



FOR INFORMATION

OPEN SESSION

TO: Academic Board

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

CONTACT INFO: christopher.lang@utoronto.ca

PRESENTER: See Sponsor

CONTACT INFO:

DATE: May 20, 2021 for May 27, 2021

AGENDA ITEM: 11(b)

ITEM IDENTIFICATION: Academic Appeals Committee, Individual Reports, Spring 2021

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 27, 2021)**

PREVIOUS ACTION TAKEN:

The last semi-annual report came to the Academic Board on November 18, 2020.

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.

DOCUMENTATION PROVIDED:

- Academic Appeals Committee, Individual Reports, Spring 2021

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report # 411 of the Academic Appeals Committee
November 26, 2020

To the Academic Board
University of Toronto.

Your Committee reports that it held an electronic hearing, conducted by Zoom on Monday, November 2, 2020, at which the following members were present:

Academic Appeal Committee Members:

Ms. Sara Faherty Chair
Professor Salvatore Spadafora Faculty Governor
Ms. Olivia Batt Student Governor

Hearing Secretary:

Ms. Krista Kennedy, Administrative Clerk, Office of Appeals, Discipline and Faculty Grievances

For the Student Appellant:

J.H. (the “Student”)

For the Faculty of Applied Science and Engineering:

Professor Thomas Coyle, Vice-Dean, Undergraduate Studies, Faculty of Applied Science and Engineering

The Appeal

[1] The Student appeals a decision of the Academic Appeals Board of the Faculty of Applied Science & Engineering (the “AAB”) of February 13, 2020 (the “Decision”) that denied the Student expungement of his U of T transcript, instead granting retroactive withdrawal (WDR) for all courses on his transcript from the Fall of 2005, Fall of 2006, and Fall of 2007. The Student is seeking complete expungement of his University of Toronto transcript, requesting the registrar to remove any evidence of his having been enrolled at the University during those terms, and the removal of the seven WDR he was previously granted during the Winter term of 2006.

The Facts

[2] The Student began his studies as a freshman in the Faculty Applied Science & Engineering in the Fall term of 2005. His path to the University was unhappy, and not entirely voluntary. He describes a traumatic and abusive relationship with parents who insisted that he apply to and enrol in the Faculty, despite his lack of interest in the subject. The language he uses to describe his

enrolling in the Faculty is chilling: He was “forced” to enter the program “against [his] will.” He reports that he was subjected to physical and emotional abuse and that he did not have any choice. A final terrible incident occurred on January 12, 2006, the day the Student’s parents drove him back to the St. George campus to commence the second term of his first year of studies. It ended with police involvement and an emergency services hospital report, and it appears to have ended the Student’s term—his transcript shows “WDR” for the 7 courses he had enrolled in for the Winter, 2006 term. Apparently the Student made a successful and timely request to withdraw from his second semester of first year but he is now asking to have the record of those courses completely removed from his transcript. (As well as removing records of the courses he took the semester before that term and the two Fall terms following that term.)

[3] The impetus for the request expungement of these four semester’s classes is the Student’s desire to start his post-secondary academic career over again at a film school in the United States. He has been in touch with several schools, and he would like to apply as a freshman, with no prior University experience, rather than as a transfer student.

[4] His eligibility to apply as a freshman will determine how many years he can spend at the institutions he wants to attend. One of the schools, his first choice, would require him to complete four semesters at another school, and would then permit him to earn their two-year degree, rather than the four-year degree the Student wishes to earn. All of the schools’ policies will treat the Student as a transfer student if he has University level courses completed at another institution, and as a first year student if he does not. The Student prefers to be treated as a first year student, both because it will allow him to attend his preferred program for a full four years, and because he believes his chances of admission are better if he is considered as a first year student.

Previous Rulings:

[5] On February 12, 2020, the Academic Appeals Board of the Faculty of Applied Science & Engineering met to review the Student’s appeal of an earlier petition decision. The next day Professor Jason Foster, the Chair, wrote to the Student. Professor Foster wrote, “Extremely sympathetic to your circumstances, yet unable to expunge a student record, the AAB has rendered the following decision, which it hopes will help you achieve your goal:

Retroactive withdrawal (WDR) for all remaining courses on your transcript so that no grades—and, therefore, no credits—remain. In the same letter Professor Foster offered to have the Faculty Registrar, Don MacMillan, provide the Student with a letter to include in his applications to note that due to exceptional circumstances, the Faculty granted him a late withdrawal from all courses and that he retains no credits.

