

**FOR INFORMATION**

**OPEN SESSION**

**TO:** Academic Board

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

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

**PRESENTER:** See Sponsor

**CONTACT INFO:**

**DATE:** November 10, 2022 for November 17, 2022

**AGENDA ITEM:** 8(a)

**ITEM IDENTIFICATION:** Academic Appeals Committee, Individual Reports, Fall 2022

**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] (November 17, 2022)

**PREVIOUS ACTION TAKEN:**

The last semi-annual report came to the Academic Board on May 26, 2022.

**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.

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**DOCUMENTATION PROVIDED:**

- Academic Appeals Committee, Individual Reports, Fall 2022

**UNIVERSITY OF TORONTO  
GOVERNING COUNCIL**

Report #419 of the Academic Appeals Committee  
**June 15, 2022**

To the Academic Board  
University of Toronto

Your Committee reports that it held an electronic hearing, conducted by Zoom on March 29, 2022, at which the following members were present:

**Academic Appeals Committee Members:**

Dr. Erika J. Murray, Chair  
Professor Jan Mahrt-Smith, Faculty Governor  
Ms. Susan Froom, Student Governor

**Hearing Secretary:**

Ms. Nadia Bruno, Special Projects Officer, Office of Appeals, Discipline and Faculty Grievances

**For the Student Appellant:**

Ms. P.S. (the “Student”)

**For the University of Toronto Mississauga:**

Professor Michael Lettieri, Vice-Dean, Academic Experience, University of Toronto Mississauga  
Ms. Chioma Nwabugwu, Assistant Registrar, Academic Standards, University of Toronto Mississauga

**I. Appeal**

This is an appeal from a decision of the Academic Appeals Subcommittee of the University of Toronto Mississauga (the “Division”) dated July 5, 2021 which refused to allow the Student late withdrawal without academic penalty from the following five courses (“the five courses”) spanning from Fall 2015 to Winter 2018:

PSY100Y5Y, 2015(9);  
PSY201H5F, 2017(9);  
PSY210H5F, 2017(9);  
PSY230H5F, 2017(9); and  
PSY210H5S, 2018(1).

**II. The Facts**

The Student first registered with the University of Toronto (the “University”) in the Fall 2015 term. After the Winter 2016 term, the Student was placed on academic probation because her CGPA fell below 1.50. After the Summer 2016 term, her CGPA remained below 1.50, and, as a result, she was suspended for one year. The Student returned to the University in the Fall 2017

term. At the end of the Winter 2018 term, her CGPA remained below 1.50, and as a result, she was suspended for three years.

Three years later, on March 14, 2021, the Student submitted petitions for late withdrawal without academic penalty for the five courses, spanning from 2015 to 2018. The Student's petition statements for the five courses were identical. She outlined that her mental health from 2016 to 2018 provided challenges that led her to do poorly in school, be placed on academic probation, and eventually on academic suspension. The Student sought medical treatment from the Division's Health and Counselling Centre and from her family doctor, who then referred the Student to a psychiatrist whom she saw regularly in 2018.

In August 2018, the Student successfully petitioned to have the 3-year suspension lifted. The Student returned to the University on academic probation, in Fall 2018. The Student continued to take courses until the end of the Winter 2021 term, when her CGPA again fell below 1.50. At the end of the Winter 2021 session, the Student's status was "suspended for three years."

The Student petitioned to have the five courses removed from her academic record because, as reflected in her petition statement, "my condition had caused me to do poorly in school. I wish to appeal for the grades that I have failed during that time as they do not reflect my best work." In support of her petitions, the Student submitted:

- a. A medical document (psychiatric assessment) dated March 1, 2021 from her psychiatrist Dr. J.S. Dhaliwal ("Dr Letter 1");
- b. A medical document (psychiatric consultation) dated June 15, 2018 from her psychiatrist Dr. J.S. Dhaliwal ("Dr Letter 2");
- c. A medical document (partial psychiatric assessment) dated June 22, 2018 from her psychiatrist Dr. J.S. Dhaliwal ("Dr Letter 3");
- d. University of Toronto Verification of Student Illness or Injury (VOI) Form dated August 12, 2018 completed by Dr. J.S. Dhaliwal. The VOI Form noted that the Student had multiple visits with Dr. J.S. Dhaliwal, had moderate and serious incapacitation circled on the form, handwriting indicating starting in "Sept 2017" with no anticipated end date and with a last seen handwritten date of "June 22, 2018" signed by psychiatrist Dr. J.S. Dhaliwal. (VOI Form #1); and
- e. A copy of prescription receipts for Clonopam (used to treat panic disorders and seizures), Clonazepam (used to prevent and control seizures), and Rexulti (used to treat certain mental disorders such as schizophrenia and depression), all dated June 15, 2018. ("the prescriptions").

The Student's petition requests were all refused. The petition denial messages for all five courses (cited above) were identical. The Student was provided with the same copied and pasted message from five different Instructors for each of her five petitions:

Your petition for late withdrawal without academic penalty has been refused because you completed the course.

Late withdrawal without academic penalty cannot be granted after a student shows their intent to complete a course by writing the final examination (or the final term test/assignment in courses without final exams).

If you are having difficulty in a course, you are expected to drop it on ACORN by the published drop deadline. If you did not do so and are still having difficulty after the drop deadline, you are expected to request late withdrawal after the drop date (LWD) status by the last day of class. Refer to the UTM Academic Calendar ([https://student.utm.utoronto.ca/calendar//calendar\\_detail2.pl?Topic=Dropping%20Courses](https://student.utm.utoronto.ca/calendar//calendar_detail2.pl?Topic=Dropping%20Courses)) and the online form (<https://registrar.utm.utoronto.ca/student/LWD/>).

You are encouraged to seek academic advising in the Office of the Registrar to discuss your academic progress and strategies for future success and to review the Petitions website (<https://www.utm.utoronto.ca/registrar/current-students/petitions>) with respect to the appeal process.

In response, on April 8, 2021, the Student submitted an Appeal to the Committee on Standing ("COS") enclosing additional medical documentation in support of her appeal.

On appeal to the COS the Student submitted:

- a. An Appeal Notice ("Appeal Notice");
- b. A Letter from a Lead Counsellor, Office of the Registrar dated April 26, 2021 ("Health & Counselling Centre Letter");
- c. A VOI Form indicating Dr. J.S. Dhaliwal had multiple/on-going visits with the Student and that she was last seen June 22, 2018. The VOI Form is dated March 29, 2021, severe and moderate incapacitation are checked off on the form handwritten starting in "yr 2018" with a "not known" anticipated end date signed by a psychiatrist Dr. J.S. Dhaliwal. (VOI Form #2);
- d. A medical document (psychiatric assessment) dated April 5, 2021 from her psychiatrist Dr. J.S. Dhaliwal ("Dr Letter 4"); and
- e. Three Academic Advising Walk-in Appointment Notes from the Office of the Registrar [General Advising – Per Request] dated May 12, 2016, December 5, 2017 and March 1, 2018.

The Student's appeals were all denied. Each of the COS members provided the Student with the exact same copied and pasted response for each of her five appeals:

The Committee on Standing (COS) has reviewed your appeal and upheld the previous petition refusal.

If you wish to appeal this decision to the UTM Academic Appeals Subcommittee (AAS), please contact Tali Ajimal, Coordinator, Academic Appeals and Integrity at [academicappeals.utm@utoronto.ca](mailto:academicappeals.utm@utoronto.ca)

It is recommended that you seek academic advising in the Office of the Registrar prior to submitting an appeal to the AAS.

Students have 90 days from receiving their refused appeal decision, from the Committee on Standing, to submit a request to have their appeal considered by the Academic Appeals Subcommittee. Once you submit your appeal and documentation you will be contacted regarding the scheduling of your hearing.

We recognize that this decision may be upsetting to you. Should you experience distress during this time and require additional supports, you may contact Good 2 Talk, a post-secondary student helpline available 24/7/365 at 1-866-925-5454.

On June 10<sup>th</sup>, 2021 the Student appealed the refusals to the Academic Appeals Subcommittee ("AAS"). The Student did not submit any additional supporting documentation to the AAS. The Student's appeal was heard virtually on June 21, 2021. There is nothing in the record about what was asked or said at the AAS hearing nor what evidence before the subcommittee, if any, was considered. On July 5, 2021, the Student received a letter from the Chair of the AAS advising her that her appeal was refused. The letter provided the following comments:

- (1) While the Subcommittee sympathized with the difficulties you faced, the members of the Subcommittee noted that you did not present a compelling case, which would prompt the Subcommittee to exempt you from an academic regulation.
- (2) The Subcommittee encourages you to familiarize yourself with the rules and regulations of the University. You are expected to make responsible decisions in order to effectively manage your course load.
- (3) The Subcommittee strongly recommends that you make regular appointments with staff of the [Robert Gillespie Academic Skills Centre](#) regarding the development of your academic skills.

On November 1, 2021, the Student appealed the decision of the AAS to the Academic Appeal Committee ("AAC").

### III. Decision

The function of this AAC is to hear and consider appeals made by students against decisions of faculty, college or school councils (or committees thereof) in the application of academic regulations. Since each division of the University is required to have its own appeal processes, the AAC is in effect a reviewing body and not a forum for fresh decision-making. Put simply, the AAC decides whether the Division's decision was reasonable. In considering the reasonableness of the decision of the Divisional appeal body, the AAC is to consider the facts and whether the academic regulations and requirements were applied *correctly, consistently, and fairly*<sup>1</sup>; and ultimately whether the 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<sup>2</sup>. If the decision was unreasonable or there was an unfair interpretation and/or application of the relevant policies, processes or procedures, only then should the AAC interfere with the decision<sup>3</sup>.

Various levels of academic appeal committees have on a number of occasions dealt with petitions for late withdrawal from a course without academic penalty and have consistently stressed that this remedy should not be lightly granted. This Panel of the AAC (this "Committee") agrees. Indeed, a Division's decision not to grant the remedy of late withdrawal without academic penalty should not be over-ruled by the AAC except where the Division appears not to have followed its own published processes fairly and reasonably or in other unusual and unique situations, for example, if there were exceptional or extraordinary circumstances where a student may be granted exceptions to the policies.

In order to make a finding on whether the Division's decision was reasonable, this matter inherently involved this Committee reviewing if and how the Division considered the evidence (facts) pertaining to the Student's mental health during Fall 2015, Fall 2017 and Winter 2018, and applied the appropriate University policies. This included an assessment of whether the Division took reasonable steps reviewing the evidence before it, and if warranted, in assembling additional evidence and documentations that are likely available on request. Although the AAC has broad jurisdiction, appeals before the AAC are not a trial *de novo*, meaning not to be a fresh trial of the evidence. However, the AAC does have a duty to consider the evidence that was before the Division, particularly when the evidence is at issue.

Prior to the Student's hearing, this Committee carefully reviewed the reasons of the committees who have denied the Student's appeals to date, the evidence as submitted by the Student with her petitions, the additional evidence the Student submitted in support of her petitions on appeal to the COS, as well as the information provided by the Division. In a virtual hearing on March 29, 2022, this Committee then heard from the Student and the Division. Both parties were self-represented.

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<sup>1</sup> Motion Decision 359-1 dated August 25, 2011, page 6

<sup>2</sup> Report # 413 dated May 10, 2021, page 8

<sup>3</sup> *Ibid*

The hearing opened with the Student speaking about her mental health dating back to high school and that she sought help from various doctors, including her family doctor and now long-time psychiatrist, Dr. J.S. Dhaliwal. She stated that she wanted to be given a fair chance when she goes out to find employment and that she doesn't want her GPA hanging over her head from grades she received when she struggled with various mental health issues.

This Committee asked the Student questions about the one 2018 course in which the Student enrolled and wrote the final exam in April 2018 (PSY210H5S, 2018(1)). The Student expressed that due to her mental health she did not believe she was able to make decisions at that time. This Committee then asked her about her mental health during the three courses she enrolled in and for which she wrote the final exams in December 2017 (PSY201H5F, 2017(9); PSY210H5F, 2017(9); PSY230H5F, 2017(9)). The Student expressed that just because she wrote the exams, it did not mean she knew what she was doing because she was mentally unwell. This Committee then asked her about her mental health during 2015 when she was enrolled and wrote the final exam for PSY100Y5Y, 2015(9). The Student explained that this was her first course at the University and that she believed that she had symptoms at that time. She explained that although her symptoms were not as severe, that she also had symptoms since high school. This Committee asked the Student if she had any evidence to support that she was medically incapacitated in 2015, to which the Student responded that she did not.

The Student described, though briefly, being mentally unwell during many of her academic years, and seeing her family doctor on many occasions, who referred her to the psychiatrist Dr. J.S. Dhaliwal. This Committee did not then press the Student to elaborate and disclose specific details about her mental health, rather it turned to the medical evidence the Student submitted with her petitions. This Committee began asking the Student questions about the VOI Form #1. The Student expressed that this was the form she was instructed to use by the Division. Of significant importance to this Committee is the fact that on the VOI Form #1, dated August 12, 2018, psychiatrist Dr. J.S. Dhaliwal indicated that the Student had a "serious" degree of incapacitation under academic functioning, that was ongoing since September 2017 with no anticipated end date. Under the "serious" category of VOI Form # 1, it lists "unable to write a test/examination" as a classification.

