

**THE UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL**

Report #428 of the Academic Appeals Committee  
November 10, 2023

To the Academic Board  
University of Toronto

**Senior Chair:**

Professor Hamish Stewart

**Hearing Secretary:**

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

**For the Student Appellant:**

J.J. (the “Student”)

**For the Toronto School of Theology:**

Catherine Fan, Paliare Roland Rosenberg Rothstein LLP

**Overview**

The Student was enrolled in the Master of Theological Studies program at Knox College, a member of the Toronto School of Theology (TST). He appealed a course grade, asking to receive either a notation of LWD (late withdrawal without penalty) or AEG (aegrotat standing) for the course. In Report #427, dated August 8, 2023, a panel of your Committee allowed the Student’s appeal and gave him an election as to the remedy, namely a choice between (i) resubmitting an essay and receiving a grade for the course and (ii) receiving a notation of INC in the course. The Student has yet to make his election. TST applies for directions concerning the implementation of the remedy. The Senior Chair of your Committee holds that the panel intended the Student to make his election within a reasonable time and intended INC to be the default remedy. The Student has stated that he needs certain information from TST before making his election and has agreed to make his election promptly on receiving it. The Senior Chair finds that the Student has received the information he requested. The Student is therefore now in a position to make his election. If the Student does not elect within a reasonable time, the Senior Chair authorizes TST to assign the Student a notation of INC.

**Background**

As noted, the Student was enrolled in the Master of Theological Studies program at Knox College, a member of TST. In the Fall 2021 term, the Student was enrolled in WYB3743HF, “Paul’s Letter to the Galatians” (*Galatians*). The course instructor was Professor Stephen Chester. The Student was also enrolled in WYB3641HF, “Matthew’s Story of Jesus” (*Matthew*).

Both courses were taught at Wycliffe College, a member of TST. The Student received a grade of FZ (failure) in each of these two courses. He appealed those grades. His appeal in *Matthew* was successful within TST and he was granted the choice between an extension to complete the course work or a notation of INC. Ultimately, the Student received a grade of INC in *Matthew*.

The Student's appeal of the grade in *Galatians* was unsuccessful within TST. The appeal process began with a re-reading of the paper by Professor Chester, who confirmed the failure.<sup>1</sup> The next step was to have the paper read by a second reader. TST's appeal policy stated that the second reader should "read the assignment free of evaluative comments of others". On February 24, 2022, Professor Peter Robinson, who served as Academic Dean of Wycliffe College, sent an email to Professor Catherine Hamilton, asking her to be the second reader. This email is critical to the appeal and so will be referred to as "the critical email."<sup>2</sup> In the body of the critical email, Professor Robinson stated that "[Professor Chester] gave the student a failing grade. I have attached the paper as well as the guidelines provided for the paper. I have also attached the course syllabus which also details elements of the final assignment. ..."<sup>3</sup> He also commented on the Student's approach to scriptural interpretation and stated that while he was "entitled to [those] views, the basic question is whether or not [he] followed the guidelines for the assignment." On the same day, Professor Hamilton answered Professor Robinson, stating that she "agreed entirely" with Professor Chester's mark, that the paper was "incoherent" and "does not do – at all – what the assignment asked." On February 28, 2022, Professor Robinson emailed the Student,<sup>4</sup> informing him that the second reader "has confirmed a failing grade for the assignment", summarizing the second reader's comments, and stating that "The reviewer was given the essay with no grade, none of Professor Chester's comments, and your name removed from the paper. In addition they were given the course syllabus and the guidelines for the paper." He did not tell the Student that in the body of the critical email he had informed Professor Hamilton of the grade originally assigned by Professor Chester and had commented on the Student's methodology.<sup>5</sup>

The Student appealed to the TST's Academic Appeal Committee (TST-AAC). Wycliffe College did not include the critical email in its materials before the TST-AAC. Among other arguments, the Student alleged that Wycliffe had not followed TST's appeal procedures. He expressed

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<sup>1</sup> Professor Chester's comments on his re-reading of the paper appear at p. 98 of TST's appeal materials.

<sup>2</sup> The critical email is reproduced as an Appendix to this Report.

<sup>3</sup> The Student's paper appears twice in TST's appeal materials: with Professor Chester's comments at pp. 10-15, and with Professor Hamilton's comments at pp. 186-197. The Senior Chair received a copy of the paper, without comments, from TST via ADFG on October 6, 2023. The assignment guidelines and the syllabus for *Galatians* appear respectively at pp. 81-82 and pp. 70-78 of TST's appeal materials.