[6] The Faculty of Applied Science & Engineering’s AAB letter ended by informing the Student he could appeal their decision.

Decision

Feasibility

[7] This appeal draws into question the integrity and purpose of registrarial records. The Student is convinced that having his records at this University completely expunged would be preferable to having the courses noted on his transcript but having the grades he earned replaced with WDR. This is not supported by the communication he has had with the individual schools (see pages 8 to 13 and pages 38 to 47 of the Student's Notice of Appeal). While there was some back-and-forth clarifying the Student's history, ultimately the schools with which he communicated told him that they would not treat him like a transfer student if he did not earn credit at another University. The remedy the Faculty of Applied Science and Engineering has provided removes all academic credit from the Student's transcript.

[8] The Student is concerned that apart from his eligibility to apply under his preferred status, the facts of his previous enrollment makes him less competitive. The Student refers to remarks made by an unnamed educational consultant, whom he quotes as saying:

“I would be at a disadvantage if I disclose my brief enrollment at University of Toronto. This would affect how my application is viewed since I already have “college experience” or “have had chance at life already” in the eyes of admissions committee. This would reduce my chance of admission, even if I am eligible to apply as a freshman applicant. Furthermore, the admissions committee might be skeptical about my academic commitment and doubt that I will take education seriously.”

[9] It is not clear to your Committee that the Student's educational consultant is correct in their predictions about the impact of the Student's previous record. Admissions Committees are made up by multiple individuals, and each committee member at each school may have a different response to the Student's life history, especially depending on how the Student frames his experiences and what he's learned from them. More important, even if we agreed with the consultant, it does not follow that we can insulate the Student from the consequences of the facts of his previous enrollment. The Student is asking for a remedy that cannot reasonably be granted by the Academic Appeal Board. While we are equipped to protect the Student from the academic consequences of his past enrollments, it does not follow that we can require the Division to eradicate all traces of these attempts from the Student's record.

[10] The Faculty of Applied Science and Engineering's *Petition for Special Consideration* form that students complete offers them three named categories of relief: “Retroactive Withdrawal,” “Transfer to Part Time Studies,” or “Fees Adjustment.” There is a fourth category of “Other,” which is reasonable given the infinite variety of problems students face. However the inclusion of “Retroactive Withdrawal” indicates that this remedy is the contemplated relief for a student who wishes to address the problem of not having dropped a class in a timely manner. The Student checked the “Other” box, and wrote in “Removal of enrollment/academic record.” We think the Division's form of removal of the academic records of a course is captured by “Retroactive Withdrawal.” We have not seen evidence of a remedy of total expungement anywhere in the University's policies.

[11] Here the Faculty of Applied Science and Engineering has agreed to change the Students' grades to WDR, which treats this request as if it was made before the add/drop date in the term in which the course took place. This is a better outcome for the Student than a LWD would be. The Student wishes the division would go even farther and completely remove evidence of these courses from his transcript. This remedy pushes past the Governing Council's Transcript Policy, dated January 26, 2012, which tells us that the academic transcript "must include...an enrolment history, which traces chronologically the student's participation at the University." This aspect of the Faculty's record keeping is not academic in nature—it is meant to be a correct account of a student's enrollment. To remove evidence that the course was attempted would be to falsify the record. We can remove a record of student's academic performance, but we cannot undo the fact that the Student was enrolled in courses at the University of Toronto during the Fall of 2005, the Winter of 2006, the Fall of 2006, and the Fall of 2007.

[12] In a different policy statement, *Statement Concerning Change of Student Personal Information in Official Academic Records*, dated April 16, 2009, the University establishes that "the accuracy of students' academic records is fundamental to the integrity of the University's academic mission." Here, the Student would have us remove the record that he had even attempted fourteen courses over four terms. He actually earned 2.7 academic credits during that time. While his current desire to apply to some schools as a first year student makes him wish to delete the records of those credits, he may end up wishing to have those hard earned credits back at some future date—the University cannot erase and replace its records depending on what benefits a former students' current pending applications. While the division can agree that the marks he earned are not reflective of his academic ability, which the Student has well documented, it should not create the false impression that he was not enrolled at the University during those years.