This Committee noted that in their Response the Division argued that the Student ***failed to supply any additional supporting documentation*** that would support granting an exemption from University regulations<sup>4</sup>. Specifically, that the AAS had ***carefully considered*** all the supporting documentation submitted by the Student and acknowledged the ongoing medical issues she experienced<sup>5</sup>. Furthermore, it was reasoned that "subsequent documents ***do not provide specific enough details about how the Student's academic functioning was impaired.***"<sup>6</sup>

This Committee next opened the forum to the Division for their comments and response. The Vice Dean, Academic Experience, Professor Michael Lettieri, stated that he believed the Student's petitions were handled fairly, uniformly and in line with policies and procedures of the Division. Using the same verbiage found in the reasonings of previous committees, Professor

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<sup>4</sup> The Division's Response Submission, page 5

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*, page 6



Lettieri argued that since the Student wrote the final exams for all courses in question, it was demonstrative of her intent to complete the courses. Professor Lettieri stated that the Student had sought academic advice since 2016, was regularly in contact with regards to her academic standing, and was “warned” to monitor her progress in terms of academic standing. The Division further argued that the medical documentation submitted by the Student did not confirm her incapacity at the time of the withdrawals, and that the Student was appealing for academic withdrawal without academic penalty because she had poor grades.

Indeed, this Committee agrees, the Student is seeking academic withdrawal without academic penalty because she received poor grades. According to the Student’s psychiatrist as found on the VOI Form #1, the Student received poor grades while having a “serious” degree of incapacitation on academic functioning, being unable to write examinations from September 2017 to at least June 2018. The issue before this Committee is to decide, based on the evidence that was before the Division and the AAS, whether denying the Student’s appeal was reasonable and fair, and ultimately within a range of possible acceptable outcomes.

The Division argued that the AAS had “carefully considered” all the supporting documentation submitted by the Student and supported the AAS’s reasoning that the dates on the documents, rather than encompassing the 2015-16 and 2017-18 academic years, postdated them. This is a factual error. The VOI Form #1 dated August 12, 2018, encompasses September 2017 to June 22, 2018. There is in fact handwriting by Dr. J.S. Dhaliwal on the VOI Form #1 indicating a start date of September 2017 with no anticipated end date. At the hearing, this Committee asked the Division why the VOI Form #1 was not considered sufficient enough to grant the Student’s petitions for Fall 2017 and Winter 2018. In response, the Division advised that because the VOI Form #1 dated August 2018 was not dated contemporaneously with April 2018 or December 2017, the periods when the Student wrote her final exams, it was insufficient. Furthermore, the Division argued that since Student’s petitions were filed in March 2021 and the VOI Form #1 was dated August 12, 2018, being not more contemporaneous with Winter 2018 and Fall 2017 terms, that the Division did not give much weight, if any, to the VOI Form #1.

This Committee then asked the Student why the VOI Form #1 was dated August 12, 2018 and not more contemporaneous with the April 2018 exam or the Fall 2017 periods. The Student explained that she was very ill, that she did not know what to do, that she had been going back and forth to her family doctor for years, that she knew she was mentally unwell, however that she did not know what was wrong with her mind and that it took several months from the date of referral from her family doctor to be seen by the psychiatrist Dr. J.S. Dhaliwal. The Student then went on to express that it can often take much longer to see a psychiatrist, that she was seen by Dr. J.S. Dhaliwal within months quite quickly and that she continues to see Dr. J.S. Dhaliwal.

Furthermore, it was reasoned at the petition level that, “according to University policy, late withdrawal without academic penalty, cannot be granted when a student writes a final examination, hence demonstrating intent to complete a course.” If this reasoning is correct, the University’s VOI Form shall never be completed after a final exam has taken place to medically attest that a student was ill during a final exam. This Committee questioned the Division if there was another University form to be used in such circumstances and the Division confirmed that there was not. The Division further advised that in certain circumstances a VOI Form can be

dated after a final exam has taken place, however more evidence is required. This Committee then sought some examples from the Division of such circumstances. The Division provided the example of a car accident. The Division advised that if a student was in a car accident, a VOI Form completed months later would likely be accepted, however there would be more evidence in addition to the VOI Form completed by a medical professional, such as from Service Ontario or the police attesting to the accident. This Committee then asked both the Student and the Division whether or not the Student was notified of any deficiencies with the VOI Form # 1 or asked to provide further medical documentation. It was confirmed that the Student was never asked to provide additional medical documentation nor was she notified of any deficiencies with the VOI Form #1. The Division also confirmed that it did not reach out to the Student's psychiatrist Dr. J.S. Dhaliwal to request additional information. This Committee then brought to the Division's attention the fact that in one of the pieces of evidence submitted by the Student in support of her petitions, Dr. J.S. Dhaliwal explicitly wrote "So, there is no confusion about such situation, if further questions needed, I could be asked by third party. I can explain more if I get response from the other party." (Dr Letter 4; April 5, 2021)

This Committee finds that there is nothing on the standard VOI Form template to indicate that where a VOI Form is dated after a relevant date, there is an onus on students to provide additional supporting documentation. Furthermore, this Committee is not aware of any University policy indicating there is a finite limited period of time by which a Student must file a petition in order to rely on an earlier dated VOI Form to seek late withdrawal without academic penalty. This Committee asked the Divisional representative, hypothetically, in the Student's case, what additional evidence would have been sufficient to meet the standard of evidence the Division would require to grant the petition. The Division advised that it would require more than the medical evidence on the University's VOI Form. In response, the Divisional representative indicated that if the VOI Form was completed closer to the final exam dates in question, then the VOI Form would be sufficient. This Committee recognizes that the VOI form was not completed on the same dates of the Student's final exams, and in fact was completed by her psychiatrist months later, however this is when she got her referral appointment. This is the form the Student was instructed to use. This Committee does not agree that it is reasonable that where a mentally unwell student having a serious degree of incapacitation attends a final exam and puts pen to paper so to speak, is therefore necessarily of the mental capacity to write the exams, or indeed even necessarily of the mental capacity to make an informed decision about whether writing the exam is a good decision in light of university academic regulations and the possible consequences.

Each level of previous committees found that the Student "did not confirm her incapacitation", the COS going further finding that the Student did not present "sufficient extenuating circumstances" and the AAS reasoned that the Student had "failed to supply *any* additional supporting documentation." It is unclear to this Committee how the medical evidence provided by the Student would be considered not supporting, did not confirm her incapacitation, insufficient, or that extenuating circumstances did not occur nor were required to be presented. It is this Committee's finding that not one of the lower-level committees reasonably and adequately considered the medical evidence before it. In none of the lower-level committees written reasons was the medical evidence, including specifically the VOI Form #1 even referenced. Nor was the supporting letter from Dr. J.S. Dhaliwal dated March 1, 2021 referenced, outlining psychiatric

consultations with the Student on June 15, 2018, and June 22, 2018. Specifically, the psychiatrist letter stated in support of the Student's petitions that, "She has paranoia and unfound hallucination which caused psychotic symptoms in April 2018, lasting for a month...Her diagnoses included depression with bipolar type 1, type 2 with psychosis and depression and psychosis." Furthermore, the June 15, 2018 psychiatric consultation letter from Dr. J.S. Dhaliwal to the Student's family doctor (Dr Letter #2) states: "She was hallucinating which means she was hearing noises and voices as if you hear a crowd talking, but do not know what they are saying. She is very clear about that and also she thought people were against her in April 2018. That lasted about a month and then it stopped and she did not get any delusions of reference and she did not have any visual hallucinations or any other hallucinations, so there are unformed hallucinations with paranoia, part of depression." At the end of the Dr Letter 2 the psychiatrist Dr. J.S. Dhaliwal made the following 'Note': "The patient said to me that right now she is suspended because her score was low. I am asking her to bring that form which is recognizing her mental health and then necessary steps should be taken to appeal the decision and also give her extra protection and some other resources to the patient." This Committee finds that Dr. J.S. Dhaliwal went even further than completing the VOI Forms but also took the time to write his support for the Student's petitions, which was unreasonably and unfairly overlooked by the Division and the AAS.

This Committee finds that the evidence relied upon by the Student from her psychiatrist Dr. J.S. Dhaliwal relevant evidence of significant weight that none of the previous levels of petition or appeal bodies correctly and fairly considered, and that accordingly the decision of the Division and the AAS was unreasonable. The Division appears to have been operating under a misapprehension about the Student's mental health, the processes and procedures around the VOI Form, how a student can have a serious degree of incapacitation, still write an exam but in the professional opinion of a medical doctor be significantly impaired. The question is not whether the Student intended to complete a course. The question is whether the Student had a serious degree of incapacitation on academic functioning, which impaired her ability to write her exams and, potentially, the ability to make conscious decisions about her academic progression and the potential consequences of relevant academic policies. Despite the Student having written the exams and the psychiatrist seeing her months later, according to the medical opinion of the Student's psychiatrist, she was experiencing a "serious" degree of incapacitation "unable to write examinations."

This Committee finds that Division as well as all other appellant committees lacked appreciation of relevant medical evidence and more particularly had complete disregard of such evidence. This Committee's decision relies heavily on the Student's University of Toronto VOI Form #1 completed by her psychiatrist, Dr. J.S. Dhaliwal on August 12, 2018 and the supporting letter dated March 1, 2021, from Dr. J.S. Dhaliwal outlining psychiatric consultations with the Student on June 15, 2018, and June 22, 2018. Of most importance, this Committee relies on and accords significant deference to the medical evidence of the Student's psychiatrist submitted on the University's VOI Form, per University procedure, in the absence of any other known alternative University form and/or procedure.

Dr. J.S. Dhaliwal is a medical professional who specializes in psychiatry. This Committee defers to Dr. J.S. Dhaliwal's medical opinion and the University's policy in place around filling out the

VOI Forms. The Student completed the VOI Forms per the University's policy verifying the Student's serious illness from September 2017 to at least June, 22, 2018, as indicated on the VOI Form #1. Furthermore, Dr. J.S. Dhaliwal's psychiatric consultation letters dated March 1, 2021 and April 5, 2021, make evident his support of the Student's appeal based on his medical expertise. "I want to make it very clear that her illness is psychiatric in nature...In my clinical opinion decline in education has caused by untreated symptoms which she is treating now. I do not see that the patient can be blamed for having symptoms. Nobody has control over these symptoms; they occur and cause significant problems in young students. She is a hardworking student, and deep consideration should be given to her diagnosis of psychiatric in nature as diagnosed by her attending psychiatrist, which I am." These pieces of evidence are found to be most relevant to the Student's petitions, have not been accorded the deference they deserved by all previous committees to date, and instead have been fatally overlooked.

This Committee unanimously agrees there was indeed sufficient evidence to support the Student's petition for late withdrawal without academic penalty from Winter 2018 (PSY210H5S, 2018(1)). However, this Committee unanimously agrees that there is no medical evidence to support the Student's petition for late withdrawal without academic penalty from 2015 (PSY100Y5Y, 2015(9)). Although not as extensive, there is also medical evidence sufficient to grant the Student's petition for late withdrawal without academic penalty for Fall 2017 (PSY201H5F, 2017(9); PSY210H5F, 2017(9); PSY230H5F, 2017(9)). This Committee agrees that a reasonable person who carefully reviews all of the evidence, and properly accords it weight in terms of reliability and credibility since it's from a psychiatrist, should reasonably accept that the totality of the evidence supports the conclusion that the Student was seriously incapacitated and unable to write exams during the Fall 2017 and Winter 2018 periods, per the VOI Form #1 and other supporting medical evidence. Finally, this Committee finds that if the Division thought the evidence was lacking or questionable, it was incumbent on them to request further information from the psychiatrist Dr. J.S. Dhaliwal to confirm any details on the VOI Forms, as per the policy. The fact the Division did not make such requests should not be held against the Student, when she had completed the VOI Form and provided additional medical letters from Dr. J.S. Dhaliwal.

The University's VOI Form as stated on the University's website at the time of this Report "is the new official University of Toronto form, replacing the Student Medical Certificate, for all students who are requesting special academic consideration based on illness or injury." Under the FAQ section on the University's website, two relevant questions presumably often posed by students with the University's relevant responses are as follows:

1. ***"Why does the form not include the nature of my health problem. How can the University decide on my request for special consideration without that information?"***

In response, the University has posted: "The University respects your privacy. The most important information is whether or how your illness or injury affects your ability to fulfill your academic obligations and the time involved."

2. ***“Do I have to see someone while I’m ill or injured? What if I’m too ill or injured?”***

In response, the University has posted: “It is important that you see your practitioner as soon as possible. The form can only be signed if you were seen at the time of your illness or injury, not after the fact. As well, the University reserves the right to confirm all details on the form, including dates.”

