

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report #421 of the Academic Appeals Committee
July 4, 2022

To the Academic Board
University of Toronto

Senior Chair
Professor Hamish Stewart

For the Student Appellant:
Ms. S.R.K. (the “Student”)

For the Toronto School of Theology:
Ms. Catherine Fan, Paliare Roland Rothstein Rosenberg LLP

This appeal was conducted on the basis of written submissions.

Ruling

In November 2021, the Student was withdrawn from the Doctor of Theology (ThD) program at the Toronto School of Theology (TST), on the basis that she had failed her comprehensive examinations. The Student seeks to appeal to your Committee based on the manner in which the TST conducted the third of those examinations. TST argues that the Student’s appeal should be made to the TST’s Graduate Studies Council Academic Appeal Committee (GSCAAC, also referred to in the materials as TST-GSCAAC or TST-AAC).

The Senior Chair of your Committee agrees with TST. The appeal is therefore quashed.

Background to this ruling

In 2012, the Student was enrolled in the ThD program. Her supervisor was Professor Paul Wilson. She successfully completed her course work and language requirements. The next step in the ThD program was to pass three comprehensive examinations, referred to in the materials as (i) a specialization examination; (ii) a breadth examination; and (iii) an analytic (or comprehensive) essay, including an oral defence of that essay. The minimum passing mark was B+ (77%) on each examination. According to the ThD handbook (2018 version), a student who “fails to attain the minimum grade in any of the comprehensive examinations on the first attempt ... may take only one supplementary examination per comprehensive ... [up to a] maximum of two supplementary examinations ...” (TST Book of Documents (BoD), p. 046). Accordingly, a student who failed all three comprehensive examinations would not be able to continue in the program.

In August 2019, the Student submitted the written material for her three comprehensive examinations. The first comprehensive was evaluated by Professors Wilson and Reynolds, the second by Professors Gordon and Newman, and the third by Professors Wilson and Gordon. She received marks of B, B, and

B- respectively. All of these marks fell below the required passing mark of B+. However, the Student had not orally defended the analytic essay. The TST took the position that there was no purpose in proceeding to the oral defence because the Student had failed all three comprehensive examinations and could take at most two supplementals; thus, there was no possibility that she could pass all three comprehensive exams. She was therefore withdrawn from the ThD program.

The student appealed to the GSCAAC. Her appeal was dismissed (BoD, tab 7). She appealed the GSCAAC's decision to your Committee on several grounds. Your Committee rejected most of her grounds of appeal, but allowed the appeal on the following ground. The Committee found that, because the third comprehensive examination included both the analytic essay and the oral defence of that essay, it was unreasonable to interpret the relevant policy as preventing the Student from proceeding to the oral defence (Report 413, pp. 16-21). The Committee provided the Student with the following remedy (Report 413, p. 22):

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

... 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.

Accordingly, the Student was readmitted to TST for the Fall 2021 term. On October 26, 2021, she orally defended her analytic essay. The examiners were Professors Wilson and Gordon, who had already evaluated the analytic essay itself.

In a letter dated November 2, 2021, Professor Jesse Billett, Associate Director of Graduate Studies at TST, informed the Student that she had received a mark of B- (72) on the analytic essay and its defence. Therefore, the Student had received failing marks of B, B, and B- on the three comprehensive examinations and was therefore ineligible for supplemental examinations. She was told that she would be withdrawn from the ThD program effective November 18, 2021. Professor Billett stated (BoD, p. 164):

If you believe that the remedy [granted by the Committee] was not properly implemented, you may wish to seek further redress from the [AAC] ... If you believe that the ThD regulations have not been correctly applied, you still have the right to make an appeal through the channels of recourse listed in the ThD handbook

Counsel for TST have advised the Senior Chair of this Committee that the Student has brought two appeals to the GSCAAC concerning TST's decision to withdraw her from the ThD program (TST Submissions, paras. 21-23).

This appeal

The Student seeks to appeal to your Committee on the basis that TST did not properly implement the remedy granted in Report 413. On January 28, she filed a Notice of Appeal (NoA) with the Office of

Appeals, Discipline and Faculty Grievances (ADFG). The NoA states that the remedy granted in Committee Report 413 was not properly implemented. Her grounds of appeal are noted below. The remedies the Student seeks include repeating the analytic essay and oral examination “with different and relevant examiners/advisors/supervisors” (NoA, p. 9).

