

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report 404 of the Academic Appeals Committee
June 20, 2019

To the Academic Board
University of Toronto

The following academic appeal was heard on Thursday, June 6, 2019.

Committee Members:

Professor Stephen Waddams, Chair
Professor Mohan Matthen, Faculty Governor
Mr. Price Amobi Maka, Student Governor

Hearing Secretary:

Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Appeals Discipline and Faculty Grievances

Appearances:

For M. U-S (the “Student”):

Mr. Alex Severance, Law Student, Downtown Legal Services

For the Toronto School of Theology:

Mr. Robert A Centa, Paliare Roland Rosenberg Rothstein LLP

This is an appeal from a decision of the Toronto School of Theology (TST) terminating the Student’s candidacy for the degree of Doctor of Theology (Th.D.). Your Committee makes no comment on the long chain of events that led up to the termination because, as will appear, this will now fall to be considered by the TST appeals committee (Graduate Studies Council Academic Appeals Committee; GSCAAC).

The termination was communicated by letter from the Acting Director of the Graduate Centre for Theological Studies, of the TST, on September 7, 2016. The Student immediately indicated a wish to appeal from this decision and was informed by the Acting Director that the proper route was an appeal to the GSCAAC. She filed an appeal within the time limit, but was then informed by letter from the Registrar, on December 15, 2016, that she was not eligible to appeal to the GSCAAC since her “application falls under admissions and related matters.”

This last statement was erroneous. It was conceded by TST, in its reply in the present proceedings (para 87), that the TST appeal committee “erred in refusing jurisdiction over the Student’s appeal and should have considered the merits of the issue.” The TST nevertheless opposed the appeal on the ground that the notice of appeal was filed out of time, but TST submitted that, if the time argument failed, “the matter should be remitted back” to the TST appeals committee.

The Student, in her initial statement of appeal, sought an order reinstating her in her program. Subsequently, however, the Student amended her position by saying that “assuming this issue [timeliness] is resolved in the Appellant’s favour, we agree with the Respondent that the appeal ... should be remitted to the GSC Academic Appeals Committee ... for determination on its merits.” (email of May 31, 2019).

The result was that both parties agreed that only the time issue remained to be resolved by your Committee.

The relevant provision in your committee’s terms of reference is:

3.1.6. An appeal to the Committee shall, except in exceptional circumstances, be commenced by filing a Notice of Appeal in accordance with the rules of the Academic Appeals Committee no later than 5.00 pm on the ninetieth day after the date of the decision from which the appeal is being taken.

The appeal was filed on February 7, 2019. The question for your Committee is whether the words “except in exceptional circumstances” apply in this case.

Both parties referred to a four-part test used in previous decisions of your Committee and derived from judicial statements in similar, though not identical, contexts. The four matters to be considered in this test are a continuing intention to appeal, a reasonable excuse for delay, an arguable case, and absence of prejudice to the other side. These factors are, in our opinion, matters for consideration, relevant in many cases, but not strict pre-requisites in all circumstances. The meaning of “exceptional circumstances” is not exhausted by the four considerations mentioned. The underlying purpose of the exception must be borne in mind, that is, to prevent the strict general rule from causing an inequity. In the present case it could not be expected that the Student would give positive indications of an intention to appeal in circumstances where the erroneous decision of the TST (as now conceded) led her to believe that there was and would be no decision of the TST appeals committee, and so no decision from which she could appeal.

The policy of the University on Academic Appeals Within Divisions (Dec 12, 2005) states (para 4 (i)) that “Divisional processes should require that any student whose appeal has been denied must be advised of a further right to appeal of the decision of the divisional appeals committee to the Academic Appeals Committee of the Academic Board of the Governing Council. The existence of this right of appeal should be clearly communicated, in writing, to students for whom the appeal was denied at the divisional level”

The Registrar’s letter of December 15, 2016, did not include any indication of a right to appeal, but TST relies on a provision in the Th.D. and Ph.D. Handbook as follows:

14.2.7. Right of Appeal to the U of T Academic Appeals Committee. All Th.D. students have the right to appeal the final result of a TST appeals process (Step 3) to the Academic Appeals Committee of Governing Council of the University of Toronto.

In our opinion it would be preferable, in general, for students to be informed individually of their right of appeal. But, even assuming that the notice in the Handbook is sufficient in normal circumstances, the present circumstances are far from normal. The Registrar's letter of December 15, 2016, did not give the appearance of being itself an actual decision of the TST appeals committee. On the contrary, it indicated that no such decision had been made, and that an appeal committee had not, and would not be, constituted because the Student was ineligible to appeal. As is now conceded, this was a mistake. In these exceptional circumstances we do not consider that adequate notice was given to the Student of her right to appeal. It was not simply a matter of omitting to give information: the statement in the Handbook, in the particular circumstances of this case, and from the point of view of a student reading it and asking herself "What should I do next?" was (to say the least) confusing. Even a careful reading of the Handbook together with the letter of December 15 would not convey to a reasonable person in these circumstances that she ought to be considering an appeal from a decision that she had been officially informed had not and would not be made. The wording of the Handbook, with its references to "the final result," "process," and "Step 3" implies that, at the least, a TST appeal committee will have been constituted and will have given some consideration to the matter. Step 3 is described in a table on the same page of the Handbook as "Academic Appeals Committee of ADC", the former name of the TST appeals committee.

It was suggested that, since the Student sought legal advice in the summer of 2018 and began substantive work on her appeal in September of 2018, the delay occurring after September 2018 was significant. In our opinion the seeking of legal advice did not displace the exceptional circumstances referred to above, and could not be said, in itself, to create a new strict time period.

The conclusion of your Committee is that the appeal should be allowed, and the matter remitted to the GSCAAC for prompt consideration.