Accordingly, it is clear to this Committee that the University recognizes that the privacy of students is important, the VOI Form being completed by a medical professional is to serve as *the* means of deciding if a request for special consideration should be granted, that a student is to have the form completed as soon as possible, which this Committee finds the Student did given the circumstances. If there were questions around the VOI Forms, the onus was on the University to seek clarity and confirm any details on the forms, including dates.

Furthermore, at the bottom of the VOI Form, the following is stated:

**“In some appeal situations, the University may require additional information from you or your practitioner to decide whether or not to grant or confirm special consideration.”**

If the Division required further additional information from the Student or her psychiatrist Dr. J.S. Dhaliwal, there was a clear onus on the Division to request such information, not completely disregard the medical evidence it had before it. Finally, there is nothing within University policy that this Committee is aware of or that the Division could point this Committee to:

1. that indicates that a request for late withdrawal without academic penalty shall be filed contemporaneous, i.e. within the same month or year as the course was completed; nor
2. that there is a separate University form/procedure/evidentiary burden placed on students to prove their level of mental illness/incapacitation during the period of incapacitation attested by a medical professional.

To the contrary, as confirmed by the Division during the hearing, and written within University policy “Registration and Course Enrollment” under “Enrollment Limitations” and specifically under “Late Withdrawal After the Drop Date (LWD)” one of the methods acknowledged is via a petition. “Once the academic deadline for dropping a course has passed, the only method of dropping a course *without petition* (i.e., with petition is a means) is by using the LWD option online at <http://student.utm.utoronto.ca/LWD>.” The Student proceeded via petition by providing medical evidence. Her petitions ought to have been taken seriously and should not have been dismissed without regard to the medical evidence, or with no request for additional supporting information.

This Committee finds that there was insufficient medical evidence to support the Student’s petition for late withdrawal without academic penalty for PSY100Y5Y, 2015(9), and therefore

this Committee dismisses the Student's appeal with respect to that course. However, this Committee finds that it was unreasonable and unfair for the lower committees to have overlooked the Student's medical evidence for a late withdrawal without academic penalty for PSY201H5F, 2017(9); PSY210H5F, 2017(9); PSY230H5F, 2017(9); and PSY210H5S, 2018(1), and if questionable, to not follow the University's processes by failing to seek any confirmation on the details of the VOI Forms or psychiatrist letters, while deeming the totality of the medical evidence insufficient and denying the petitions. Accordingly, this Committee finds that a late withdrawal without academic penalty for PSY201H5F, 2017(9); PSY210H5F, 2017(9); PSY230H5F, 2017(9); and PSY210H5S, 2018(1) is an appropriate remedy in this case.

The appeal is allowed, in part.

**UNIVERSITY OF TORONTO  
GOVERNING COUNCIL**

Report # 420 of the Academic Appeals Committee  
**June 23<sup>rd</sup>, 2022**

To the Academic Board  
University of Toronto

Your Committee reports that it held an electronic hearing, conducted by Zoom on Thursday, March 17, 2022, at which the following members were present:

**Academic Appeals Committee Members:**

Professor Hamish Stewart, Senior Chair  
Professor Mark Lautens, Faculty Governor  
Mr. Amin Kamaleddin, Student Governor

**Hearing Secretary:**

Ms. Nadia Bruno, Special Projects Officer, Office of Appeals, Discipline and Faculty Grievances

**For the Student Appellant:**

Mr. S.J. (the “Student”)

**For the Faculty of Medicine:**

Mr. Robert Centa, Paliare Roland Rothstein Rosenberg LLP  
Ms. Glynnis Hawe, Paliare Roland Rothstein Rosenberg LLP

**Overview**

In July 2016, the Student began a five-year residency program in paediatric neurology at the Hospital for Sick Children (SickKids). During the 2018/2019 academic year, the third year of the program, the Student failed one of his four-week rotations. Following three months of informal remediation, the program’s Promotions and Competence Committee (PCC) recommended that he complete six months of formal remediation. The Faculty of Medicine’s Board of Examiners – Postgraduate (BOE-PG) ultimately accepted this recommendation. The Student appealed to the Faculty’s Appeal Committee (FMAC). While the FMAC was considering the Student’s appeal, the Student successfully completed the formal remediation. Effective June 5, 2020, the Student resigned from the residency program. On July 21, 2020, the FMAC dismissed the Student’s appeal. The Student appeals to your Committee.

The appeal is dismissed.

### **Chronology of the Student's Residency and of the Student's Appeals**

In the fall of 2016, the Student entered the Paediatric Neurology Residency and Fellowship Program at SickKids, a five-year program. The program director was Dr. Cecil Hahn of SickKids' Division of Neurology and of the Faculty's Department of Paediatrics. Each year of the program consisted of several training blocks of approximately four weeks each. A student's performance in each block was evaluated on a scale of 1 to 5, with 3 ("meets expectations") being the passing grade. Throughout the first two years of the program and the first eight blocks of the third year, the Student received an overall evaluation of 3 or higher in each rotation, though some concerns were expressed about his performance.

In the ninth block of the third year, the Student was assigned to the Epilepsy rotation, which ran from February 11 to March 10, 2019, under the supervision of Dr. Robyn Whitney. Although he received an overall passing grade of 3, some elements of his performance were assessed at 2 ("below expectations").

In the tenth block of the third year, the Student was assigned to the Ward/Consult rotation, which ran from March 11 to April 7, 2019, under the supervision of Dr. Elizabeth Pulcine. His overall performance in this rotation was assessed at 2 ("below expectations"). In her evaluation, Dr. Pulcine expressed several concerns about the Student's background knowledge and about his skills in patient examination, history-taking, and diagnosis.

In early March 2019, Dr. Hahn had discussions with several faculty members who had supervised the Student concerning the Student's performance. Dr. Hahn concluded that the Student was in academic distress and, in accordance with the applicable policy, presented the PCC with some options for remediating the Student's performance. On April 1, 2019, the PCC recommended six months of formal remediation. The Student objected to this recommendation on various grounds. The PCC responded to the Student's objections by withdrawing its original recommendation and recommending instead three months of informal remediation. The remediation was to be conducted in accordance with an academic support plan which provided certain criteria for success. On May 2, 2019, the Student agreed to the academic support plan.

Accordingly, from May 6 to July 28, 2019, the Student engaged in three blocks of informal remediation. The Student failed to meet the criteria set out in the academic support plan. His evaluations noted weaknesses with his skills in patient examination and history-taking, among other areas.

Because informal remediation had not succeeded, the PCC recommended that the Student again be presented to the BOE-PG for formal remediation. The Student appealed that recommendation to the Department's Appeal Committee. That appeal was dismissed (Student's Notice of Appeal [NoA], p. 60). The PCC then asked the BOE-PG to order formal remediation. On August 26, 2019, the BOE-PG accepted that recommendation and directed the Student to enter into a six-block period of formal remediation, which would last roughly six months.

The Student requested, and was granted, permission to complete a block of training at McGill University, from October to December 2019, before beginning his formal remediation. The Student began the formal remediation on December 16, 2019.

In January 2020, the Student appealed the BOE-PG's decision to require formal remediation to the FMAC. On March 2, 2020, the FMAC issued its decision. It considered information provided by the parties that had not been before the BOE-PG, and in light of this information, directed the BOE-PG to reconsider its decision. In particular, the FMAC was "concerned that [the Student] did not receive the



feedback that was used internally to justify the need for remediation and some of this this feedback ... was provided well after the evaluation period” (NoA, p. 212).

On March 30, 2020, the BOE-PG affirmed its earlier decision to require formal remediation and on April 27, 2020 provided its reasons for doing so. It is this decision that is ultimately the subject of the Student’s appeal to your Committee.

The Student successfully completed formal remediation on May 29, 2020. Effective June 5, 2020, he resigned from the residency program.

Meanwhile, the Student had appealed the BOE-PG’s decision of March/April 2020 to the FMAC. His grounds of appeal were essentially the same as those on the appeal to your Committee, as noted below. On July 21, 2020, the FMAC dismissed the Student’s appeal (NoA, pp. 006-007).

### **The Student’s Complaints about Dr. Hahn and Dr. Dlamini**

In November 2019, the Student filed two complaints with the Faculty’s Department of Paediatrics. In the first complaint, he alleged that Dr. Hahn had harassed him at a meeting on March 4, 2019, and that Dr. Hahn’s decision to refer him to the PCC was retaliation or reprisal for a negative performance evaluation that the Student had made of Dr. Hahn on March 13, 2019. The second complaint concerned Dr. Noma Dlamini. Dr. Dlamini had supervised the Student’s rotation from June 8 to 30, 2018, but did not complete her evaluation of the Student’s performance until May 2019. The Student alleged that this late filing was a form of intimidation and harassment.

The Student’s complaints were dealt with in accordance with the Faculty’s procedures for handling complaints of intimidation, harassment, and unprofessionalism in post-graduate medical programs. Dr. Salvatore Spadafora, Vice-Dean for post-graduate medical education, ultimately concluded that the Student had not been intimidated or harassed, but ordered the late evaluation removed from the Student’s record.

Your Committee has no jurisdiction to consider these complaints on their own merits. While your Committee is arguably not bound by the factual conclusions reached by Dr. Spadafora in resolving them, to the extent they are relevant to this appeal, your Committee finds as follows.

First, with respect to the allegation that Dr. Hahn’s decision to refer the Student to the PCC was a form of retaliation, the evidence is overwhelming that Dr. Hahn was unaware of the evaluation until December 2019 and that, accordingly, it could not have affected his decision-making in March 2019. Your Committee had before it Dr. Hahn’s unchallenged affidavit to that effect (Faculty Book of Documents [BoD], Tab 10) and no evidence to the contrary. Moreover, the evidence is also overwhelming that Dr. Hahn was motivated to refer the Student to the PCC by the information he had received from his colleagues expressing their concerns about the Student’s performance in the residency program (BoD, Tabs 4 to 7). Finally, in any event, the issue on this appeal is the reasonableness of the BOE-PG’s decision to require the Student to take formal remediation, not Dr. Hahn’s reasons for referring the Student to the PCC.

Second, the late evaluation was only one of many pieces of information that was before the BOE-PG when it made its decision. Your Committee finds that removing it from the Student’s file at an earlier stage would have made no difference to that decision.

### **Jurisdictional Comments from the Chair**

The Chair of your Committee has doubts as to whether it was appropriate for your Committee to hear this appeal. As noted, the Student appeals from a decision directing him to complete an academic requirement that he then successfully completed. This sequence of events suggests two related reasons why it might not be appropriate to hear the appeal. First, the student having successfully completed the academic requirement in question, an appeal from an order that he do so is arguably moot. Second, if your Committee agreed with the Student's submission that he should not have been directed to complete this requirement, it is unclear what remedy your Committee could have given him. The Student specifically seeks the following remedy (NoA, p. 011):

a clear recognition letter; that **1**) admits; a) the injustice of the prolonging process that has many circumstances of bias and external influences and b) unfair decisions from the Board of Examiners (BOE) of the remediation for six months that was released on August 26, 2019, and **2**) clarifies all inaccurate responses and harmfulness from all committees who supported that decision ...

Your Committee "has only the powers given to it by Governing Council, expressly or by necessary implication, in its Terms of Reference" (Report 359-1). It is unclear whether the discretion to hear a moot appeal or the jurisdiction to issue a letter of the kind sought by the Student falls within those powers. Since the Student's appeal is in any event dismissed, and since it appears that the Faculty deliberately chose not to argue these questions, it is not necessary to determine them.

### **The Student's Appeal to the Academic Appeal Committee**

The Student's central claim is that the BOE-PG should not have required him to engage in formal remediation. The Student raises the following grounds of appeal:

- A. "Lack of Transparency and Timeliness" leading up to Dr. Hahn's decision to refer the Student to the PCC (NoA, pp. 014-015).
- B. "Lack of Consistency" in that the Student "did not have any opportunity to do outside rotation or elective during the unofficial remediation period ..." (NoA, p. 015, original emphasis).
- C. "Lack of Confidentiality". The Student alleges breaches of confidentiality.
- D. "Lack of Fairness and Equity" (NoA, p. 016). Under this heading, the student makes a number of complaints about the conduct of the informal remediation (May to July 2019).
- E. "Lack of Credibility in Evaluations". Under this heading, the Student takes issue with the manner in which he was evaluated throughout the program.
- F. "Lack of Adhering to Official University Policy and Procedure". Under this heading, the Student argues:
  1. His supervision during the formal remediation was not consistent with the BOE-PG's remediation decision;
  2. In particular, Dr. Mahendranath Moharir should not have been assigned as an evaluator because of alleged bias;
  3. The remediation block that he passed at McGill should have been counted towards his formal remediation; and
  4. When reconsidering his case, the BOE did not comply with the FMAC's directions.

The Faculty submits that “[t]he sole issue on this appeal is whether the FMAC’s decision to uphold the decision of the BOE-PG to require remediation was reasonable” (Faculty Submissions, para. 29).

Your Committee finds that none of the grounds of appeal raised by the Student cast any doubt on the reasonableness of the BOE-PG’s decision or on the reasonableness of the FMAC’s dismissal of the Student’s appeal from that decision.