Meaning of Late Withdrawal Without Academic Penalty

[13] The Student has provided persuasive documentation to show that he was pressured by his parents to enrol in the University of Toronto's Faculty of Applied Science and Engineering during the academic years of 2005-2006, 2006-2007, and 2007-2008. There is evidence of him being treated harshly, and of him having been mentally unwell as a result. This Committee is convinced that the grades on the Student's current transcript are not an actual reflection of his academic ability, and believe that the Faculty of Applied Science and Engineering acted correctly when it agreed to remove those grades.

[14] The Faculty of Applied Science and Engineering has granted the Student one of the remedies he requested, and that remedy is a generous application of its policy. Your Committee notes previous Committee holdings, including Decision #375 which reads:

"Your Committee has on a number of occasions dealt with petitions for late withdrawal from a course without academic penalty and has consistently stressed that this remedy will not be lightly granted. The remedy of late withdrawal without academic penalty is an extraordinary remedy, reserved for unusual and unique situations. The idea of "drop dates" indicates that the University expects that a student will make a decision whether to continue in a course by a set date in the term. But by the drop date, a student is expected to have assessed his or her situation

and made a decision. Once the drop date passes, the implication is that the student has decided to continue on in the course. Exceptions to this policy are rare, but could include situations where unexpected and unforeseeable circumstances occur after the drop date, where already existing circumstances become unpredictably worse, or where already existing circumstances do not reasonably resolve.”

Impact of Remedies

[15] Even if this Committee is wrong about the reasonableness of the Student’s request to permanently expunge the record of his attempts to take courses during three different academic years, the Faculty’s decision that it would not pursue that remedy should stand. Total erasure of academic attempts is not a remedy offered by this University. While divisions may enter WDR or LWD marks to protect students from the academic consequences of courses they took when their ability was impaired, the University transcript policy does not offer an option to remove any trace of those courses. The Student wants the Division to alter its records to show that he was never at the Faculty of Applied Science and Engineering so he can create the impression to other institutions that he has never attended University. The Division has instead offered a remedy that removes the academic consequences of his being here without complete expungement. The same remedy has been given to other students with similar issues and documentation. It would be inappropriate for this Committee to direct a division to grant a remedy that violates the integrity of its records. This is especially true when the Division has provided a standard remedy, consistent with the treatment of countless other students at this University, that creates a pathway to the result the Student desires.

[16] The Student’s submissions show that three of the schools he is interested in agree that with WDR marks he can apply as a first year student. The Student argued that the differing responses he received from various staff members at a number of US schools means that he cannot rely on the ultimate responses he received. We disagree. It is not unusual for the staff to give a standard answer to complicated questions. In this case, the Student asked sometimes opaque questions, and then correctly elevated his request after receiving negative initial responses from staff members of the Universities to which he plans to apply. By the end of his string of communications, he had arrived at a different, favourable response from the schools with which he communicated. We have no reason to doubt those final responses, especially in light of the fact that the Registrar of the Faculty of Applied Science and Engineering has confirmed those responses.

[17] The Faculty of Applied Science and Engineering is clearly sympathetic to the Student’s situation, and worked hard to find a workable solution to his problem. This Committee believes it found a remedy that has virtually the same impact as expunging the records. Its efforts on behalf of the Student go beyond a typical response for changes to a transcript. Here, the Registrar connected with three of the schools to which the Student wishes to apply, and made a direct offer to the Student to provide him with a letter explaining his situation and the University of Toronto’s reasoning for granting Withdrawals in his case. At least three of the US schools have confirmed that the solution proposed by the Registrar will allow the Student to apply as a first year student. See the email dated November 21, 2019 from University of California, Los Angeles; the email dated November 19, 2019 from the University of Southern California; and the email dated November 22, 2019 from New York University.

[18] For the reasons outlined above, your Committee affirms the decision of the Academic Appeals Board of the Faculty of Applied Science and Engineering dated February 13, 2020. The Board's decision was a correct and generous application of its policies.

[19] The appeal is dismissed.

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report # 412 of the Academic Appeals Committee
January 8, 2021

To the Academic Board
University of Toronto.