<sup>4</sup> At p. 004 of his appeal materials, the Student states that Professor Robinson "deliberately deleted the Second Reader's comment when forwarding me the Second Reader's response, omitting a significant portion of the text." This statement is not entirely correct. Professor Robinson did not forward Professor Hamilton's email; rather, he paraphrased her assessment of the Student's paper. He did omit one aspect of Professor Hamilton's email, namely, that she had expressed doubts about the Student's "ability to do a degree." This omission is understandable, as expressing these doubts went beyond Professor Hamilton's role as second reader.

<sup>5</sup> This email is at p. 025 of the Student's appeal materials. At p. 004 of his appeal materials, the Student states that in the email of February 28, "Dr. Robinson stated that the Second Reader assigned me a zero mark." This statement is incorrect.

“doubt whether a second reader existed at all” and argued that “[i]f there was a second reader . . . , then that person must have been allowed to see the instructor’s original comments” (TST appeal materials, pp. 107-108). Professor Robinson made an oral statement to the TST-AAC concerning the procedure followed. The TST-AAC rejected the Student’s allegations, finding that there was indeed a second reader and that the appeal policy had been followed. With respect to Professor Robinson’s oral statement, it said (TST appeal materials, p. 108):

During oral questioning at the hearing, Wycliffe’s representative, Prof. Robinson, stated that he himself was the one who had put the Student Appellant’s final research paper into the hands of the anonymous second reader and that he had ensured that the second reader received nothing except the paper (without marks or comments), the assignment instructions, and the syllabus. . . . Your Committee found no reason to doubt Prof. Robinson’s straightforward account of what had happened, and it was unpersuaded by the Student Appellant’s arguments that Wycliffe was incorrect, unfair, or dishonest in its implementation of the BD Handbook’s procedures for having a second reader assess coursework.

The Student appealed to your Committee. The critical email was included in the TST’s appeal materials (p. 103), with Professor Hamilton’s name redacted. The Chair of the panel that heard his appeal was Professor Lisa Austin of the Faculty of Law. In Report #427, the panel allowed the appeal. Your Committee found that Wycliffe College had not followed TST’s appeal procedure. Your Committee interpreted the relevant policy as follows (p. 4):

On a plain reading of section 11.8.1 of the BD Handbook [*i.e.*, the TST Basic Conjoint Degree Policy Handbook], the second reader review process was not properly followed in this case. The BD Handbook clearly states that the second reader should “read the assignment free of evaluative comments of others”. Here, the second reader was told the grade and provided information that suggested that the Student had not followed the assignment guidelines due to his views of scriptural interpretation. The second reader was even offered further evaluative comments of the course instructor (although these were not in fact passed along).

Your Committee found that this policy had been violated because the critical email included “evaluative comments,” namely, “the grade and . . . information that suggested that the Student had not followed the assignment guidelines . . .” (p. 4). Your Committee did not specifically comment on the oral statement that Professor Robinson had made to the TST-AAC; your Committee did, however, explicitly reject TST’s arguments that “‘evaluative comments’ do not include providing the instructor’s grade” and that it was necessary to provide Professor Hamilton with commentary on the assignment guidelines (p. 4).

Your Committee also found that despite some differences between the Student’s situation in *Matthew* and in *Galatians*, there was no principled basis for distinguishing his appeals in the two courses, and accordingly the Student should be put in the same position in relation to *Galatians* as he had been in relation to *Matthew*. As noted, in the event that his appeal was allowed, the Student had requested that either LWD or AEG be noted on his transcript. Your Committee instead granted the following remedy: that the Student be permitted to choose between receiving a notation of INC or resubmitting the final paper for the course. This choice of remedies put him

in the same position in *Galatians* that he had been in *Matthew*. Your Committee also noted that there is no functional difference between the notations of INC and LWD, in that both indicate that a student was enrolled in but neither passed nor failed the course in question. (In contrast, AEG is a notation indicating that a student, though not receiving a grade, has received credit for the course in question.) Your Committee stated the remedy granted as follows:

... your Committee ... grant a remedy of either incomplete (“INC”) or, should the Student elect, an extension for re-submission of his final research paper. (p. 1)

Your Committee stated the remedy in slightly different terms on p. 8 of its report.