The Senior Chair of your Committee was concerned that the Student’s appeal might not be properly before your Committee. He was unsure whether a claim that a remedy has not been properly implemented should be made in the form of a direct appeal to the Committee or in the form of an appeal through the relevant division’s appeal processes (and, only if those appeals were unsuccessful, to the Committee). Even if it was possible to appeal directly to the Committee on this ground, he was also uncertain whether the Student’s appeal was in fact based on that ground. The Senior Chair attempted to arrange a case conference with both parties to discuss the proper appeal route. Arranging that conference proved to be unexpectedly difficult. The Senior Chair therefore invited the parties to make written submissions as to whether, given the factual background to this case and the specific issues raised in the Student’s NoA, the Student’s appeal properly lies to the Committee or to TST’s GSCAAC. Specifically, the Senior Chair posed the following questions:

1. Professor Billett advised the Student that if she believed the remedy ordered in Report 413 had not been properly implemented, she should appeal directly to the Committee. Was this advice correct?
2. If the answer to question 1 is “yes”, do some or all of the grounds of appeal raised by the Student in fact relate to the implementation of the remedy ordered in Report 413?

The parties’ positions

The Student submits that Professor Billett’s statement about the appeal route was correct. She states that “this appeal on the implementation of Report 413 must be understood in the continuation of the previous appeal ...”, that is, the appeal that was decided in Report 413 (Student’s Submissions, p. 2).

TST submits that while your Committee may have jurisdiction “over any outstanding dispute over the meaning of the remedy ordered” (TST Submissions, para. 34), the Student’s grounds of appeal raise no issues concerning the implementation of the remedy (para. 36) and that in any event TST did implement the remedy (para. 31). TST further submits that your Committee has no jurisdiction to grant the remedies sought by the Student in her NoA (TST Submissions, paras. 40-43). TST asks the Senior Chair to dismiss the appeal for want of jurisdiction “with a direction that the new issues be consolidated with the existing appeals before the [GSCAAC]” (TST Submissions, para. 46).

Decision

In Report 413, your Committee ordered TST to register the Student for at least one term, to permit her to defend her analytic essay orally, and to “assess the [analytic] essay and its oral defence together and assign an overall grade to that effort with both thoroughness and expedition” (Report 413, p. 22). It is clear that the TST has done those things. Nevertheless, the Student argues that her appeal relates to the implementation of the remedy ordered in Report 413. The Student raises three grounds of appeal (NoA, p. 8):

1. Five days were given to the student appellant for writing the Analytic Essay to due to the confusing administration.
2. When the student appellant was taking the Oral Examination, the student Appellant was in the more serious mental health crisis caused by unsent and falsely written academic report by the examiner found in the process of the academic appeal.
3. The student appellant was forced to take the Oral Examination with the examiner with whom the student appellant had the serious stresses.

The first ground of appeal does not concern the implementation of the remedy granted by the Committee or the manner in which the Student was examined in October 2021. It concerns the conditions under which the Student wrote the analytic essay in August 2019, as also described in Report 413 (pp. 6-8). The Student raised this issue in her initial appeal to GSCAAC, without success (BoD, pp. 129). She could have, but did not, raise it in her previous appeal to your Committee. It cannot serve as a basis for a new appeal to your Committee at this stage.

The second and third grounds of appeal do concern the manner in which the oral defence was conducted. In support of these grounds, the Student makes the following complaints (NoA, p. 7, lettering added):

[A] The Remedy was to take the exam continuously with the examiners who had terminated the student appellant from the doctoral program.

But the student appellant found out the official academic report written in 2017 by the examiner that had not been sent to the student appellant. This official academic report contained false content on the study of the student's appellant.

[B] ... the student appellant made the appeal in TST to change the examiner for taking the Oral Examination. But this appeal was denied. The student appellant was forced to take the exam in the threatening condition.

Both of these complaints concern the identity of the faculty members who participated in the oral examination. There is nothing in the remedy granted by your Committee in Report 413 to suggest that the oral defence should be conducted by examiners other than those who had read the analytic essay. These complaints and the associated grounds of appeal therefore do not concern the implementation of the remedy granted in Report 413.

As to [A], the "official academic report written in 2017" appears to be a report of the Student's supervisory committee, dated September 15, 2017, which states in material part that the Student "has made no progress and will be seeking an extension." The supervisory committee consisted of Professors Taylor, Kervin, and Wilson; as noted, Professor Wilson was one of the Student's examiners in October 2021. It is not clear when the Student received the supervisory report, why she found it objectionable, or how she thinks it might have affected the conduct of the oral examination. In any event, those issues were not before the Committee and the remedy granted in Report 413 does not speak to them.