Your Committee reports that it held an electronic hearing, conducted by Zoom on Friday, November 13, 2020, at which the following members were present:

Academic Appeal Committee Members:

Professor Hamish Stewart, Senior Chair
Professor Sonu Gaind, Faculty Governor
Mr. Amin Kamaledin, Student Governor

Hearing Secretary:

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

For the Student Appellant:

I.A. (the “Student”)

For the School of Graduate Studies:

Mr. Robert A. Centa, Counsel Paliare Roland Rosenberg Rothstein LLP
Ms. Jodi Martin, Co-Counsel, Paliare Roland Rosenberg Rothstein LLP

Overview

The Student was enrolled in the Ph.D. program in the Division of Social and Behavioural Sciences (Division) of the Dalla Lana School of Public Health (School). She successfully completed her course work. She was then required to pass a Qualifying Examination (QE) to achieve Ph.D. candidacy. On her initial attempt in January 2018, the Student failed the QE. She retook the QE in September 2018 and failed again. The Student appealed that failure to the Division’s Graduate Department Academic Appeals Committee (GDAAC). On the 2nd of February 2019, the GDAAC dismissed her appeal. She then appealed to the Graduate Academic Appeals Board (GAAB). On the 16th of December 2019, the GAAB dismissed her appeal.

The Student now appeals to your Committee. She argues that there were a number of procedural flaws in the administration of the second QE and she seeks various remedies. The School of Graduate Studies (SGS) argues that the appeal should be dismissed.

Your Committee finds that there is no merit in the Student’s grounds of appeal and therefore dismisses the appeal.

Chronology

The Student registered in the School's Ph.D. program in the Fall 2014 term and over the next few terms successfully completed her course work. In order to proceed in her program and achieve Ph.D. candidacy, she was required to pass a Qualifying Examination.

The Qualifying Examination

The SGS describes the QE, as it was constituted at the time, as follows (SGS Submissions, para. 21):

“The qualifying examination ... normally consists of an 8,000 word paper and an oral presentation of that paper. A student should demonstrate a capacity for independent scholarly work and creativity, the ability to theorize a topic using a variety of approaches, the ability to assess critically related empirical literature and from these propose a theoretically and methodologically sophisticated and consistent research question that would advance the topic area. Through the qualifying examination a student will demonstrate the capacity to understand, apply, and compare theoretical perspectives that are taught in the program's core theory courses.”

The guidelines for the QE that were applicable to the Student had most recently been revised in 2017 and we therefore refer to them as the 2017 Guidelines (SGS Book of Documents, pp. 012-013). The 2017 Guidelines provided, among other things, that:

- “The qualifying exam ... should demonstrate the student's capacity for independent scholarly work and creativity, ability to theorize a topic using a variety of approaches, ability to critically assess related empirical literature, and from these propose theoretically and methodologically consistent research questions that would advance the topic area and may be used for the dissertation. Through this process, the student will demonstrate capacity to identify, synthesize, and critique the literature within their chosen topic area.”
- “The student is expected to meet with their supervisor once every quarter before the start of the QE process and at least 2-3 times ... during the preparation of the outline of the QE to discuss the scope, direction and content. The thesis committee members should meet at least twice with the student during this period. ... Once the outline is approved, the student is expected to write the paper independent of the supervisor and thesis committee. ...”

Under these guidelines, not sooner than two weeks following the submission of the QE paper, the Student was orally examined on the paper. At the oral examination, the Student presented the paper and was then questioned by the examining committee. Following the oral examination, the examining committee deliberated and determined whether the Student passed by a majority vote. The examining committee had three elements:

- (1) the student's Ph.D. supervisory committee;
- (2) the Program Director or their designate; and
- (3) an Examiner.

Each element of the committee had one vote. The first element of the committee would typically consist of three persons (the student's supervisor and two other faculty members), like other Ph.D. supervisory committees in the University.

The Division's guidelines for the QE were revised in 2018 and currently provide, among other things (emphasis in the original):

- “The purpose of the qualifying exam (QE) is to assess the student’s capacity to understand, apply, and compare theoretical perspectives that are taught in the [Division’s core theory courses]. Specifically, the QE process will assess the student’s ability to theorize a topic using two different theoretical approaches and to propose theoretically sophisticated research questions that would advance the student’s topic area of interest and may be used for the dissertation. The process of writing the QE and producing a final product should ideally contribute to the theory section of the student’s thesis proposal.”
- “The paper will identify and describe two theoretical perspectives from which the topic can be considered. ...”
- “The QE paper will explain why these theories are relevant to the topic area, situate them in relation to other systems of thought or traditions, briefly describe the evolution or lineage of the theories, describe the key tenets/constructs of each theory, apply them to the chosen substantive or empirical area of interest, and discuss how the two theories compare to/contrast with/complement one another in relation to the substantive area.”
- “The paper will then propose theoretically-informed research questions ... which might be undertaken in future study, and that arise from the application of the selected theoretical approaches.”
- “The student’s supervisor and committee ... can provide advice and support to the student in identifying the substantive area of focus for the paper and in selecting appropriate theoretical perspectives. ... The supervisor, committee and other faculty members will not provide feedback to the student through the process of writing the QE paper ... and are not permitted to review drafts of the paper prior to its submission.”