On August 27, 2023, the Student asked TST to change the FZ notation on his transcript, pending his election between the remedies. On August 30, Professor Darren Dias, who serves as Executive Director of TST, wrote to the Student, indicating that TST would substitute a notation of SDF (“standing deferred”). SDF is not a permanent notation. Professor Dias also asked the Student to make his election “as soon as possible.” On September 3, the Student wrote to Professor Dias, stating that before he could make his election, he needed to receive the critical email, which he described as “the specific email that [Professor Robinson] sent to the Second Reader [Professor Catherine Hamilton], describing the attachments involved.” He stated that this email was “an indispensable part of my decision-making process between opting for resubmission or an ‘Incomplete’ grade.”

On September 20, counsel for TST wrote to the Office of Appeals, Discipline and Faculty Grievances (ADFG), noting that the Student had not yet made his election and requesting directions concerning the implementation of the remedy ordered in Report #427. The critical email, including Professor Hamilton’s name, was included in TST’s motion materials (p. 7). TST asked your Senior Chair to “confirm that [the Student] be deemed to have elected to receive an INC in [*Galatians*] if he does not make an election within a reasonable time frame.”

The Student replied promptly to TST’s request for directions. The Student characterized the TST’s request for directions as a request for reconsideration of Report #427 and in particular as a request that your Committee impose a “deadline” on his election. He noted that your Committee may reconsider its own decisions only in extremely limited circumstances (Report #418). He restated the need for “a specific document from TST to inform my decision between resubmitting the assignment or opting for an incomplete grade”, that is, the critical email, including all attachments.

Having read the parties’ materials, the Senior Chair did not fully understand what remained at issue between the parties. He therefore asked the parties to meet with him (on Zoom) so that they could briefly state their positions. On September 27, in advance of the meeting, the Student wrote to ADFG asking them to “inform the Senior Chair that I am specifically, and only, seeking the email from Peter Robinson to the Second Reader, which contains the attachments. Once I receive that email, I will promptly make a decision.” The meeting occurred on October 3. Counsel for TST and the Student attended. The main issue discussed at the meeting was whether or not the Student had in fact received the critical email. At the end of the meeting, the Senior Chair advised the parties that he would rule on TST’s request for directions.

On October 6, counsel for TST wrote to the Student, providing another copy of the critical email, and stating:

Please advise Mr. Dias of your election by October 13<sup>th</sup> at the latest. If the TST does not hear from you by then, I have instructions to write to the Academic Appeal Committee to advise that the TST has provided the original email that you had insisted on being produced and that you have continued to refuse to make your election.

The Student interpreted this message as an attempt to impose on him a deadline of October 13 to make his election. Counsel for TST, in correspondence with ADFG, characterized it as a request “that the Student make his election upon being provided with a copy of the email he requested in its original format”. Regardless of the proper characterization of this message, the Senior Chair observes that the position of both parties had been made clear from the meeting on October 3: TST’s position was that it had already provided the critical email and the Student’s position was that he had not received it.

On October 10, the Student wrote to ADFG stating: “I respectfully suggest that we pause on this issue until the conclusion of my appeal with Knox College”, referring to another procedure that is not currently before your Committee. The Senior Chair did not ask TST for its position on this request, as he had all the information he needed to determine TST’s motion and saw no reason to prolong the proceedings.

### **Procedural and Jurisdictional Issues**

In the normal course, the appropriate person to deal with TST’s request for directions would be the chair of the panel that heard the Student’s appeal. However, Professor Austin is on leave for the academic year 2023/24. The appropriate person to respond is therefore the Senior Chair of your Committee.

TST characterizes the proceedings before the Senior Chair as a motion for directions concerning the implementation of the remedy granted in Report #427. The Student characterizes the proceedings as a request for reconsideration of Report #427. He notes that your Committee has previously held that, except in narrow circumstances which are not relevant here, it has no jurisdiction to reconsider its own decisions (Report #418).

Your Senior Chair agrees with the TST’s characterization of the proceedings. It is a motion for directions concerning the implementation of the remedy granted in Report #427. TST has not asked the Chair to reconsider the outcome of the appeal or the remedy or to vary the reasoning in Report #427.

