

**THE UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL**

Report #402 of the Academic Appeals Committee (Chair Only)  
**March 29, 2019**

To the Academic Board  
University of Toronto

This motion was conducted on the basis of written submissions. The parties did not attend.

**Senior Chair**

Professor Hamish Stewart

**For the Student**

Mr. W. H.: Mr. Selwyn Pieters

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

Mr. Robert A. Centa, Paliare Roland Rosenberg Rothstein LLP

**Preliminary Issue**

The Student was enrolled in the Doctor of Theology (Th.D.) program in the Biblical Studies Department of the Toronto School of Theology (TST). On December 16, 2016, the Student and TST executed Minutes of Settlement (TST Book of Documents, Tab 3). The Minutes were intended to resolve certain issues arising out of the Student's performance in the program and certain prior academic appeals. In the process of negotiating the terms of the settlement, the Student was represented by Ms. Amanda Ross and the TST by Mr. Robert Centa. The Minutes required the Student to complete his second major comprehensive examination in the Department "on or before June 30, 2017, with a minimum grade of A-" and laid out certain further requirements with specific timelines. The Minutes provided that if the Student did not meet those requirements, his registration in the program would be terminated. Para. 2 of Schedule A further provided that he "waives any right to academic appeal any grade or any decision to terminate his registration in the program for any reason."

The Student took the second major comprehensive examination and was assigned a grade of 73% (B-). On July 31, 2017, Professor Jaroslav Skira, director of the Graduate Centre for Theological Studies at TST, advised the Student that his registration in the TST program was terminated, in accordance with the Minutes of Settlement.

The Student now seeks to appeal the termination of his registration. On December 10, 2018, he filed a Notice of Appeal to your Committee. Your Chair asked for written submissions from the parties as to whether your Committee had jurisdiction to hear the appeal. TST filed its submissions on January 9, 2019. The Student filed a Revised Reply (February 6, 2019), and TST provided a brief further Reply on February 22, 2019.

TST submits that that your Committee lacks jurisdiction to hear the Student's appeal. TST submits that the Minutes of Settlement deprive your Committee of jurisdiction to hear the appeal and that your Committee has no jurisdiction to review the validity of that agreement. TST submits further that, apart from the Minutes of Settlement, the Student would first have to appeal to TST's Graduate Studies Council Academic Appeal Committee (GSCAAC) before appealing to your Committee.

The Student submits that because he cannot appeal to the GSCAAC, he must be able to appeal to your Committee (Student's Revised Reply, para. 17); he argues, in effect, that he has exhausted his remedies within TST. He also indicates that he will argue that the Minutes of Settlement are not enforceable; specifically, that he cannot contract out of his human rights (para. 23) or out of his appeal rights within the University (paras. 25-26).

Your Committee's Terms of Reference provide that its function 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 and requirements ..." (2.1). Appeals from the GSCAAC to your Committee are explicitly provided for by s. 14.3.7 of TST's Program Handbook for doctoral students (2018) (at p. 56). In the normal course of events, the Student would appeal the TST's decision to the GSCAAC; if that appeal were dismissed, he could then appeal to your Committee. However, your Committee lacks jurisdiction to hear an appeal directly from a decision that was made at lower level than the council of a faculty, college or school. Accordingly, your Committee would have jurisdiction to hear the Student's appeal from a decision of the GSCAAC, but does not have jurisdiction to hear his appeal directly from TST's decision to terminate his registration.

However, the Minutes of Settlement are on their face a bar to the Student's appeal from the termination appeal to the GSCAAC. The Student submits that your Committee must therefore have jurisdiction to hear his appeal. The Chair of your Committee rejects this submission. The Committee's jurisdiction depends on its terms of reference, and is not created by the fact that no other University body has jurisdiction over a dispute between a student and a division of the University.

Moreover, the Minutes of Settlement on their face are also a bar to the Student's appeal from the termination to your Committee. TST submits that your Committee has no jurisdiction to consider the validity of the Minutes of Settlement because it "is not a decision in the application of an academic regulation or requirement" (TST Submissions, para. 2; see also paras. 15-18). The Student raises a number of arguments as to why the Minutes should not be enforced. As to whether your Committee has jurisdiction to consider its enforceability, he submits that an appeal to AAC is his "only alternative" (Revised Reply, para. 17; see also para. 19). But the fact that there is no other alternative appeal route does not give your Committee jurisdiction. He also argues that the Minutes of Settlement "arose out of issues encountered by [the Student] due to a disability ... and that required accommodation by the TST" (para. 20). It is not in dispute that TST had a duty to accommodate the Student; nor is it disputed that a student can appeal an academic decision on the ground that he or she was inadequately accommodated. At its highest, the Student's submission amounts to an argument that the Minutes of Settlement themselves could be construed as an aspect

of TST's accommodation of the Student's disability and would therefore be reviewable in the academic appeal process. In light of my conclusion that your Committee does not have jurisdiction to hear the Student's appeal at this stage, it is not strictly necessary to decide whether characterizing the Minutes of Settlement in this way would give jurisdiction; however, your Chair observes that it would be quite extraordinary for a University appeal body to consider the merits of an agreement that had been negotiated between a student and a division of the University where both parties were legally represented.

The Student's appeal is quashed.