The 2018 Guidelines do not contemplate an oral examination.

The Student’s Qualifying Examination

The Student first attempted the QE on the 15th of January 2018, and was unsuccessful. The examining committee provided her with extensive comments, with specific suggestions for improvement, on the QE paper (SGS Book of Documents, pp. 018-021). The Student did not appeal from the examining committee’s decision. In accordance with the QE guidelines then in force, the Student was given the opportunity to retake the QE.

The 2017 Guidelines contemplate that, when a student retakes the QE, “[t]he composition of the examining committee should remain the same if at all possible.” In the Student’s case, this was not possible. In the spring of 2018, her supervisor went on medical leave. Dr. Blake Poland agreed to serve as the Student’s supervisor during the process of repeating the QE. The Student requested that certain members of the examining committee be replaced by others, and the Division agreed to this request. Consequently, the examining committee that evaluated her second QE was quite different from the original committee.

Between mid-April and mid-May, the Student discussed the revisions to her QE paper with Dr. Poland. On the 25th of May, the Student met with her supervisory committee, which provided her with substantive feedback on the revisions to her QE paper. Following that meeting, in accordance with the guidelines, she worked independently and did not discuss the paper with her supervisory committee.

As an accommodation for the Student's mental health challenges, the Division proposed that as a substitute for the oral component of the QE, the examining committee would draft questions for the Student to answer in writing. At the hearing before your Committee, the Student appeared to suggest that she had not agreed to this accommodation (see also her Notice of Appeal, p. 17), but it is clear from the record that she did (SGS Book of Documents, pp. 022 and 027-036). For various reasons that do not need to be spelled out in detail, the timeline for the Student's retaking of the QE was extended by several weeks.

The Student submitted her revised QE paper on the 17th of August 2018. Her examining committee was constituted as follows:

- (1) the student's Ph.D. supervisory committee: Dr. Blake Poland, supervisor; Dr. Branka Agic; Dr. Lisa Andermann; Ms. Wendy Chow; and Dr. Samuel Law (the final three members were referred to at the hearing as "the Mount Sinai Team");
- (2) the Program Director: Dr. Carol Strike; and
- (3) the Examiner: Dr. Ross Upshur.

All members of the examining committee read the Student's QE paper. The examining committee met by teleconference on the 5th of September 2018, to discuss the paper and to draft four written questions that were to be posed to the Student. Dr. Agic was on vacation and did not participate in this meeting; however, Dr. Agic had provided a written assessment of the QE paper, and the other members of the committee considered that assessment. On the 6th of September, as a substitute for the oral component of the examination, the Student received the questions and provided her answers. That afternoon, the examining committee, except for Dr. Agic, met again by teleconference, discussed the Student's answers, and unanimously concluded that she had failed the QE. The examination committee's written assessment of the QE includes the following comments, among others:

- "The QE paper falls well short of expected skill level of a doctoral student to identify, synthesize, and apply literature to a substantive topic."
- "Little to no evidence of capacity to critically appraise the literature."
- "Key terms ... are not defined."
- "The account of the various philosophical and epistemological perspectives is very simplistic."
- "The literature review is descriptive and does not seem to lead to the research question."

The Student's answers to two of the written questions were deemed to be "minimally sufficient" and the answers to the other two "insufficient". The same day, at a prearranged time, the Student was informed of her failure.

The Student was suddenly hospitalized on the 7th of September. The precise reasons for this hospitalization and the length of the Student's stay in hospital are not clear from the material before your Committee, but for the purposes of this appeal further information about this unfortunate incident was not needed.

The Division scheduled a meeting with the Student for the 6th of November. The meeting was attended by the Student, her mother, Dr. Strike, Dr. Nancy Baxter, who was then serving as the School's Associate Dean, Academic Affairs, and Ms. Candice Stoliker, Coordinator, Student Progress and Support. The Student was provided with the examining committee's feedback. Dr. Baxter provided the Student with three options: (1) a retroactive leave of absence predating her retaking of the QE; (2) an appeal of the failure; and (3) withdrawal or termination from her program. The Student had a number of concerns about the retroactive leave of absence and ultimately chose to appeal the failure.