#### *A. Allegations Concerning Transparency and Timeliness*

The essence of the Student’s complaints under this heading is that “there were never any concerns about my performance brought to my attention” in the year proceeding March 2019 (NoA, p.014, emphasis removed). However, as the Faculty points out in its submission, this complaint is clearly contradicted by the material filed by both parties with your Committee. The Student’s Notice of Appeal and the Faculty’s Book of Documents both contain numerous expressions of concern about the Student’s performance before March 2019 (see also the discussion under E below).

Moreover, as the Faculty submits, “Even an absence of prior documented academic difficulty would not invalidate [the Student’s] referral to remediation” (Faculty Submissions, para. 81). The issue for the BOE-PG, given the information before it when it reconsidered its decision in March 2020, was whether the Student required remediation as of the end of his informal period of remediation (*i.e.*, late August 2019). Given the Student’s weak performance in the ninth and tenth blocks of his third year, and particularly given his lack of success in informal remediation, the BOE-PG’s determination that he required formal remediation was reasonable.

#### *B. Allegation of Lack of Consistency*

The Student complains about inconsistent responses to his requests to do outside rotations during the period of informal remediation, in particular a rotation that he proposed to do at McMaster from August 26 to September 22, 2019. As noted above, the Student was eventually able to complete a rotation at McGill University from October to December 2019. The Student does not clearly explain how these events bear on the decision of the BOE-PG; perhaps the suggestion is that good performance at McMaster would have made formal remediation unnecessary. In any event, your Committee finds no inconsistency in the way the Faculty dealt with the Student’s requests concerning outside rotations. When the Student proposed the McMaster rotation, Dr. Hahn simply told him that a decision on that issue would have to await the outcome of his appeal of the decision of the BOE-PG to the Department’s appeal committee (BoD, p. 157). Ultimately, the Faculty did approve this suggestion and the Student chose not to take it up. There is no merit to the allegation of lack of consistency.

#### *C. Allegations of Lack of Confidentiality*

The Student says (i) that “a resident and 2 staff that Dr. Hahn ... and Dr. Yeh had told them that they had concerns about me **prior** to the decision of remediation” (NoA, p. 015, original emphasis). He also says (ii) (under ground of appeal D) that Dr. Hahn contacted Dr. Cooper and Dr. Aziz, who were his supervisors during a rotation from July 29 to August 25, 2019, before he started that rotation, “and told [them] that he has concerns about me and he needs their ‘honest’ feedback” (NoA, p. 016). He alleges that these incidents adversely affected his remediation.

As for allegation (i), throughout the proceedings, the Student has never provided any evidence as to who these three people were (except his statement that they “were not ... part of the remediation plan”), precisely what information they received, or whether they were unauthorized to receive such information. Moreover, he has never made any submissions as to how this incident, whether or not amounted to a breach of confidentiality, might have affected the reasonableness of the BOE-PG’s decision or the manner in which his informal or formal remediation was conducted. It is not disputed that Dr. Hahn and Dr. Yeh did have concerns and that the BOE-PG took those concerns into account.

As for allegation (ii), your Committee agrees with the Faculty that any disclosures Dr. Hahn made to Drs. Cooper and Aziz about his concerns regarding the Student’s performance were authorized by the Faculty’s Remediation Policy. Your Committee agrees with the Faculty’s submission that “Drs. Cooper and Aziz were [the Student’s] clinical supervisors and it was within Dr. Hahn’s discretion as Program Director to discuss [the Student’s] learning needs with them” (Faculty Submissions, para. 99). The Student does not explain how these discussions might have affected the reasonableness of the BOE-PG’s decision or the manner in which his remediation was conducted.

The Student states that Dr. Hahn’s discussions with Drs. Cooper and Aziz indicated an “intention of punishing me with 6 months remediation regardless of the outside rotation [at McMaster] ...” (NoA, p. 16, emphasis removed). This submission misconstrues the function of remediation. Remediation is not a form of punishment, but an opportunity for students to demonstrate that their skills are at the level necessary to proceed in their residency. Your Committee finds that these discussions were entirely proper.

#### *D. Allegations Concerning the Conduct of the Informal Remediation*

The Student notes that he passed the first block of his informal remediation, supervised by Dr. Hernan Gonorazky, and submits that “this rotation was not accounted for” (NoA, p. 016). There is no basis for this submission. The materials filed by the parties indicate that the Student successfully completed this rotation and that the evaluation forms part of his academic record (BoD, pp. 283-284).

The Student alleges that Dr. Hahn accused him of “being unprofessional” because of his decision to appeal the BOE-PG’s decision. The Student had a right to bring that appeal and his decision to do so does not manifest any lack of professionalism. However, there is nothing in the record to document the Student’s allegation that Dr. Hahn accused him of lack of professionalism on this basis. Your Committee rejects this allegation.

#### *E. Allegations of Lack of Credibility in Evaluations*

Under this heading, the Student challenges some of the evaluations that he received at various points from various supervisors during his third program year and during the informal remediation. He also notes the lateness of Dr. Dlamini’s evaluation from June 2018, discussed above, and argues that there was no concern about his communication skills prior to March 2019. At the hearing of the appeal, the Student emphasized the subjective element in the evaluation of skills such as communications and history-taking.

Your Committee will not reassess the merits of the Student’s academic performance. It is well-recognized that reassessing an evaluation is not the proper role of this Committee, as it has neither the expertise nor the informational basis to make such a reassessment. For example, the Student recounts an evaluation, conducted by Dr. Weiss, of his history-taking skills. He submits that he should have passed because he

“asked all important relevant questions”, but Dr. Weiss failed him because he “missed a few points” (NoA, p. 017). Your Committee is in no position to determine whether the competing assessments that Dr. Weiss and the Student himself have provided of his performance on this evaluation were reasonable or correct, and we must therefore accept Dr. Weiss’s assessment. There is no indication in the materials that the Student appealed any of the grades assigned at any point in his program. Your Committee accepts that there is a subjective element in assessment, but the Student has not provided us with any reason to think that any subjective element in evaluation was applied unfairly to him. In any event, the proper venue for such determinations is a grade appeal.

However, it is fair to say that the essence of the Student’s submission under this heading was not that your Committee should directly reassess his performance. It was, rather, that your Committee should infer from his previous academic success that he would have continued to succeed and therefore it follows that he was not assessed fairly during the third year of his program and during his informal remediation; thus, his failure must have been due to some factor other than his performance. As he puts it, “I am not aware that people can fluctuate from competence to incompetence so rapidly and abruptly between rotations” (NoA, p. 018, emphasis removed).

Your Committee declines to draw the inference that the Student’s previous academic success means that his performance during the third program year and during the informal remediation was not properly assessed. As counsel for the Faculty rightly noted at the hearing, past performance is not a guarantee of future success. Moreover, there are numerous indications of concerns about the Student’s performance prior to March 2019 (see, for example, BoD, pp. 201, 212-217, 239, 252, 266; these assessments include several occasions on which the Student’s performance had been assessed at 2 (“below expectations”) on various competencies). The Student’s difficulties during the Ward/Consult rotation and the period of informal remediation, contrary to the Student’s submissions, are not inconsistent with his past performance.

#### *F. Alleged Failure to Follow University Policies During Formal Remediation*

The Student raises some objections to the supervisors who were assigned to him during the period of formal remediation. He notes that two of those supervisors had also supervised him during the period of informal remediation and that three of them were members of the PCC; moreover, both the BOE-PG and the FMAC had indicated that a greater diversity of supervisors might be advisable. The Faculty notes that, in fact, only one of the formal remediation supervisors had supervised him during informal remediation (the other completed an evaluation but was not a supervisor) and that the Student had a total of 11 different supervisors during the formal remediation.

It might have been preferable to arrange the Student’s remediation so that he was supervised only by faculty members who had not previously evaluated him. However, given the relatively small size of the paediatric neurology program, that does not appear to have been feasible. In any event, your Committee finds that the Student’s objections to his supervision are irrelevant to this appeal because, as already noted, the Student successfully completed the formal remediation.

Your Committee rejects the allegation that Dr. Moharir was biased against the Student. The Student states that Dr. Moharir “failed me for professionalism during PGY-1” and that Dr. Moharir “did not provide me with any feedback regarding the professional concerns” (NoA, p. 019). There is no basis for the claim that the Student “failed” professionalism in the first program year. As noted, the Student passed all training blocks in the first two years of the program. Dr. Moharir did contribute to an evaluation where the Student

received a grade of 2 (“below expectations”) in certain aspects of his professional role, but the supervisors’ overall evaluation of the Student in that role was 3 (“meets expectations”) (NoA, pp. 330-332). In Block 1 of the third program year, Dr. Moharir and Dr. MacGregor jointly evaluated all aspects of the Student’s professional role as 3 (“meets expectations”) or 4 (“above expectations”) (BoD, p. 288). In any event, an instructor’s negative assessment of a student’s work is not an indication of bias, nor is it an indication that the instructor will be unable to assess a student’s work fairly in the future.

The Student argues that the three months he spent at McGill should have been counted as part of his formal remediation. He states that it was “officially part of the initial remediation plan” (NoA, p. 019). Again, since the Student successfully completed the formal remediation, the significance of this argument is unclear. In any event, there is nothing in the record to suggest that the Student’s time at McGill was ever part of the formal remediation or that the Student was told it would be. The BOE-PG accepted the remediation plan proposed by the Student’s program (NoA, p. 061). The only reference to McGill in that plan was the statement that the Student “received permission to complete a three month elective at McGill University ...” (notes of the CPC Committee meeting, NoA, p. 167). There was no suggestion that this period would count towards the formal remediation.

The Student submits that when reconsidering his case, the BOE-PG did not comply with the FMAC’s directions. As noted, on March 2, 2020, the FMAC ordered the BOE-PG to reconsider its decision of August 26, 2019, and specifically asked it to consider certain documents (NoA, p. 212). The Student says that the BOE-PG did not do so. When it released its reconsideration decision on March 30, 2020, the BOE-PG stated that it had had “a thorough discussion of this new material” (NoA, p. 216). There was nothing before your Committee to cast doubt on this statement.

## **Conclusion**

The appeal is dismissed.

**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.

**UNIVERSITY OF TORONTO  
GOVERNING COUNCIL**

Report #422 of the Academic Appeals Committee  
**September 19, 2022**

To the Academic Board  
University of Toronto

Your Committee reports that it held an electronic hearing, conducted by Zoom on Thursday, June 9, 2022, at which the following members were present:

**Academic Appeals Committee Members:**

Professor Hamish Stewart, Senior Chair  
Professor Nhung Tran, Faculty Governor  
Mr. Evan Kanter, Student Governor

**Hearing Secretary:**

Ms. Nadia Bruno, Special Projects Officer, Office of Appeals, Discipline and Faculty Grievances

**For the Student Appellant:**

Mr. M.N. (the “Student”)

**For the School of Graduate Studies:**

Ms. Jodi Martin, Paliare Roland Rosenberg Rothstein LLP

**Overview**

The Student was a Ph.D. candidate in the Institute of Biomaterials and Biomedical Engineering (the Institute) in the Department of Mechanical & Industrial Engineering at the University of Toronto. His doctoral supervisor was Professor Aaron Wheeler. In the Fall 2019 term, while the Student was on medical leave, the Institute removed Professor Wheeler as the Student’s supervisor and offered the Student two options for completing his doctoral dissertation. The Student rejected those options and appealed the Institute’s decision to remove Professor Wheeler as his supervisor to the Department’s Graduate Department Academic Appeals Committee (GDAAC). That appeal was dismissed. The Student appealed further to the Graduate Academic Appeals Board (GAAB). The GAAB dismissed his appeal.

The Student now appeals to your Committee. He asks your Committee to require the Institute to assign Professor Wheeler as his supervisor or, in the alternative, to order a new hearing at the GDAAC.

The appeal is dismissed.

## Chronology

The Student enrolled in the Ph.D. program at the Institute in September 2012, under the supervision of Professor Wheeler, and began work in Professor Wheeler's lab. In February 2015, the Student passed his qualifying examination. The next step in his program was to complete a doctoral dissertation, based on his work in the lab.

The Student suffers from a major medical condition and has received a number of medical leaves as accommodations for this condition. It is apparent from the material filed with your Committee and from the Student's oral submissions at the hearing that, between 2015 and 2018, the medical condition adversely affected his work in Professor Wheeler's lab and his progress towards completion of his doctorate.

From the Winter 2018 term onwards, the Student was on a medical leave of absence. He anticipated returning to his research sometime in 2019.

At some point during the Student's medical leave, Professor Wheeler determined that he could no longer serve as the Student's supervisor. The material before your Committee indicates that he had made this decision as early as the Fall 2018 term, and in any event, well before September 2019. Other material before your Committee is consistent with that statement. In his written submissions, the Student recognizes that the decision was made at some point between October 2018 and February 2019.<sup>1</sup>

On September 11, 2019, Professor John Davies, the Institute's Associate Director of Graduate Programs, advised the Student by email that when he returned from his medical leave, Professor Wheeler would no longer be his supervisor. The stated reason was not Professor Wheeler's unwillingness to supervise but his lab having "moved on to other research foci" (Appeal Statement, p. 79). This statement was untrue. As SGS concedes at para. 76 of its submissions, "the primary reason ... was [that] Professor Wheeler was no longer prepared, under any circumstance, to continue to supervise [the Student]." The Institute should have told the Student that. As SGS puts it, "the department ... ought to have communicated more candidly with [the Student] regarding the primary reason he could not return to Professor Wheeler's laboratory." Your Committee agrees. The Institute should, as soon as possible once the decision was made, have informed the Student that Professor Wheeler would no longer supervise his doctoral work.