As to [B], in her appeal to GSCAAC, the Student asked for the remedy of "[r]etaking the exams with new relevant examiners" (BoD, p. 126). The GSCAAC dismissed her appeal and therefore did not grant this remedy. On her appeal to your Committee, the Student again asked for this remedy (BoD, p. 136). Your Committee did not grant it. She asks for it again (BoD, p. 210). She cannot, because your Committee's decision in Report 413 was final. Moreover, [B] does not relate to the implementation of the remedy ordered in Report 413.

If the Student wishes to argue that there were procedural flaws in the administration of the oral defence of her analytic essay (an issue on which your Senior Chair expresses no opinion), the proper venue for that argument is an appeal to GSCAAC.

The appeal is therefore quashed for lack of jurisdiction, pursuant to section 3.1.7 of the AAC's *Terms of Reference*.

Other issues

Does your Committee have continuing jurisdiction over remedies that it has ordered?

TST's submissions do not directly address the question whether your Committee could supervise the implementation of a remedy or could hear an appeal directly on the ground that a remedy was not implemented according to its terms; rather, Ms. Fan emphasizes the finality of your Committee's decisions (TST Submissions, paras. 28-30). She does suggest that your Committee might have the power to interpret a remedy it has granted (para. 34) or to explicitly reserve jurisdiction over the implementation of a remedy in a particular case (para. 35). These suggestions appear to be premised on your Committee having, at least in some circumstances, some kind of continuing jurisdiction over remedies.

Since the issues raised by the Student do not concern the implementation of the remedy ordered in Report 413, it is not necessary, and would be inadvisable, to decide in this ruling whether a division's failure to implement a remedy could be directly appealed to the Committee or would have to be cured through some other process. Your Senior Chair adds that he would be surprised and dismayed if a University division failed to implement a remedy ordered by the Committee, as such a remedy is "a decision taken on behalf of Governing Council" (AAC's *Terms of Reference*, section 1.1).

Does your Committee have jurisdiction to grant the remedies sought in this appeal?

TST submits that, regardless of its jurisdiction to hear the appeal, the Committee has no jurisdiction to grant the following two remedies sought by the Student, namely (NoA, p. 9):

1. ...
2. Extending the time for completing the Doctor in Theology program considering the laps of time for the appealing
3. As an alternative remedy, transferring into another department of Doctoral Program

This submission appears to be well-founded. However, the Student has not had an opportunity to respond to it, and it is not necessary to decide it. Your Senior Chair therefore makes no further comment on it.

Professor Billett's letter

As noted, in his letter of November 2, 2019, Professor Billett told the Student that if she thought the remedy granted in Report 413 had not been properly implemented, she could seek "further redress" from

the Committee. The Student has relied heavily on this statement in bringing this appeal. So, it may appear that the need for this ruling could have been avoided entirely had Professor Billett confined himself to pointing out the availability of an appeal to GSCAAC. Nevertheless, your Senior Chair would ask you not to read this report as being critical of the letter of November 2. It is completely appropriate for a person in an administrative role, such as Professor Billett, to inform a student who is the subject of an adverse academic decision, such as the Student in this case, of the availability of an appeal and of the appropriate appeal route. (It would not be appropriate for such an administrator to provide legal advice, but that is not what happened here.) Moreover, this Report does not decide whether Professor Billett's statement was or was not correct.

Should your Senior Chair direct that the issues raised in this appeal be consolidated with the Student's outstanding appeals to TST's GSCAAC?

Ms. Fan submits that if the appeal is quashed or dismissed, there should be "a direction that the new issues be consolidated with the existing appeals before the TST GSCAAC" (TST Submissions, para. 46). There are obviously many pragmatic advantages to proceeding in this manner; as Ms. Fan puts it, this way of proceedings would "allow all of the issues to be resolved in an orderly fashion in one proceeding." However, your Senior Chair is reluctant to direct a student as to how to conduct their appeal before another appeal body. Your Senior Chair therefore limits himself to suggesting to the Student that, if she wishes to continue to assert the grounds of appeal that she raised in the appeal to your Committee, the most practical way to do so would be to do so in the context of her appeals to the GSCAAC.

Conclusion

Your Senior Chair finds that the remedy granted by your Committee in Report 413 was implemented in accordance with its terms. It is not necessary to decide whether your Committee has jurisdiction to hear an appeal directly from a division's failure to implement a remedy. The issues raised in the Student's NoA are either new issues, which should be brought to TST's GSCAAC, or are issues that were already determined by your Committee and cannot be reconsidered. The appeal is quashed.