The GDAAC Decision

The Student appealed to the GDAAC. The GDAAC considered a number of remedies sought by the Student but concluded that most of them were outside its jurisdiction. It therefore focussed on her request to have the QE grade changed from Fail to Pass. The GDAAC rejected the Student's claim that the examining committee was confused about which set of guidelines (2017 or 2018) to apply. The GDAAC found that the accommodations provided to the Student throughout the process were appropriate and designed to meet her "specific needs." The GDAAC noted that the Student had "listed a delay in receiving the written feedback" as a ground of appeal, but found that the delay had been caused by the Student's sudden hospitalization and that the arrangements for the November 6th meeting had been agreed to by all the parties to it. Finally, the GDAAC found no bias or unfairness in the assessment of the QE.

The GAAB Decision

The Student appealed to the GAAB. The GAAB commented that while it was difficult to identify the Student's grounds of appeal it could identify "three issues which might be causes for valid concern." First, Professor Agic did not participate in the teleconferences on the 5th and 6th September. The GAAB commented that Professor Agic "was one member of a large (seven person) committee and all seven were firmly of the view that the [QE paper] was a failure" and concluded that "[t]here is nothing in the record to indicate that Professor Agic's participation in the later stages would have made the slightest difference to the final result." Second, the Student had questioned "whether the assessment given to her was indeed the consensus view of the examining committee," and alleged that the Division had lied to her about the committee's unanimity. The basis for this allegation appeared to be that she had not received separate written assessments from each of the seven committee members. The GAAB noted that there was no requirement that individual members of the committee provide separate assessments, found that the examining committee had indeed been unanimous, and found "no evidence whatsoever" for the allegation that the Student had been lied to. Third, the Student had made a comparison between her QE paper and the model QE paper that she had used in her preparation, arguing that the model paper had misled her as to what was required. The GAAB found this comparison to be of little assistance and, with respect to the Student's claim about the guidelines, noted that "Guidelines are guidelines, not strict 'formulas' to be rigidly adhered to." Thus, the GAAB found no merit in the appeal and dismissed it.

Decision

The Grounds of Appeal

As was the case before the GAAB, before your Committee the Student “submitted voluminous material to support her appeal” and accordingly “it was not easy to distill what the specific grounds of appeal were.” At the hearing before your Committee, counsel for SGS and the Student herself were able to assist the panel in identifying grounds of appeal that were relevant to the matter before us, namely, whether the QE was administered fairly. Your Committee understood the Student to have raised essentially three grounds of appeal on this matter: first, that she was inadequately supervised in the period leading up to the retaken QE because she had only one meeting with her committee; second, that the examining committee had mistakenly applied the 2018 rather than the 2017 Guidelines to the Student’s QE, although the Division had rejected her request to be evaluated under the 2018 Guidelines; and third, that the result might have been different had Professor Agic fully participated in the meetings of the 5th and 6th of September. Your Committee finds no merit in any of these arguments.

The first ground of appeal: Alleged inadequate supervision

On the 15th of January 2018, the Student failed her QE. She received detailed feedback from the examining committee (SGS Book of Documents, pp. 017-021). At her request, the membership of her supervisory committee was changed significantly. In particular, Dr. Poland agreed to serve as her supervisor. The Student was permitted to discuss her revisions with Dr. Poland, until her topic was approved (SGS Book of Documents, pp. 040-041). On the 25th of May 2018, the Student met with her supervisory committee and her topic was approved (SGS Book of Documents, pp. 043-045). She did not meet with her committee again until the QE itself. However, in July she did get some feedback from members of her committee on an unrelated piece of work (Notice of Appeal, pp. 72-77).

The Student submitted that she was inadequately supervised between January and May 2018 because she met only once with her supervisory committee, rather than at least twice as recommended by the 2017 Guidelines. Your Committee rejects this submission. The usual practice in SGS is for a doctoral student to arrange meetings of their supervisory committee. There is nothing in the record to indicate that the Student attempted to arrange any meetings with her supervisory committee as a whole during this period; instead, she was content to discuss her work with Dr. Poland. There is nothing in the record to indicate that there was any inadequacy in Dr. Poland’s supervision.

Following the approval of an outline, students are meant to work independently on the QE paper, and to that end the 2017 Guidelines provided that supervisory committees were not to provide students with feedback or review drafts during this period. Thus, once the committee had approved her new outline on the 25th of May, it would have been inappropriate for the Student to continue to meet with Dr. Poland or with her supervisory committee to discuss her QE paper.