After the Student returned to Toronto, the Institute offered him two options for completing his doctoral dissertation. These options were presented to the Student at two meetings, the first on October 29, 2019, with Professor Davies, and the second on November 28 with Professor Davies and Ms. Candice Stoliker (Coordinator of Student Progress and Support). Following the second meeting, Professor Davies summarized these options in a letter to the Student dated November 28, 2019. Under either option, Professor Davies would serve as the Student's supervisor (School of Graduate Studies Book of Documents [BoD], Tab 23). The Student rejected both options and

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<sup>1</sup> "There was a premeditated plan made and executed by the department to enable prof Wheeler to back out of supervisorship that happened during my medical leave in Oct 2018 and Feb 2019." (Appeal Statement, p. 19.)

indicated that he wished to continue his doctoral research under Professor Wheeler's supervision (BoD, Tab 22).

The Student appealed to the GDAAC, which recommended that the Chair of the Department dismiss the Student's appeal, and the Chair did so (BoD, Tabs 26 and 27). The Student appealed to the Graduate Academic Appeals Board (GAAB). On February 22, 2021, the GAAB dismissed his appeal (BoD, Tab 30).

The Student appeals to your Committee. As noted above, the primary remedy he seeks is an order allowing him to complete his Ph.D. under Professor Wheeler's supervision in Professor Wheeler's lab. In the alternative, he seeks an order requiring a new hearing at the GDAAC.

### **Procedural aspects of the appeal**

The appeal was originally scheduled to be heard in February 2022. Shortly before the scheduled hearing of the appeal, the Student sought to add to the record before your Committee a document of 151 pages, consisting of 22 pages of summary and commentary followed by 129 pages of emails obtained by the Student pursuant to a freedom of information request. The Senior Chair refused to allow the record to be supplemented so close to the date of the hearing. The hearing was later rescheduled to June 2022. The Senior Chair then permitted the Student to add these materials to the record. The SGS did not file any material in response.

At the hearing, an issue arose concerning what happened at a meeting of October 29, 2019, between the Student and Professor Davies. In his appeal materials, the Student states that Professor Davies appeared "surprised" by something that was said at this meeting and urged your Committee to draw certain inferences from that surprise. Professor Davies was present at the hearing of the appeal and made a statement to your Committee in which he said that he was indeed surprised but offered a different explanation for his surprise than the one the Student urged your Committee to infer. The Student then sought leave to cross-examine Professor Davies. The Chair refused to permit this cross-examination on the ground that Professor Davies was not a witness; that is, Professor Davies was not under oath and had not been examined in chief; therefore, there was no testimony on which he could be cross-examined. In retrospect, the Chair's view is that he should not have allowed Professor Davies to make his statement. In any event, the reasons why Professor Davies appeared surprised during this meeting are irrelevant to the determination of this appeal.

### **The relevant policy**

There is no doubt that the relationship between a supervisor and a doctoral student is an extremely important one for both parties. For the student, a good supervisory relationship is essential to the completion of the doctoral degree and often continues to be significant in the student's professional life after the degree is earned. From the faculty member's perspective, supervising doctoral students is intellectually rewarding in its own right and, particularly in science, medicine, and engineering, can be indispensable to the supervisor's own research

program. The student-supervisor relationship requires trust and confidence, clear communication, intellectual compatibility, and sometimes forbearance, from both the student and the faculty member.

Accordingly, the University's Graduate Supervision Guidelines contemplate that the supervisory relationship will be a continuing one (BoD, p. 005):

The student-supervisor relationship is critical to a student's success in graduate school and should be established early in a student's program and, barring graduate unit policies or unanticipated circumstances, remain intact until the student has successfully submitted and defended their thesis.

Divisional decisions to assign, remove, and/or replace a doctoral student's supervisor are "application[s] of academic regulations and requirements" (AAC Terms of Reference, section 2.1). If a division were to make an unreasonable decision about these matters, your Committee could provide a student with a remedy, provided that remedy lay within its jurisdiction.

### **The Student's grounds of appeal**

#### *The Primary Remedy Sought*

The Student's written and oral submissions were directed primarily at persuading your Committee that it should order the Institute to require Professor Wheeler to resume (or to continue)<sup>2</sup> supervising his doctoral research. The Student's submissions might be framed as arguing that it was unreasonable for the Institute to conclude that continued supervision by Professor Wheeler was no longer possible.

The Chair of your Committee is of the view that your Committee has no jurisdiction to make an order that would effectively require a particular faculty member to serve as a particular student's doctoral supervisor or that would require a particular faculty member to accept a particular student into their lab. In their capacities as teachers, scholars, or researchers, individual faculty members are not parties to proceedings before your Committee. The orders of your Committee are directed to divisions of the University, where they are acted upon by faculty and staff acting in administrative roles (*e.g.*, program director, associate dean, assistant dean, department chair, graduate co-ordinator, etc.). Your Committee cannot tell an individual faculty member how to conduct their research program.

Your Committee would not order the remedy sought by the Student in this case even if it had jurisdiction to do so. It is obvious that Professor Wheeler is unwilling to supervise the Student. On the other hand, the Student is, apparently, willing to be supervised by Professor Wheeler. In his appeal statement, the Student says "my supervisor is a wonderful person and I have had an amicable relationship with him" (p. 12). Your Committee found this surprising. During the

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<sup>2</sup> At the hearing of the appeal, the Student sought to persuade your Committee that the remedy he sought was a "continuation" of Professor Wheeler's supervision, rather than a "resumption" of his supervision. His argument was that if the Institute's decision was set aside, it would be as if Professor Wheeler had never ceased being his supervisor. There is a certain remedial logic to this argument. However, for the purposes of this appeal, nothing turns on whether the remedy sought should be characterized as a continuation or a resumption of supervision.



hearing of the appeal, the Student described Professor Wheeler in very harsh terms. He submitted that during 2018 and 2019, Professor Wheeler and others had abused their power and had acted “like a pack of thieves in the night”; he also submitted that Professor Wheeler’s March 2020 statement was full of “frivolous and false accusations,” “malicious slanders,” and “vile statements.” Your Committee rejects this characterization of the March 2020 statement, which your Committee reads as an anguished, honest, and reflective account of Professor Wheeler’s personal and professional experience as the Student’s supervisor. There is no possibility that there could be an effective supervisory relationship between Professor Wheeler and the Student.

The Student makes five principal submissions in support of his position that the Institute’s decision was an unreasonable application of SGS’s policy concerning doctoral supervision. He submits that (1) an email of August 4, 2016, constituted a contract between him and Professor Wheeler, requiring Professor Wheeler to continue as his supervisor; (2) as of November 2017, he was only three months away from completing his dissertation; (3) Professor Wheeler would have been obliged to continue supervising him if he had returned to Toronto as of May 2019; (4) the options offered by the Institute are not feasible; and (5) continued supervision by Professor Wheeler is required by the University’s duty to accommodate the Student’s disability.

1. What was the effect of the email of August 4, 2016?

The Student submits that Professor Wheeler told him that “I could stay for the maximum allowed time of 10 years for the PhD, as long as I didn’t need funding from him ... after year 5” (Student’s Appeal Statement, p. 9). This submission is based on an email that Professor Wheeler sent to the Student on August 4, 2016, summarizing his concerns about the Student’s progress. The material portions of this email read as follows:

- (1) PhD students who graduate from my lab typically write a dissertation that includes four chapters describing new contributions. At this point, you have written one (the “chemostat”).
- (2) As I have note many times before, I am worried about your progress. You are far, far behind where my other PhD students have been at this stage.
- (3) As I understand it, at U of T, PhDs can last for up to 10 years. As far as I am concerned, you can take that whole duration if you want.
- (4) But if you opt for #3, I cannot afford to pay you during that time. As I understand it, the last month that I am obligated to pay you is December, 2017. After that point, your pay will be cut substantially (perhaps to zero) depending on what I have.

The Student submits that this email is a binding commitment from Professor Wheeler, indeed that it constitutes a contract between himself and Professor Wheeler to the effect that Professor Wheeler would continue as his supervisor. Again, the implication is that it was unreasonable for the Institute to remove Professor Wheeler in the face of this commitment.

SGS submits that only the Ontario Superior Court of Justice can answer the question whether the email is a contract, and that in any event it is not a contract (SGS Submissions, paras. 52 and 19).

The GAAB concluded that it had no jurisdiction to determine whether the email was a contract and no jurisdiction to give any contractual remedies.

According to section 3.1.4 of its Terms of Reference, the Chair of your Committee has the power to “determine all questions of law.” Whether a contract exists and how it should be interpreted are questions of law. It is therefore arguable that if the existence and meaning of a contract was for some reason relevant to the determination of an issue that was properly before your Committee, your Chair would have the jurisdiction to decide those issues. However, even if that were to happen, the Chair agrees with the Institute that, like the GAAB, your Committee has no jurisdiction to give any remedies for breach of contract. Its remedial jurisdiction is limited to providing remedies for unreasonable applications of academic regulations and requirements (AAC Terms of Reference, section 2.1).

In any event, the Chair of your Committee finds that the email is not a binding commitment by Professor Wheeler to continue serving as the Student’s supervisor, much less a contract between Professor Wheeler and the Student. It is simply a statement to the effect that, as of 2016, Professor Wheeler had no objection to the Student’s taking whatever time was necessary, within the 10-year period, to complete his Ph.D. Whether the Student could indeed take so much time would of course not be for Professor Wheeler alone to decide, as it would also depend on the input of the other members of the supervisory committee and the graduate coordinator.

The statements in Professor Wheeler’s email of August 4, 2016, do not render the Institute’s decision to remove him as the Student’s supervisor unreasonable.

2. Was the Student three months away from completing his doctorate?

The Student says that he had been told in November 2017 that “my progress was sufficient to letting me graduate after 3 more months of work” (Appeal Statement, p. 9), the implication being that the Institute’s decision to remove Professor Wheeler as supervisor was unreasonable because it prevented him from doing those three months of work in Professor Wheeler’s lab.

This submission is based on a report of a meeting of the Student’s supervisory committee, held on November 27, 2017. After evaluating the Student’s progress in some specific areas, the report states that the “earliest reasonable program completion date” is August 2018. It then goes on to say (BoD, p. 035):

While some progress has been made the student still lags behind where he should be after 5 years of research. The committee remains concerned about the lack of progress and are worried about completion.

We recommend:

- 1) supervisor and student to define a 3 month plan with milestones
- 2) monthly progress reports sent to all committee members
- 3) progress meeting in 1<sup>st</sup> week of March.

The committee thinks it is unlikely that the student will complete unless the above milestones are met.

The Student’s submission misconstrues this report. The report does not say that the Student can complete his Ph.D. within three months; to the contrary, it states that the earliest reasonable time

for completion of the Ph.D. is 10 months. The three-month plan was not a timeline for completion; it was a prerequisite to the Student's progress towards completion. (See also email from Professor Wheeler to Rhonda Marley, December 17, 2017, Latest FIPPAs, Tab 16.)

There is nothing in the supervisory report of November 2017 that casts any doubt on the reasonableness of the Institute's decision in November 2019.

3. Would Professor Wheeler have continued to supervise the Student had he returned earlier to Toronto?

In his written and oral submissions, the Student repeatedly asserted that if he had returned to Toronto by May 2019, Professor Wheeler would have been obliged to continue supervising him. This submission overlaps with the first and second. The implication is that it was unreasonable for the Institute to find, when the Student did return only a few months later, that Professor Wheeler's continued supervision was no longer possible.

This submission is supported principally by an email, dated October 1, 2018, from Professor Wheeler to Professor Elie Sone, who at that time was serving as the Institute's Associate Director of Graduate Programs. The critical portion of the email reads as follows (Latest FIPPAs, p. 33):

...remember [the Student]? A quick recap – he took his second medical leave earlier this year – it was to last between ~March-August [2018]. You and I discussed the matter, and we agreed that if (A) [the Student] managed to return to Toronto before the end of the leave, I would be obligated again to try again to get him through the program with a PhD at that time. But we also discussed the possibility of (B) [the Student] returning to Toronto at some point after the agreed-upon terms of the medical leave, in which case I would tell SGS that I have moved on and am not able to support his second try at obtaining a PhD.

Does the above match your memory? At any rate, I have been assuming that we were firmly in regime (B), given that August [2018] came and went without me hearing from [the Student]. But last week, he sent me an email ... . He suggests that he wants to "extend" his leave and that he would like to return to Toronto to continue his work in 2019.

