

**THE UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL**

Report #406 of the Academic Appeals Committee (Chair only)  
October 2, 2019

To the Academic Board  
University of Toronto

**Senior Chair**

Professor Hamish Stewart, Senior Chair

**For the Student Appellant:**

Ms. F.K. (the “Student”)

**For the School of Graduate Studies:**

Professor Charmaine Williams, Vice-Dean, Students, School of Graduate Studies

This appeal was conducted on the basis of written submissions in order to determine jurisdiction as per Section 3.1.7 of the Academic Appeals Committee Terms of Reference. The parties did not attend.

The Student seeks to appeal from a decision of the Graduate Academic Appeals Board (GAAB), dated May 8, 2019. The Student was successful at the GAAB but seeks additional remedies from your Committee. The Senior Chair of your Committee asked the Student for written submissions as to whether your Committee had jurisdiction to hear her appeal. Having read those submissions, the Senior Chair has concluded that it is not necessary to receive reply submissions from the relevant university division, that the AAC lacks jurisdiction, and that the appeal should therefore be quashed.

**Background**

In the Winter 2011 term, the Student enrolled in the Ph.D. program in Educational Leadership & Policy (ELP) in the Department of Leadership, Higher and Adult Education (the Department) at the Ontario Institute for Studies in Education. She has completed all requirements to achieve Ph.D. candidacy except her comprehensive examination. The history of the Student’s efforts to pass the comprehensive examination is complicated and does not need to be reviewed in detail for the purposes of this ruling. Most recently, in July 2018, the Student took the comprehensive examination and failed. Her registration was terminated. She appealed to the GAAB, raising a number of arguments concerning the process around her examination and seeking a number of remedies. In a decision dated May 9, 2019, the GAAB allowed her appeal. The GAAB found that the Student had been inadequately supervised during the process of preparing for the comprehensive examination and that this lack of supervision “could have contributed to the failure”. As a remedy, the GAAB ordered that the Department provide her with an opportunity to take the examination again, with adequate supervision. The GAAB rejected all of the Student’s other arguments. The GAAB concluded its decision as follows:

The remedy in this case must be another opportunity to retake the comprehensive exam. When that takes place is a matter for negotiation between [the Student] and the department. There must also be supervision of [the Student]'s work while she prepares for the exam. We will not say precisely what adequate supervision would be, but it must surely involve a series of meetings to discuss [the Student]'s work and feedback on written drafts.

We would stress that lack of supervision is the only ground of appeal in which we have found merit. [The Student] has a right to be consulted about who the supervisors and examiners are. But this does not extend to the right claimed in this appeal to veto any members of the ELP program as supervisors or examiners, or to have herself transferred to another department. We have said only that the supervision was not adequate; we have rejected any argument that ELP program faculty were, or would be, in any way biased. The meetings and feedback referred to above, ought, we believe, to be with and derive from the best qualified faculty members, and the best qualified faculty members are those appointed to the ELP program. [The Student]'s exam is also best conducted by similarly qualified faculty members. If [the Student] does not wish to work with ELP program faculty, she has the right to withdraw and apply to another program she likes better.

On appeal to your Committee, the Student seeks the following specific remedies:

- General damages of \$500,000;
- Guaranteed transfer to another department;
- Full funding for at least two years to complete the Ph.D.

In her submissions on the jurisdiction of your Committee to grant these remedies, the Student repeats her allegations of inadequate supervision. As noted, the GAAB has granted a remedy in relation to those allegations and, as the successful party on that point, the Student cannot appeal from its decision to your Committee.

The Student also suggests that “GAAB decision recommended that I withdraw and reapply to be transferred to another department” and seeks the second and third remedies on that basis. This is a mischaracterization of the GAAB’s decision. The GAAB made no such recommendation but merely observed that applying to another department was a course of action open to the Student if she chose to take it.

The Student cites two cases in support of her position: *Lam v. University of Western Ontario*, 2019 ONCA 82; and *Stuart v. University of Western Ontario*, 2017 ONSC 6980. These cases are not relevant to the issues at hand. In *Lam*, the Court of Appeal held that a student’s action against a university for breach of contract and breach of fiduciary duty should not have been dismissed on a motion for summary judgment. In *Stuart*, Morgan J. dismissed a university’s motion to strike a student’s action against it. Both cases are concerned with the appropriateness of the Superior Court of Justice hearing a student’s action against a university; both cases allowed those actions to proceed; but neither case has any bearing on the jurisdiction of an internal university tribunal such as the GAAB or the AAC.

The Student refers a number of times to the necessity for the University to follow its own rules and regulations. The University’s appeal procedures are designed for that purpose. Section 2.1 of your Committee’s terms of reference provide that your Committee shall

... 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 ...

This provision empowers your Committee but also limits it. The issues heard and the remedies granted by the AAC must relate to decisions concerning the “application of academic regulations and requirements” to students who are (or were) enrolled at the University. They do not extend to admissions decisions or to providing financial compensation. Your Committee does not have the power to direct a University division to admit a student or the power to order the University to pay damages or to provide any particular level of funding to a student. In your Committee’s Report 359-1, concerning an appeal in which two students sought damages and other financial remedies, the Chair wrote:

... the Students submitted that all of the losses that the allegedly suffered flowed from the academic decisions that they challenge ... and that those losses should therefore be considered “academic” matters. This submission has no merit. The damages sought by the Students are in the nature of financial compensation of losses allegedly flowing from allegedly erroneous decisions by [the relevant divisions of the University]; but these losses are not themselves academic matters. The AAC’s jurisdiction does not extend to remedying all the consequences, whatever they may be, of a decision that the AAC does have jurisdiction to review.

These words are equally applicable to the present appeal. The Student’s appeal to your Committee is quashed for want of jurisdiction.