The second ground of appeal: Alleged confusion as to the applicable guidelines

There is no direct evidence in the record that the examining committee confusedly applied the 2018 Guidelines rather than the 2017 Guidelines. The Student asks your Committee to infer this confusion from the examining committee’s use of language in its evaluation. The examining committee stated that the Student did not show the ability “to identify, synthesize and apply literature to a substantive topic”—

language which, the Student says, reflects the 2018 Guidelines' phrase "to understand, apply and compare theoretical perspectives" rather than the 2017 Guidelines' phrase "to identify, synthesize, and critique the literature." The Student argues that the 2018 Guidelines are concerned with "application" while the 2017 Guidelines are concerned with "criticism"; that she had written the QE paper with attention to "criticism" rather than "application"; that the examining committee must have had "application" rather than "criticism" in mind while assessing her; and that its evaluation of the QE was therefore unfair.

The fundamental task of a student under both sets of guidelines is to engage critically with the relevant literature in order to identify a specific research question. Therefore, your Committee declines to draw the inference that the examining committee was confused about which set of guidelines to apply. Moreover, your Committee is not persuaded even if the examining committee had mistakenly applied the 2018 rather than 2017 Guidelines, the outcome would have been any different. Your Committee agrees with Ms. Martin's submission that there is no material difference between the type and quality of analysis that is expected of students under the 2017 and 2018 guidelines. There are of course differences between the two sets of guidelines; in particular, the 2018 Guidelines provide more specific direction as to the format of the QE paper and they change the manner in which the QE is administered (an 8,000-word paper followed by an oral examination in the 2017 Guidelines; a 6,000-word paper without an oral examination in the 2018 Guidelines). But it appears to your Committee that these differences do not change the academic abilities that the QE is supposed to test. The examining committee concluded that the Student had demonstrated "[l]ittle to no capacity to critically appraise the literature", had "fail[ed] to note how ... critiques [of the literature] relate to the proposed topic area", had provided a "simplistic" account of "the various philosophical and epistemological perspectives", and had provided a literature review that was "descriptive and [did] not seem to lead to the research question" (SGS Book of Documents, p. 115). These would be serious flaws in the QE paper under either set of guidelines.

In support of the second ground of appeal, the Student also argued that she was misled by the Division in that in preparing her QE paper, she had followed the example of a model paper which, she says, was not consistent with the 2017 Guidelines. Your Committee was not persuaded by this submission. The Student was unable to identify any significant inconsistencies between the model paper and the Guidelines. Moreover, as the GAAB put it, "[t]he actual exam questions and answers for particular students will always depend on the focus of their own qualifying exam."

The third ground of appeal: Professor Agic's non-participation in the meetings of the 5th and 6th of September 2018

As noted above, Professor Agic was a member of the Student's supervisory committee. In late August 2018, she read the Student's QE paper and provided a written assessment to the rest of the examining committee. However, she did not participate in the meeting of the 5th of September or in the assessment of the Student's written responses to the examining committee's written questions on 6 September. Professor Agic was on vacation at the relevant time. The Student submits that Professor Agic's full participation in the meetings of the 5th and 6th September might have changed the outcome of the examination, in that of all the members of the examining committee, Professor Agic's research interests were closest to the topic of the QE paper.

The 6th of September meeting was a substitute for the oral examination. In the normal course, the entire supervisory committee would participate in an oral examination (2017 Guidelines, p. 4), which suggests that the QE should have been scheduled at a time when Professor Agic could participate fully. On the other hand, your Committee heard from Professor Gesink, who now serves as the School's Associate Dean, Academic Affairs, that quorum for a supervisory committee is two persons; assuming this quorum rule

applies to the supervisory committee's participation in examining committee meetings, it was met, so that Professor Agic was not required to participate.