The email continues with some questions for Professor Sone, concluding with the following: "... even if SGS decides to grant the leave, can I stick with position (B)?" Professor Sone's reply to this question was "My advice would be to have [the Student] ... apply for an extension to his leave (with documentation) and consider informing him of option (B) if he seeks another extension in May [2019], but I will leave it to you and [Professor Davies] to decide."

Contrary to the Student's submission, this email does not show that, on October 1, 2018, Professor Wheeler felt obliged (much less that he was obliged) to continue supervising him. To the contrary, it shows that Professor Wheeler was seeking advice that would support "option (B)", that is, not supervising the Student.

In an email of February 24, 2019, Professor Wheeler told Professor Davies: "My plans remain the same (i.e., to not accept [the Student] as a student again)" (Appeal Statement, p. 350). In an email of May 15, 2019, to Professor Davies and another person, Professor Wheeler again made it

clear that he would not be willing to supervise the Student on his return from medical leave but would be willing “to assist him in finding a different supervisor and project-plan.” Thus, it clear from the material before your Committee, including the material submitted by the Student, that Professor Wheeler had decided well before May 2019 not to continue supervising the Student. Moreover, there is no basis for the Student’s submission that Professor Wheeler would have been obliged to accept him back in the lab if he had returned in May 2019. Your Committee therefore rejects this submission.

In any event, the question of what would have happened if the Student had returned to Toronto in May 2019 is of marginal relevance. The issue before your Committee is not what would have happened if the Student had returned to Toronto sooner. It is whether, given what had happened up to that point, the Institute’s decision of November 2019 was reasonable. The possibility, if it is one, that the Student’s relationship with Professor Wheeler might have unfolded differently if the Student had returned in May 2019 does not make the decision of November 2019 unreasonable.

4. Are the options offered by the Institute feasible?

In his written and oral submissions, the Student repeatedly emphasized the impossibility of completing his work without access to Professor Wheeler’s lab. The Student may well be correct in saying that it would be difficult or impossible to complete the specific projects he was engaged in while working in Professor Wheeler’s lab. But that is not the issue before your Committee. The issue is, rather, whether the options proposed for completion of the degree were reasonable, given that the Student no longer had access to Professor Wheeler’s lab. To be reasonable, those options must be feasible. The GDAAC found that they were (BoD, p. 065). That finding involved, among other things, expertise in biomechanical engineering, which the GDAAC had but your Committee lacks. Your Committee defers to the GDAAC’s assessment that the proposed options are feasible. Your Committee also notes the Institute’s commitment to facilitate the loan and transfer of materials relevant to the Student’s project from Professor Wheeler’s lab to the Student for use at another lab in the Institute (SGS Submissions, paras. 72 and 74).

5. Is Continued Supervision by Professor Wheeler a Required Accommodation?

There is no dispute between the parties that the Student has suffered from a serious medical condition that has impeded his academic progress and that the University has a duty under the *Human Rights Code*, R.S.O. 1990, c.H.9 (the *Code*) to accommodate that disability to the point of undue hardship.

In his written submissions, the Student submits that his rights under the *Code* were violated when he was removed from Professor Wheeler’s lab. Specifically, he says: “My mental health was in fact a reason for my removal from the lab, that amounts to an infringement on my Mental health rights/discrimination based on Mental health and will hence amount to a violation of the Ontario Human Rights Code ...” (Statement of Appeal, p. 21). At the hearing, the main point of the Student’s submissions on this point was that the only possible accommodation for his disability is renewed supervision by Professor Wheeler.

The Human Rights Tribunal and the Superior Court of Justice have an expansive remedial jurisdiction under the *Code* (see ss. 45.2, 45.3, 46.1). In contrast, your Committee's remedial jurisdiction under the *Code* is limited by its general remedial jurisdiction, that is, to providing remedies for unreasonable applications of academic regulations and requirements. Your Committee can determine whether a particular application of academic regulations and requirements complied with s. 17 of the *Code* and, if it did not, make an order within its jurisdiction that would reasonably accommodate a student's disability (see, for example, Report 409). Since your Chair has concluded that requiring Professor Wheeler to continue supervising the Student is not a remedy that can be granted by your Committee, it cannot be a remedy for any violation of the *Code*, if there was one.

As to whether there was any violation of the Student's rights under the *Code*, your Committee is divided.

One member of your Committee is concerned that the Student's removal from Professor Wheeler's lab may indeed have been an act of discrimination on the ground of disability, as defined in s. 10(a) of the *Code*, contrary to ss. 1 and 9 of the *Code*, for the following reason. In this member's view, it was not fair to judge the Student's performance in the lab during a period of time when his medical condition was extremely disabling; in this member's view, that judgment should only have been made at a time when the Student's condition was well-controlled with medication and other therapy. In this member's view, the decision to remove the Student from Professor Wheeler's lab, which was communicated to the Student at the conclusion of the Student's medical treatment and leave, may have been discriminatory since it was based on the Student's pre-treatment performance.

The other two members of your Committee are not persuaded that the Student's removal from Professor Wheeler's lab was an instance of discrimination contrary to the *Code*. These two members are inclined to see the Student's removal from the lab as a situation where s. 17(1) of the *Code* applies. That section, read together with ss. 17(2) and (3), provides that where a person has been reasonably accommodated but nevertheless "is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability," there is no infringement of the person's right under the *Code*. During the period leading up to the Student's departure from Toronto in late 2018, the Student was provided with extensive accommodations. In particular, the Student's medical leaves and Professor Wheeler's extraordinary efforts, documented both in his statement of March 2020 and in the material submitted by the Student (see particularly Latest FIPPAs, Tab 15), to ensure that the Student's work in his lab was conducted safely and to keep the Student on the path to completion of his Ph.D., were significant accommodations. Despite those accommodations, the Student was unable to function effectively in Professor Wheeler's lab.

In any event, all three members of your Committee agree that, given the impossibility of continued supervision by Professor Wheeler, the offer of alternative paths to the completion of the Student's Ph.D. that the Institute offered to the Student in Professor Davies's letter of November 28, 2019, was a reasonable accommodation for the Student's disability.

### *The Alternative Remedy*

In the alternative, the Student submits that the GDAAC process was flawed and that your Committee should order a new hearing at the GDAAC. This submission was not the main focus of the Student's oral arguments to your Committee, but it was fully argued in his written submissions and was fully canvassed at the hearing before the GAAB. Your Committee adopts the reasons of the GAAB for rejecting this submission (BoD, p. 078):

Regarding the GDAAC's decision, [the Student] submits that there were three procedural flaws. First, there was a delay, as the decision took 5 months instead of the 2 months prescribed by the SGS General Regulations, Section 10. Second, [the Student] also points to the absence of a student representative in the GDAAC's meeting. Third, [the Student] submits that he was not immediately provided with a copy of the GDAAC report, as required by SGS GDAAC Guidelines, section 23. The GAAB agrees that the manner in which the GDAAC decision was handled was not in full compliance with the procedural requirements of SGS Regulations and Guidelines. However, the GAAB has also considered that procedural guarantees must be proportional to the nature of the decision being made and the impact on the appellant. Therefore, these guarantees are heightened when the decision is non-discretionary and also has a significant impact on the student's ability to continue their studies (e.g. expulsion). This is not the case here.

Moreover, none of these procedural flaws are so significant as to provide grounds to invalidate the decision. The delay in the GDAAC meeting, as [the Student] himself acknowledges, may have been associated with the fact that the University was dealing with an unprecedented global pandemic in early 2020, and was shifting from in-person to virtual operations. As to the lack of a student representative at the GDAAC meeting, [the Student] correctly points to the fact that the committee does require one graduate student member (SGS GDAAC Guidelines, section 11(a)). However, the same section of the Guidelines also indicates that the quorum for a meeting is three members, including the Chair. Therefore, the absence of the student representative at the meeting does not render the GDAAC meeting or its recommendations invalid. Finally, [the Student] should have received the GDAAC report with recommendations immediately after the meeting. The delay in providing him with the report, however, was compensated with an extension of the deadline for him to submit his appeal to the GAAB, granted by Prof. Charmaine Williams SGS Vice-Dean, Students. Therefore, any potential negative impact of such delay was mitigated by this extension.

Your Committee adds the following. The absence of the student member from the GDAAC meeting was not a procedural flaw. The GDAAC guidelines require every GDAAC to have a student member, but the guidelines do not require a student member to participate in every GDAAC decision. The quorum for a GDAAC meeting is three, but there is no requirement that the student member be one of the three.

### **Conclusion**

The University's Graduate Supervision Guidelines contemplate that the relationship between a doctoral student and their supervisor "should ... barring graduate unit policies or unanticipated circumstances, remain intact until the student has successfully submitted and defended their thesis." Professor Wheeler's decision to cease supervising the Student was an unanticipated circumstance. Your Committee has no jurisdiction to order the primary remedy sought by the Student, that is, to order the Institute to require Professor Wheeler to continue as the Student's

doctoral supervisor. The issue before your Committee is best characterized as whether, given Professor Wheeler's unwillingness to supervise, the alternatives that the Institute offered to the Student in Professor Davies's letter of November 28, 2019, were reasonable paths to the completion of the Student's Ph.D. Your Committee finds that they were. Your Committee rejects the Student's submission that any procedural flaws in the GDAAC process require a new hearing before the GDAAC. The appeal is dismissed.

**UNIVERSITY OF TORONTO  
GOVERNING COUNCIL**

Report # 423 of the Academic Appeals Committee  
September 19, 2022

To the Academic Board  
University of Toronto

Your Committee held an electronic hearing, conducted by Zoom on Tuesday, November 3, 2021, at which the following members were present:

**Academic Appeals Committee Members:**

Ms. Sara Faherty, Chair  
Prof. K. Sonu Gaiind, Faculty Governor  
Ms. Susan Froom, Student Governor

**Appeals, Discipline and Faculty Grievances**

Ms. Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty Grievances

**For the Student-Appellant:**

Mr. A.A (the Student-Appellant “Student”)

**For the Faculty of Arts and Science:**

Mr. Randy Boyagoda, Vice Dean, Faculty of Arts and Science  
Ms. Lisa Lutwak, Director, Faculty Governance & Curriculum Services, Faculty of Arts and Science

The hearing was reopened on Friday, February 18, 2022, and conducted by Zoom at which the above individuals were present, except for Ms. Lisa Lutwak.

**I. Overview**

The Student-Appellant appeals the December 22, 2020, decision of the Faculty of Arts and Science, as communicated in an email titled “Final Decision” from Thomas MacKay, Director of Faculty Governance and Curriculum Services. This email confirms the finality of a decision that the Student was not entitled to further re-grading of a quiz in the Winter 2020 term of BIO251H1, *Form, Function and Development of Plants*. That decision was first communicated to the Student-Appellant in an email sent by Associate Dean Asher Cutter on July 24, 2020. After several months of clarifications and exchanges, Mr. MacKay’s December 22 email informed the Student-Appellant that there was no change to the final decision, and that the remaining avenue of appeal was to this Committee.

The Student-Appellant’s concerns regarding his treatment can be viewed narrowly as a claim that one question on a ten-question quiz that was worth five percent of his final mark was invalid, because the underlying material had not been taught and was therefore “untestable.” This claim was made in the context of a constellation of concerns the Student-Appellant set forth about his instructor.

This file presented a procedural challenge when the Student-Appellant contacted the Office of Governing Council almost immediately after the hearing on November 3, 2021, ended asking to speak to this Committee. The Student-Appellant explained that he had some points he forgot to make during the hearing. The Chair determined that it would not be possible for the Student-Appellant to speak again to



this Committee without the representatives of the Faculty of Arts and Science present. A second part of the hearing, limited to 30 minutes and limited to the subjects the Student-Appellant neglected to bring up during the November 3 hearing took place on February 18, 2022, at 2:00 pm. No further written submissions were permitted.

## II. Facts

The Student-Appellant had the bad luck of wanting to challenge a question that was on a quiz that was administered on Monday, March 9, 2020. History shows that the week this quiz was given proved to be plagued by rapid changes in public health guidelines and the academic program was required to respond to them with very little notice. Everyone on this Committee recalls the uncertainty and many last-minute challenges that surrounded the University of Toronto's shutting down of in-person classes that was announced that Friday, on March 13, 2020, due to the Covid-19 outbreak. Faculty, students, and staff at the University were all affected by the international pandemic that would go on to require shut-downs and adjusting to remote learning for the rest of that academic year, through the entire next academic year, and is still having a serious impact on teaching and learning at the University of Toronto. The record in this file exhibits significant delays, and some of the exchanges with the Student-Appellant were frustrating and confused. This Committee notes these delays and is grateful for the Student-Appellant's patience and the administrators' continued efforts to attend to this request for a regrading.

The academic work that is the subject of this appeal is a quiz that was administered on Monday, March 9, 2020 ("Quiz 3"). The Student wrote to the instructor the day after the quiz was administered, raising his concern that of the 4 true/false questions on the quiz, "3 of them were not answerable given what we were asked to study." The Student has not, at any time, asserted that his answers to the questions on Quiz 3 were correct. Rather, he challenges the fairness of the instructor's asking questions that, in his view, were not covered in the material students had been asked to study at the time the quiz was given.

