assessment of the Student Appellant’s oral defence of that essay, then it is clear that there are three components to the Comprehensive Examination stage of a Th.D. student’s evaluation:

- (i) one comprehensive exam of a Student’s specialization area;
- (ii) one comprehensive exam to assess the breadth of a student’s knowledge; and
- (iii) a comprehensive essay that is defended orally.

This would bring ss. 8.5.1. and 8.5.2. into perfect alignment with the provisions regarding comprehensive examinations in s. 8.6.3. and its related sub-sections, as outlined above. And, if these provisions are already in alignment, no “(squaring) of the circle” – as Counsel for the TST had indicated was possible to reconcile her client’s seemingly contradictory interpretation of these provisions – is required.

Counsel for the TST argued that your Committee should show deference to the TST’s interpretation of the Handbook with respect to the determination of a student failure. However, the limit of such deference is the line beyond which such an interpretation, in the opinion of your Committee, is unreasonable.

Your Committee finds it notable that, even an experienced faculty member such as Professor Dorcas Gordon asked her fellow professors whether, in the absence of having carried out an oral evaluation of the Student Appellant's comprehensive essay as provided for under provision s.8.3.2., the Student Appellant's third comprehensive "could be considered a failure?"⁵⁹

In reply, Professor Shantz, the then-Director of the GCTS, answered:

Dear Dorcas,

Thank you for the question. I think the salient point in the policy is that the written part of the third comp requires supplemental work. Normally, if the third comp required a supplementary exam, the oral would not proceed until that supplementary work had been evaluated. Indeed, the oral would not take place until all supplementary work had been completed. There is simply no allowance for a student to under-perform on all three written elements and yet be allowed to proceed to the oral. So, while the grade would include the oral, the fact that the written portion is below standard precludes any further assessment.⁶⁰

Your Committee has no reason to believe that Professor Shantz was being in any way dishonest when she advised Professor Gordon that, according to the way in which the GCTS traditionally interpreted the provisions of its Handbook, the Student Appellant was not entitled to proceed to the oral defence stage of her third comprehensive examination because she had "under-performed" on the written elements of all three of her examinations. Rather, having been presented with no evidence to the contrary, your Committee is confident that Professor Shantz was being forthright and sincere when she provided this description to Professor Gordon of the GCTS' prevailing practice when faced with the sort of circumstances presented by the Student Appellant. Unfortunately, that prevailing practice – because it denied a student the opportunity to orally defend her third comprehensive exam before declaring that she had irredeemably failed her comprehensive examinations – points to an unreasonable interpretation of the TST's own Handbook.

Your Committee notes that, even Professor Shantz acknowledged to Professor Gordon that "[i]t's a somewhat complicated procedure, perhaps, and a good reason for the sorts of revisions that we've now implemented." Notably, however, a side-by-side comparison of ss. 8.3.2, 8.5.1, 8.5.2, 8.6.3, 8.6.3.3., and 8.6.3.3.3. in the 2012 and 2018 versions of the TST Handbook finds that the language of these provisions changes very little. Presumably, therefore, those who approved the 2018 version of the Handbook were confident that all of these provisions still held together as a coherent whole that did not require "squaring," and that did not outline a four-component system of evaluation of doctoral students' comprehensive examinations for one purpose but only a three-component system for another.

If there had been a prevailing concern that institutional practice was not matching written policy with respect to the conducting and evaluation of the comprehensive exams and essay, the updating of the Handbook in 2018 would have provided a natural opportunity to address such concerns. The fact that no substantive changes were made to these passages suggests that there was a guiding

⁵⁹ TST's Book of Documents, Tab 23, p. 94.

⁶⁰ *Ibid*, p. 93.

assumption that all of these provisions held together as a reasonable whole as much in 2018 as they had in 2012.

In any event, whether the editorial committee that reviewed the 2018 revisions gave this specific matter any attention or not does not deter from the reasonable expectation that a Handbook that is published by the TST and distributed to its students will be interpreted and applied both fairly and reasonably. Both criteria are essential: the fair and consistent application of a provision that is interpreted unreasonably does not make its interpretation any more reasonable.

That appears to be what might have happened here: the GCTS had developed the customary practice of treating a student's comprehensive essay and the oral defence of that essay as two standalone components of assessing that student's readiness to move on to the thesis stage of their studies. Accordingly, when the Student Appellant failed to attain the B+ minimum required on each of the three exams she had submitted, the supervisory committee saw no reason to schedule the oral defence, since no student was permitted to sit any more than two supplementary examinations. But the fact that the TST may have developed this customary practice and applied it consistently to other students over the years does not change what the TST's own Handbook says very clearly about the evaluation of the comprehensive essay necessarily including its oral defence for students in the Pastoral department.

As noted above, Counsel for the TST argued that your Committee should accept the TST's interpretation of s. 8.5.1. and s. 8.5.2. of the Handbook "at face value." But there is nothing on the face of either edition of the Handbook that leads your Committee to find that certain provisions were intended by the drafters to be taken "at face value" while others should be open to more nuanced or strained interpretations. Rather, your Committee is convinced that the only fair and reasonable way to interpret the provisions of the Handbook is to take them *all* at face value.

When your Committee does this, the oral defence of the comprehensive essay is seen an essential pre-condition to the evaluation and marking of that essay, and the requirement in s. 8.5.1. that a student "achieve at least a minimum B+ grade in each comprehensive exam (including the oral evaluation)" means just that: that the oral defence of the comprehensive essay is an integral element in the assessment of the essay itself, and the resulting letter grade for that essay must be at least a B+. The TST's alternate interpretation of these provisions was unreasonable.

Because this interpretation of its own Handbook was unreasonable, it was also unreasonable for the TST to issue the Student Appellant a summary of her marks with an "INC" for "Incomplete" beside the Comprehensive Essay after depriving her of the opportunity to defend her essay orally as required by the Handbook.

Your Committee therefore agrees with this ground of appeal.

IV. The Decision

For reasons outlined above under section III (iv), your Committee concurs with the Student Appellant that the TST acted unreasonably when it interpreted and applied its own Handbook provisions concerning the evaluation of her comprehensive examinations in such a way as to deny the Student Appellant an opportunity to defend her comprehensive essay orally. By extension, it was also unreasonable for the TST to evaluate the Student Appellant's comprehensive essay without including her oral defence of that essay as an essential component of that evaluation.

The Student's appeal is therefore granted.

V. The Remedy

Your Committee recommends that the TST register the Student Appellant back to the Th.D. program for a minimum of one full semester.

In the meantime, the Student Appellant may wish to begin preparation for the defence of her comprehensive essay that was originally written and submitted for evaluation in August 2019, and work with the TST regarding timing.

Furthermore, your Committee recommends that, upon the conclusion of the Student Appellant's oral defence, the TST should assess the comprehensive essay and its oral defence together and assign an overall grade to that effort with both thoroughness and expedition. Your Committee also recommends that the TST follow its normal practices and procedures, as outlined in its Handbook, to identify and confirm the examiners to mark the two supplemental examinations, if she becomes eligible to write them.

In your Committee's view, all provisions of the 2018 Handbook continue to apply, including s. 8.5.1.

Given that it was not reasonable for the Student Appellant's registration to be terminated in the first instance, your Committee recommends that her tuition and any student fees (including, but not limited to, any student fees to enable the Student Appellant's access to student mental health support services) be waived up to and including the final determination of whether or not she has succeeded in passing her comprehensive examinations. For reasons of fairness, your Committee also recommends that the Student Appellant not pay a second time for something that was unreasonably denied to her in the first instance.