Neither party explicitly addressed the question whether your Committee, or a Chair of your Committee, has jurisdiction to make directions concerning the implementation of a remedy. This question was previously raised in Report #421, where a student argued that TST had not properly

implemented the remedy that your Committee had granted in Report #413 and requested that your Committee require it to do so. But in that case, your Senior Chair found that it was not necessary to determine the jurisdictional question because TST had already implemented the remedy ordered.

Your Senior Chair holds that a Chair of your committee has jurisdiction to make directions concerning the implementation of a remedy. This jurisdiction arises from your committee's power to make final decisions concerning "appeals made by students against decisions of faculty, college or school councils (or committees thereof) in the application of academic regulations" (Terms of Reference, s. 2.1). If there is disagreement about the implementation of a remedy, the decision is not final. Moreover, if a Chair of your Committee did not have this jurisdiction, in case of a dispute about a division's implementation of a remedy, a student would have to begin the appeal process again at the department or divisional level and, if unsuccessful within their division, would be required to launch a fresh appeal to AAC on the narrow issue of whether a remedy already granted had been properly implemented. Such a procedure would be cumbersome, time-consuming, and disadvantageous to students.

Normally, the Chair hearing such a motion for directions would be the Chair of the panel that granted the remedy, but where that Chair is not available, the Senior Chair or another Chair designated by the Senior Chair may hear it. A Chair hearing such a motion has no jurisdiction to depart from the factual findings or interpretations of university policies made by the panel that decided the appeal or to modify or vary the remedy granted by the panel, as such a departure would amount to reconsideration of the decision rather than implementation of the remedy. Any directions concerning the implementation of a remedy must be consistent with the findings and the reasoning in the Report that granted the remedy.

## **Decision**

TST asks your Senior Chair to find that it is implicit in Report #427 that the choice provided to the Student was to be made within a reasonable time. The Student points out that Report #427 did not impose a "deadline" on his choice and argues that your Senior Chair has no jurisdiction to impose such a deadline as that would in effect be a reconsideration of Report #427 (Student's Reply, pp. 5-7). The Student also submits that it would be unreasonable to require him to make his election in the absence of the information necessary to make an informed choice between the two remedies and states that he has not received that information. TST notes that Report #427 did not make the Student's election contingent on the production of any additional information and submits that it has in any event provided him with the information he has requested. As noted, in an email of September 27 and again at the meeting on October 3, the Student clarified that the only information he still requires to make his election is the critical email and stated that on receipt of the critical email he would be able to make his election "promptly."

Your Senior Chair agrees with TST that it was implicit in Report #427 that the Student's choice was to be made within a reasonable time. Your Committee cannot have intended that the Student delay his choice indefinitely. The practical consequence of indefinite delay would be that the temporary notation of SDF would remain on the Student's transcript indefinitely. Your

Committee did not grant that remedy and could not have contemplated it. Your Senior Chair also agrees with the Student that your Committee did not, and did not intend to, impose a specific deadline on his election. Since your Committee neither imposed a specific deadline for the election nor contemplated the election being delayed indefinitely, your Committee must have intended the Student to make his election within a reasonable time. The Senior Chair infers that your Committee intended to make a notation of INC the default. As your Committee noted in Report #427, a notation of INC is functionally very similar to the notation of LWD originally sought by the Student.

There is considerable merit in TST's submission that Report #427 does not entitle the Student to additional information before making his election; yet there is also some merit in the Student's argument that he should have a proper basis for making his election. But if the Student has indeed received the critical email, it is not necessary to decide these points because the Student has stated that he will make his election promptly on receiving the critical email. It is therefore helpful to determine whether the Student has received the critical email, unaltered and with all attachments. To repeat, the critical email is a message dated February 24, 2022, from Professor Robinson, the course instructor, to Professor Hamilton, the second reader. This email, as most recently received by the Student and ADFG on October 6, 2023, had three attachments: (i) a copy of Student's essay for *Galatians*; (ii) the guidelines for the paper that Professor Robinson had provided to student in *Galatians*; and (iii) the syllabus for *Galatians*. In the body of the email, Professor Robinson described these attachments as follows: "I have attached the paper as well as the guidelines provided for the paper. I have also attached the course syllabus which also details elements of the final assignment." TST has forwarded this email, with its attachments, to the Student on several different occasions, most recently on October 6.