It would have been better if Professor Agic had participated in the meetings of the 5th and 6th of September. Some members of your Committee are inclined to characterize Professor Agic's non-participation as a procedural flaw in the administration of the Student's QE; other members of your Committee are not certain whether that is the appropriate characterization. But, if it was a procedural flaw, your Committee considers it a minor one in the context of a large supervisory committee (five members rather than the usual three) and a large examining committee meeting (seven members rather than the usual five), which would have created significant challenges in scheduling the examining committee's deliberations and the substitute for the oral examination in accordance with the 2017 Guidelines. More fundamentally, your Committee is not persuaded that Professor Agic's absence from these meetings made any difference. Professor Agic's participation in the meeting of the 6th of September would have changed the result only if she had been so impressed by the Student's written answers that she would not only have revised her initial assessment of the QE paper but also persuaded a majority of the supervisory committee and at least one other member of the examination committee to change their assessments as well. As the GAAB put it, Professor Agic "was one member of a large (seven person) [examining] committee, and all seven were firmly of the view that the principal examination [the QE paper] was a failure. There is nothing in the record to indicate that Professor Agic's participation in the later stages would have made the slightest difference to the final result."

Other Issues

The Student raised many issues in addition to those discussed above. Although it is not necessary to resolve those issues in order to decide the appeal, your Committee would like to comment briefly on some of them.

Remedies

Since the appeal is dismissed, it is not necessary to decide on the remedy. At various stages of this appeal, the Student has asked the GDAAC, the GAAB, and the AAC for a great variety of remedies, including ordering someone to conduct an investigation of the Division, changing the QE mark from fail to pass, exempting the Student from the QE requirement, requiring an external assessment of the QE paper, and providing the Student another opportunity to take the QE.

Neither your Committee, the GAAB, nor the GDAAC has jurisdiction to order an investigation.

It is doubtful whether your Committee has jurisdiction to exempt a student from an academic requirement; if it does, such a remedy would only be appropriate in a truly exceptional case. Your Committee does not assess the academic merit of students' work and therefore would not normally change a mark from fail to pass. It might be possible for your Committee to order an external assessment, but there was nothing in the record here to justify such an order. If the Student had succeeded in demonstrating any unfairness in the way the QE was administered, the only remedy your Committee would seriously have considered would have been an opportunity to retake the QE.

The First QE

In her appeal materials, the Student complains about some aspects of her first attempt to take the QE in January 2018 (Notice of Appeal, pp. 24-28). As GDAAC and GAAB pointed out, the Student did not appeal

her failure on that occasion, and so those issues were not properly before them. They were not properly before your Committee either.

The Meeting of the 6th of November 2018 and Related Issues

In her written submissions, and to a lesser extent in her oral submissions, the Student complained about the timing and the manner in which the feedback on the QE was communicated to her on the 6th of November 2018. As the GAAB pointed out, these complaints “are irrelevant to the question at issue.” Moreover, your Committee had some difficulty understanding the basis for these complaints. The meeting was delayed because of the Student’s health issues and because the Division received a request from the Student’s mother not to communicate with the Student until her health had improved (SGS Book of Documents, pp. 117-121). Your Committee agrees with the SGS’s submission that “[t]he meeting was carefully scripted to ensure that it was sensitive to the Student’s health issues, clear, and provided detailed, but respectful feedback on her performance on the second qualifying examination” (SGS Submissions, p. 021). It is unfortunate that the Student’s experience of this meeting did not reflect the Division’s intention, but it is not clear to your Committee how the Division could have done better.

As noted above, at this meeting, the Division offered the Student three options: (1) a retroactive leave of absence, to begin at some time before she retook the QE; (2) an appeal of the failure; and (3) withdrawal or termination from her program. The Student had a number of questions about the first possibility, not all of which the Division was able to answer immediately, and she ultimately chose the second. In her written materials and at the hearing, the Student stated that if she had chosen the retroactive leave of absence, she would have been required to give up her right of appeal. It is true that, had the Student taken a retroactive leave of absence, her retaking of the QE would have been deemed never to have occurred, and there would be nothing to appeal. In your Committee’s view, the Division’s suggestion of a retroactive leave of absence was generous in the circumstances.

Other allegations

Throughout these proceedings, at all levels of appeal, the Student has made allegations to the effect that various University decision-makers were biased against her, had lied to her, had improperly concealed information from her, and had misused her confidential medical information. In particular, the Student made serious allegations about the GAAB Chair’s conduct of her appeal hearing. Some of these allegations are connected with points mentioned above. For example, the Student appears to interpret the GAAB’s failure to order an investigation as some evidence that the GAAB Chair was biased against her (Notice of Appeal, p. 37); but, as noted above, the GAAB simply lacked jurisdiction to make such an order and so its failure to do so is not evidence of any bias. These allegations were not supported by anything beyond the Student’s statements in her Notice of Appeal and did not play a major role in the Student’s oral submissions before your Committee. Your Committee wholly rejects them.

**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.