The Student alerted the instructor to his concerns on March 11, two days after he wrote the quiz. He received his mark on the quiz later that month and determined that the questions he was challenging were not excluded from the calculation of his grade. The instructor communicated that the material tested on Quiz 3 was covered in the assigned material and in a handout that students had been told to read in preparation for the Quiz. After further exchanges, on April 8, the instructor told the Student that if he wanted a regrade, he should request one. She said that she would do the regrade herself.

The instructor provided the Student-Appellant with his quiz on April 16 of 2020. On April 18, two days after sending the Student-Appellant's quiz to him, the instructor sent an email to the Student-Appellant informing him "If you are going to request a regrade of your quiz 3 I will need to know by 12:00 pm April 19. I will not accept a request for regrade after that time." The Student-Appellant submitted his request for a regrade on April 19 at 10:51 pm. The following day, April 20, the instructor told the Student she was rejecting his request for a regrade, writing "the email I sent on April 18, 2020 states that I will not accept a request for regrade after 12:00 pm April 19. Unfortunately, you did not meet this deadline. Your request email for a regrade was sent late in the evening on April 19, well after 12:00 pm."

The Student asserts that the time-frame the instructor gave him was not reasonable, and that it was not consistent with either the information about requests for grade changes set forth in the syllabus, or with the University's policies on requests for grade changes.

The instructor's syllabus states:

***"Grade changes:***

“Students who wish to receive consideration for a grade change for a test must discuss the test with the course instructor. Students who wish to receive consideration for a grade change for a quiz must discuss this with their TA. Final approval for the grade change on a quiz will be at the discretion of the course instructor. **Grade changes will only be considered within one week of the posting of the grade in Quercus. Grade changes will not be considered after this time.** Check Quercus frequently to make sure that your marks are posted and therefore, recorded.”

Technically the instructor did not violate this rule, since the syllabus ties the one-week limit in requesting regrades to the date grades are posted. The Student-Appellant reports receiving his mark in March, so that the one-week limit had clearly elapsed. However, the Student may have believed he could not write a meaningful request for his regrade until he had seen his quiz, and that did not happen until weeks later, on April 16. In these circumstances the Student-Appellant’s perspective might be that he should be allowed one-week after receiving his quiz (or until April 22) to request a regrade, and the instructor’s perspective might be that his request was already weeks late, and she was being generous giving him more time. This question is resolved below.

The Student-Appellant identified two problems with the instructor’s proposed regrade. He asserts that the instructor’s statement that she would regrade the quiz herself violates a provision in the Faculty of Arts and Science’s academic handbook (<https://artsci.calendar.utoronto.ca/term-work-testStudent-Appellant-and-final-exams#reassessment-marks>). (Benjamin Gilbert refers student to this website in his May 25 email.)

This provision says “[i]f a TA originally marked the work, the remarking request should go first to the TA and any appeal of that should go to the course instructor.” This provision allows for a grade appeal of a work going to the instructor eventually if it is decided against the student (this reading assumes students do not appeal TAs’ decisions that are favourable to them), but the Student-Appellant would have preferred that the remarking request should go directly to the TA. However, it was the Student who sent his request directly to his instructor. The Student is correct that the instructor proposal was inconsistent with the text of the Academic Handbook at the time, which is problematic. It would have been better if she had redirected the request to the TA who had originally marked the Quiz.

The other problem is clearer cut: the Academic Handbook stated, “Students should make such requests as soon as reasonably possible after receiving the work back, but no later than 2 weeks after it was returned.” This provision is important for two reasons. First, it establishes that the relevant starting point for timing requests for regrades is the return of the assignment, not the posting of the grade. Second, it establishes the appropriate time frame at two weeks, not the one-week window that was listed in the syllabus, nor the less than three days allowed by this instructor in this instance. Again, the instructor’s practice was inconsistent with provisions in the Academic Handbook. It would have been better if she were aware of the rules, or, if she was not aware of them, if she had looked them up so she could follow them.

Your Committee is persuaded that the instructor’s handling of the Student-Appellant’s request was not consistent with the Faculty of Arts and Science policies. The less-than-two-day time-frame the instructor gave the Student-Appellant was not reasonable, and he was entitled to twelve more days than he received.

The Student sent the instructor his request, narrowly missing the unreasonably short time-allowance she had given him.

This problem was resolved the next day. The Student immediately told the instructor that he was not satisfied with her response. The instructor responded by forwarding the email exchange regarding a regrade to the Associate Chair, Undergraduate, of the Ecology and Evolutionary Biology department. Associate Chair Professor Benjamin Gilbert responded that same day.

Your Committee is afraid that the Student-Appellant misunderstands Professor Gilbert's April 20 email. He characterizes the Associate Chair's communication as "agreeing" with his instructor but on the issue of whether he was entitled to a regrade the Associate Chair's email says the opposite—he wrote "[s]hould you choose to contest this decision I can request a regrade." This email reverses the instructor's refusal to offer a regrade.

Associate Chair Gilbert's email touches on other topics, which may explain the Student-Appellant's misreading. Most notably, he writes, "your concerns about the questions have been checked against the materials presented in lab and that you were supposed to read prior to lab. In short, the professor and TAs verified that these questions are consistent with learning expectations and the learning resources provided to students." In this sentence, Professor Gilbert communicated to the Student-Appellant that his substantive concerns had, in fact, already been addressed by the instructor and the TAs. Recall that the Student was not defending the scientific correctness of his answers, but rather he is challenging the validity of some of the questions. The Student-Appellant was arguing that the questions were unfair because they hadn't been covered by the instructor. Classifying this debate as a request for a regrade may be a source of confusion—the Student-Appellant was challenging the fairness of asking those questions on the quiz. The TAs and the instructor confirmed that the questions were legitimate. The Associate Chair inquired into the facts and determined the substance of the matter had been handled properly and in a timely manner.

The Student-Appellant continued to escalate the matter, engaging with Nicolas Rule, who was then Vice-Dean, and eventually contacting Associate Dean Asher Cutter and Thomas MacKay, the Director of Faculty Governance & Curriculum Services. In these exchanges the Student-Appellant was raising several procedural irregularities and frequently voiced concerns that his multiple issues were not being addressed. During the hearing the Student-Appellant repeatedly asserted that no one had addressed his underlying substantive concerns and suggested that he had yet to have an academic with the appropriate background and training review his claims.

In one exchange, dated July 28, 2020, Director MacKay told the Student-Appellant "you can and should take the decision from Dr. Cutter as applying to all aspects of your appeal—including the issue of the fairness surrounding testable material. In other words, you can trust that Dr. Cutter has decided that your specific concern on that matter has been fairly addressed...you should consider the response comprehensive and final at this stage in the appeals process." In another email, dated July 28, 2020, Director MacKay assured the Student-Appellant "the decision received from Dr. Cutter is the final decision and encompasses all aspects of your case."

All these emails relied on the clearly stated Faculty policy establishing that work that is valued at less than twenty percent of a final course grade is not reviewed higher than the instructor level.

### **III. Procedural Facts**

#### *Second half of hearing*

Within a few minutes of the closing of the November 3, 2021 hearing, the Student asked if he could get in touch with Committee members because he realized there were points he wanted to make that he had not made. The hearing was reopened for thirty minutes on February 18, 2022, at 2:00 pm with the same attendees, except Ms. Lutwak was not available.

At the second part of the hearing the Student reiterated many of the points he made during the first, much longer part of the hearing. It is unclear to this Committee precisely which arguments and facts the Student wished to recite that he had not made earlier, except that during this second part of the hearing he emphasized his desire to see the instructor in BIO251H1, *Form, Function and Development of Plants*, face consequences for her performance during this term, and to be penalized because of the way she mishandled his request for a regrade.

#### IV. Issues

At issue in this academic appeal is the process and outcome of the Student-Appellant's request for a regrade of a quiz that was administered in the Winter 2020 term of BIO251H1, *Form, Function and Development of Plants*.

1. Was the material covered in Quiz 3 "testable" in BIO251H1?
2. Did the Student-Appellant's instructor correctly state the policies of the Faculty of Arts and Science on regrading work on her syllabus or in her emails to the Student?
3. Did the Student-Appellant receive a fair and substantive review of his concerns relating to the validity of the question that appeared on Quiz 3 by a qualified reader?
4. Did the Faculty of Arts and Science follow Faculty policies in following up on the Student-Appellant's concerns, and were those policies fair and reasonable?
5. Is the Student-Appellant entitled to further review of the validity of his score on Quiz 3 in BIO251H1, *Form, Function and Development of Plants*?
6. Is the Student-Appellant entitled to any of the additional remedies he requests?
7. Should the instructor's regrade of Quiz 3 be applied?

#### V. Analysis

##### ***1. Was the material covered in Quiz 3 "testable" in BIO251H1?***

Yes. The Student-Appellant is not defending the correctness of his answers, but rather is arguing that it was not reasonable or fair for the teacher to ask the questions she asked because the material being tested had not been appropriately covered in class. The instructor disagreed, replying that the material was in the introductory paragraph to the Lab. The instructor also reported that the material had been orally covered during class, and that it appeared in the assigned reading associated with the Lab. In his note of April 20, Benjamin Gilbert, an Associate Professor in Ecology and Evolutionary Biology, and Associate Chair of Undergraduate Studies, wrote that the TAs for this class supported the instructor's reasoning, writing, "[i]n short, the professor and TAs verified that these questions are consistent with learning expectations and the learning resources provided to students."

The Student-Appellant has had difficulty taking in Professor Gilbert's message. In his written submissions to Governing Council he wrote, "Throughout this entire appeal process, not one person considered or addressed the evidence put forward by the student to show why the question was unanswerable. Instead, the approach taken by all reviewers regarding that point was to simply ask the original course instructor whether they thought the question was answerable using the course material."

This Committee reads Professor Gilbert’s message as indicating that the TAs confirmed that the material was covered in the class. The Student-Appellant suggests that Dr. Gilbert is not specifically focused on the area of science covered by the quiz question at issue, but this Committee finds that between the instructor of the course, her four TAs, and Professor Gilbert there is an appropriate balance of subject matter expertise, personal knowledge of the course in question, authority, and objectivity.

In his email of July 28, Thomas MacKay followed up, writing “you can and should take the decision from Dr. Cutter as applying to all aspects of your appeal—including the issue of the fairness surrounding the testable material.” Mr. MacKay reiterated, “In other words, you can trust that Dr. Cutter has decided that your specific concern on that matter has been fairly addressed.”

This Committee does not have the expertise, nor is it charged with determining the academic merits of the Student-Appellant’s argument. We find that despite the misstatements of the appeal process that marred the earliest steps in this request for a regrade, based on the statements of the instructor and the TAs, and the inquiry conducted by Dr. Cutter, the Student-Appellant’s original concern has been addressed. The Faculty has determined that the material was testable.

**2. *Did the Student-Appellant’s instructor correctly state the policies of the Faculty of Arts and Science on regrading work on her syllabus or in her emails to the Student?***

The Student-Appellant’s instructor did not correctly state the policies of the Faculty of Arts and Science. This Committee has identified two errors in her application of the policies. First, she said that she would regrade Quiz 3 when according to the FAS it should have first been regraded by the TA who originally marked it. Second, she gave the Student an unreasonably short period of time to submit his request.

This instructor should have known, or known to look up, the Faculty of Arts and Science’s policies pertaining to the Student-Appellant’s request for a regrade. She made two mistakes. This Committee finds the instructor was incorrect in her statements of the policy. We also believe the Faculty of Arts and Science has an obligation to inform instructors of its policies. In this case, after the misstatement of policies was called to their attention, the misstatements were corrected to the extent possible. The questions about who should regrade the Student-Appellant’s Quiz 3 were made irrelevant by the substance of the student’s argument—he was not claiming his answers were correct, but rather that the underlying material had not been presented in class, so they were “untestable.” In the end, he got multiple answers to that question—the instructor and the TAs all verified that the material had been presented. The question about how much time he should have had was defended by the administration. The instructor originally told the Student that his submission was too late and that his request would not go forward, but in fact the next day the Administration did move forward with the inquiry. We note that it was the instructor who brought the Administration into this debate. While it would have been better if she had known the regrading policy or checked with the administration before responding to the Student on April 19, we see that she consulted the Administration on April 20—so her mistakes were promptly corrected. The Student-Appellant was justifiably irritated with his instructor’s unreasonable demand and incorrect statement of the rules, but he was not impaired by those mistakes, and it was his instructor herself who brought these questions to the Faculty of Arts and Science for resolution.

**3. *Did the Student-Appellant receive a fair and substantive review of the validity of the question that appeared on Quiz 3 by a qualified reader?***

In some of his written submissions, and during the hearing, the Student-Appellant suggested that the TA who originally marked his quiz should be the person to address his concerns. The record indicates that this has already happened. In his email of April 20, 2020, Dr. Benjamin Gilbert wrote to the Student-Appellant about his concern that the quiz questions had not been properly “checked against the materials

presented in lab and that you were supposed to read prior to lab.” Dr. Gilbert explained, “the professor and TAs verified that these questions are consistent with learning expectations and the learning resources provided to students.”