In his appeal materials, the Student suggested that with the critical email Professor Robinson might have sent Professor Hamilton the version of his paper with comments by Professor Chester rather than an unannotated version (Student's appeal materials, pp. 003-004). If so, that would also be a violation of TST's policy. But, in Report #427, your Committee did not explicitly make this finding. In any event, if Professor Robinson had sent the version with comments (and your Senior Chair does not find that he did), the Student also has that version of the paper (TST appeal materials, pp. 86-97) and has already received a remedy for TST's violation of its own appeal policy. Finally, your Senior Chair notes that in Report #427, your Committee explicitly found that Professor Robinson did not provide Professor Hamilton with the "further evaluative comments of the course instructor," *i.e.*, Professor Chester's comments on re-reading the paper (TST appeal materials, p. 98). This finding is binding on the Senior Chair in this motion ruling.

At the meeting on October 3, the Student alleged that there might have been another attachment to the critical email. This allegation does not appear in the Student's submissions to your Committee concerning the critical email (pp. 003-004), but is implicit in an email he sent to Professor Dias on September 3 (Student's reply to TST's motion, p. 14). At the meeting on October 3, the Student stated that if TST would provide him with "the actual email," he would be able to determine whether there was such an additional attachment. If there had been such an additional attachment, the body of the email would likely have been altered as well, as it refers only to three attachments. The Student stated that there was "a good possibility" that the email

had been altered. He did not, however, explain what procedure, apart from forwarding, could be used to provide him with the email.

It is possible to edit an email before forwarding it. But the allegation that Professor Robinson altered the critical email before providing it to counsel for TST, thence to your Committee, and the Student, and now to the Senior Chair, is a very serious one, and the Senior Chair would expect it to be supported by evidence. There is none. The suggestion that the critical email has been altered is entirely speculative. The Student alluded to emails from a former executive director of TST which, he said, “raised alarming concerns about the accuracy and reliability of information provided by TST” (Student’s reply to TST’s motion, p. 7). However, he did not place these emails before the Senior Chair, and even if he had, they would not be a proper basis for finding that the critical email had been altered. Any inference about Professor Robinson’s conduct based on the Student’s concerns about a different person’s conduct would be entirely speculative. The Student suggested at pp. 004-005 of his appeal materials that Professor Robinson was motivated to conceal from your Committee the fact that he had provided evaluative comments to the second reader. If Professor Robinson did intend to conceal this fact (and your Senior Chair does not find that he did), he manifestly failed to do so, as evaluative comments were included in the body of the email as reproduced in TST’s appeal materials. Moreover, there is nothing in Professor Hamilton’s report to suggest that she had access to or relied upon anything other than the three attachments that Professor Robinson (properly) provided and the evaluative comments that Professor Robinson (improperly) included in the body of the email. (The Student has not alleged that Professor Hamilton’s email was altered in any way.) The Senior Chair notes, once again, that the Student has already received a remedy for the inclusion of evaluative comments in the critical email. Your Senior Chair finds as a fact that the Student has received the critical email that Professor Robinson sent to Professor Hamilton, unaltered and with all three of its attachments.

The Student is therefore in a position to elect promptly between the two options provided to him in Report #427. The Senior Chair trusts that he will do so.

### **Concluding Observation**

The Senior Chair was puzzled by Wycliffe’s failure to include the critical email in the materials it filed before the TST-AAC. He notes that if the TST-AAC had had this information, it would have been in a much better position to assess the merits of the Student’s appeal, and the Student’s further appeal to your Committee might have been unnecessary.



## **Appendix – The Critical Email**

Dear Catherine,

I am wondering if you would be willing to help out with reviewing a paper as part of a student's appeal process. A student who took Galatians with Stephen Chester last term has appealed his grade. As part of that appeal we need to have another faculty member review the paper to see whether or not the initial grade was justified. Stephen gave the student a failing grade. I have attached the student's paper as well as the guidelines provided for the paper. I have also attached the course syllabus which also details elements of the final assignment.

As part of this process Stephen himself has reviewed the paper and offered a further response. I can let you see that as well if that would be helpful.

I should note as well that the student has expressed the following "This entire point of the paper and the reason why I took the course was to debunk what was to defend Paul from the misrepresentation of him found in the ecumenical council and scholarly work since the 19th century." It seems as though the student is working with an understanding of the Noahide Laws and how that should inform our interpretation of scripture. While the student is entitled to their views the basic question is whether or not the student followed the guidelines for the assignment.

Would you be able to do this? In this process we cannot give you the student's name nor will the student be given your name. Please let me know.

Peter