While your Committee is not convinced that a review by the instructor alone would not have been dispositive in this case, here we see that the TAs concurred with this conclusion. The Student-Appellant believes that throughout his appeals no one looked at the substance of his evidence. He asserts that instead of doing that, reviewers consulted with the instructor who, he believes, would undoubtedly support her original grade rather than acknowledge an error.

The Student-Appellant characterizes his evidence of the instructor’s wrong doing as “black and white,” asserting that he can unequivocally prove that professor’s unfairness in marking. This does not strike your Committee as accurate. There were procedural mistakes early in the Student-Appellant’s attempt to get his Quiz 3 regraded, but they were addressed, and they did not cause the Student-Appellant academic harm.

After the instructor’s misstatements of policies was called to their attention, Administrators corrected the instructor’s misstatements of procedure to the extent possible. The Student-Appellant’s questions about who should regrade the Student-Appellant’s Quiz 3 were made irrelevant by the substance of the Student’s argument—he was not claiming his answers were correct, but rather that the underlying material had not been presented in class, so they were “untestable.” According to the syllabus, there were four TAs in the course. There is no point in worrying about which individual (the instructor or one of the TAs) re-read his answers, the questions the Student-Appellant got wrong, since he is not claiming to have answered them correctly. The incorrect answers on Quiz 3 did not have to be re-read at all. It was a true/false question, and the Student acknowledged in his March 26 email to the instructor that he answered it incorrectly. (“One question asked about whether monocots and dicots differ because one group has a heart stage whereas the other does not. I learned later that this is true.”) Rather, the Student-Appellant wanted an answer to his question about whether the material was “testable,” or, in other words, whether it had been covered in the class. In the end, he got multiple answers to that question from the people who were most qualified to answer it. The instructor and the TAs verified that the material had been presented. Dr. Cutter inquired into this matter and was satisfied that the material was testable.

The instructor originally told the Student that his submission was too late and that his request would not go forward, but in fact the next day the Administration did move forward with the inquiry. The question about how much time the Student-Appellant should have had to submit his request for a regrade was correctly interpreted and his right to submit the request was defended by the Administration. The request was acted upon.

We think it is important that in the end it was the instructor who brought the Administration into her dispute with the Student-Appellant. While it would have been better if she had known the regrading policy or checked with the Administration before responding to the Student on April 19, we see that she appropriately consulted the Administration on April 20—so her mistakes were promptly corrected. The Student-Appellant was justifiably irritated with his instructor’s unreasonable demand and incorrect statement of the rules, but he was not impaired by those mistakes, and it was his instructor herself who brought this dispute to the Faculty of Arts and Science for resolution.

It is in the nature of appeals that with every escalation the decision-maker is further removed from the details of the underlying events. In this case the Student-Appellant got responses from the people closest to the incident (the instructor and the TAs) and from administrators (Dr. Gilbert and Dr. Cutter) who were further from the events. His request for a higher number of more specifically academically qualified readers of Quiz 3 is not supported by Faculty of Arts and Science policies, which disallows that degree of

scrutiny for assignments of such low value. Its policy reads, “A request for re-grading of a mark beyond the instructor for term work may only be made for an item worth at least 20% of the course mark.”

**4. *Did the Faculty of Arts and Science follow Faculty policies in following up on the Student-Appellant’s concerns, and were those policies fair and reasonable?***

While the instructor incorrectly applied an appeal request deadline to the Student, the administrators at the Faculty of Arts and Science, who were notified of these questions by the instructor, followed their policies. The Faculty of Arts and Science is responsible for making sure its instructors are aware of and adhere to Faculty policies. This Committee is aware that with more than 27,000 undergraduate students, and more than 340 undergraduate programs and more than 4,800 courses this is an enormous task. We urge the Faculty to continue to work on making sure instructors are well-informed and act in accordance with its policies.

It is especially concerning that the instructor’s syllabus set forth provisions that were inconsistent with the policies at the Faculty of Arts and Science. During the hearing Vice Dean Boyagoda acknowledged that the Faculty needs to upgrade its communications with instructors, and that it is in the process of clarifying its policies to increase compliance. This Committee applauds this effort and notes that while the instructor in this incident was not well informed of the policies, the administrators she contacted were aware of them and followed them.

**5. *Is the Student-Appellant entitled to further review of his score on Quiz 3 in BIO251H1?***

The Student-Appellant requested a regrade of a quiz (Lab Quiz 3) he wrote for BIO251, *Form, Function, and Development in Plants*. The Student-Appellant asserts that there were errors in the way the instructor handled this request. A subsequent review of the mark was conducted, but the Student is still not satisfied that his concerns have been properly understood or addressed. He is asking for another review of the assignment and would like it to be conducted by three qualified reviewers. This is not warranted for an assignment that was weighted so slightly. The Faculty of Arts and Science limits review of such assignments to the instructor level.

**6. *Is the Student-Appellant entitled to the additional remedies he requests?***

The Student-Appellant has voiced considerable frustration with his instructor’s treatment of his request for a regrade. He has correctly pointed out that her understanding of Faculty of Arts and Science policies on this issue is incorrect. He has correctly pointed out that the policy on her syllabus is inconsistent with the Faculty policies. His allegations go further than this, however, and are not supported by the record. His requests that the Faculty of Arts and Science pursue disciplinary action against the instructor are inappropriate and cannot be considered in this forum.

This Committee is saddened to see the extent of the Student-Appellant’s mistrust and anger with his instructor. He used strong language in his written submissions and at his hearing, and he is convinced that the instructor in this file has so much malice toward him that she cannot be trusted. We take the Student’s factual allegations regarding his writing of the assignment in question at face-value, but we cannot adopt or embrace the overall posture of his written submissions. We regret this context and wish that it were otherwise. We urge the Student-Appellant to have confidence that even though his instructor made incorrect statements about how requests for regades are handled at the Faculty of Arts and Science, and even though she gave him an unreasonably short amount of time to submit his request, in the end his request was accepted (even though it was submitted after the instructor’s unreasonable deadline), and the substance of his request was addressed by people qualified to do so.

Whether any further action was appropriate or was pursued is not known to this Committee, and we have no reason to inquire further. Vice Dean Boyagoda pointed out that any such action would be completely confidential. He acknowledged that the Division has a responsibility to communicate rules clearly to instructors to make sure that they are applied fairly and consistently and acknowledged that the size of the Faculty of Arts and Science, with more than 900 academic staff presents challenges in getting clear, consistent communication of sometimes complex rules completely communicated. The human resources division of the University has tools regarding employment status, disciplinary measures, etc., but they are not properly exercised by this academic appeal body. The Faculty of Arts and Science is reviewing and revising its calendar and syllabi for clarity. This work is expected to be finished during the upcoming academic year (2022-2023).

The Student-Appellant repeatedly raised issues that were not supported in his written submissions. This Committee is not able to address the claims brought on behalf of unnamed classmates. The University has a robust course evaluation system in place for students, and much of what the Student-Appellant raised might be appropriately addressed through those mechanisms. Some of what the Student-Appellant raised would only be addressed with confidentiality in the employment law context, and would, of course, require evidence that was not provided in the context of this academic appeal.

The Student-Appellant continues to express his belief that no one other than the instructor has reviewed his concerns about the validity of the question: namely, that students had not been provided with adequate material to correctly answer a true/false question about how monocots and dicots differ.

The Student-Appellant's claims challenging the validity of the question were reviewed again at a higher level of appeal. On July 28, 2020, there were several emails between the Student-Appellant and Mr. MacKay regarding whether a regrade of Quiz 3 was to go forward. (The Student-Appellant had asked for a regrade to be performed by someone other than the original instructor but did not want a regrade if it were to be done by Professor Sage.) After several exchanges on that point, the Student-Appellant brought up his concern that the true basis of his request for a regrade had not been addressed. Put simply, the Student-Appellant was not suggesting his answer to the question on Quiz 3 was correct. Rather, he was challenging the validity of that question. He believed it was an unfair question because the material it was probing had not been presented to students at the time the quiz was given.

At 5:08 pm on July 28, Mr. MacKay's focus switched to the issue of whether the administration had been attentive to the Student's underlying concern. He wrote, "you can and should take the decision from Dr. Cutter as applying to all aspects of your appeal—including the issue of the fairness surrounding testable material. In other words you can trust that Dr. Cutter has decided that your specific concern on that matter has been fairly addressed."

The Student-Appellant asked Mr. MacKay to follow up with Dr. Cutter to confirm that issue. Mr. MacKay said that he would, and on July 30, 2020, he wrote back: Thomas Mackay, in his July 30, 2020, email, expressly confirmed that Dr. Asher Cutter, a scholar in ecology and evolutionary biology, had considered the Student-Appellant's concerns about whether the answer to the true/false question on Quiz 3 could be answered from the course materials presented at the time the quiz was administered. Dr. Cutter, with an undergraduate degree from Tufts University, a PhD from University of Arizona, who did post-doctoral work at the University of Edinburgh, reviewed the student's claim. On July 30, 2020, Mr. Mackay wrote, and "I have confirmed that the decision received from Dr. Cutter is the final decision and encompasses all the aspects of your case. This encompassed the question of the testable material in the same way the whole case was assessed: Dr. Cutter did not see any basis to suggest the process of evaluation or appeals thus far did not treat you fairly and consistently."



Despite the clarity of Mr. MacKay's two emails, the Student-Appellant did not absorb the meaning of these messages, writing the following day:

“[u]p until this point, no one has actually taken a look at the substance of my proof. Dr. Gilbert did not conduct any review of his own, he simply took Dr. Sage's word on the matter,”

and

“[t]hus far, there has been no opportunity for me to actually present my proof to anyone other than the course instructor.”

These statements are not consistent with the communications from Mr. MacKay about Dr. Cutter's involvement with this question. While it is clear that he consulted with the instructor and the TAs, it does not support the Student-Appellant's firm belief that this is all he did.

The Student-Appellant is frustrated and angry, and clearly has little respect for the instructor of BIO251. This unfortunate turn of events seems to have led him to lose trust in the entire process of reviewing his concerns about the course. Nonetheless, your Committee can only conclude that the Faculty of Arts and Science followed its policies. In the end, the outcome is not what the Student-Appellant hoped for, but it is fair. The administration has, in fact, dealt with the issues he raised and clearly explained the reasoning for their administrative conclusions to him.

#### **7. *Should the instructor's regrade of Quiz 3 be applied?***

*Student does not currently wish to have regrade of Quiz 3 applied to his mark*

There has been some confusion about whether the Student-Appellant is currently requesting a regrade of his Quiz. He is not. He wanted a regrade to be performed by someone other than his original instructor and has been very clear that if that is not forthcoming, he does not wish to have Professor Sage regrade his Quiz. It appears as if, in error, such a regrade by the original instructor has already been performed.

In his email of July 30, 2020, Mr. MacKay reported that the quiz had been re-marked. He noted that “the remark of the quiz will not be applied while you are undertaking appeal processes.” The Student-Appellant was very firm that he does not want the revised mark on this quiz applied. Since he made his wishes on this point clear early in this process, your Committee agrees that the original mark (not the lower revised mark) should stand. The request for a regrade of the quiz was withdrawn when the Student-Appellant learned that the original instructor would do it (or had done it), and it should not be applied. The Division appears to be aware of this request, and prepared to honour it. This Committee emphasizes that the instructor's regrade of Quiz 3 should not be applied.

### **6. Conclusion**

The Student-Appellant is obviously frustrated by what he perceives as the instructor's unreasonable behaviour and her violation of the University's policies. This Committee agrees that the instructor made some errors, but notes that those errors were quickly addressed and corrected by the Faculty of Arts and Science, and the Student was not academically harmed by the early procedural mistakes.

This file raises difficult questions and is unsettling because it presents a complete breakdown of trust between a Student and his instructor. It is impossible to understand the Student's motivation for pursuing another review of this single true/false question on a ten-point quiz that was worth 5% of the Student-

Appellant's overall course mark without reference to the emotional context of this course. The facts and evidence presented by both the Student-Appellant and the Division outline a dispute that is hard to comprehend unless you adopt the perspective of a very frustrated Student who has lost confidence in the fairness of his instructor. The Student-Appellant acknowledges that changing his score on the quiz would not change his overall grade for the course, which was an A. This Committee sees the Student-Appellant's frustration and acknowledges that his instructor originally set forth a mistaken procedure for addressing his request for a regrade. We also see, however, that several administrators at the Faculty of Arts and Science stepped in to redress the error. The primary remedy sought by the Student is not proportionate to the incident, and is not necessary because a qualified regrade has taken place. The other remedies requested by the Student are in the province of human resources, would require significant evidence to justify, and cannot be answered in the realm of the academic appeal process.

This Committee looked carefully at the events described and concludes that despite the instructor's initial incorrect statement of Faculty of Arts and Science policy at the beginning of the process, the Student-Appellant ultimately received a fair and substantive regrade that was commensurate with an assignment of the weight of Quiz 3. Under clearly stated Faculty of Arts and Science policies, he is not entitled to further review of that quiz.