



FOR INFORMATION

OPEN SESSION

TO: Academic Board

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

CONTACT INFO: christopher.lang@utoronto.ca

PRESENTER: See Sponsor

CONTACT INFO:

DATE: November 12, 2019 for November 21, 2019

AGENDA ITEM: 12(b)

ITEM IDENTIFICATION:

Academic Appeals Committee, Individual Reports, Fall 2019

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 21, 2019)**

PREVIOUS ACTION TAKEN:

The last semi-annual report came to the Academic Board on May 30, 2019.

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.

DOCUMENTATION PROVIDED:

- Academic Appeals Committee, Individual Reports, Fall 2019

**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.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #405 of the Academic Appeals Committee (Chair only)
August 27, 2019

To the Academic Board
University of Toronto

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

Senior Chair

Professor Hamish Stewart, Senior Chair

For the Student Appellant:

Mr. R.M. (the “former Student”)

For the Faculty of Faculty of Arts and Science:

Mr. Thomas MacKay, Director, Faculty Governance and Curriculum Services (the “Faculty”)

The former Student seeks to appeal from a decision of the Committee on Standing of the Faculty of Arts and Science. The decision was made on April 24, 1991. Normally, the next level of appeal be the Faculty’s Appeal Board, but there is no record of such an appeal having been taken. The Office of Appeals, Discipline and Faculty Grievances (the “Office”) received the Student’s Notice of Appeal in June 2019, more than 28 years after the decision in question. In the circumstances, your Committee decided to deal with the matter as if there had been an unsuccessful appeal to the Appeal Board. Section 3.1.6 of your Committee’s *Terms of Reference* provides that “except in exceptional circumstances” an appeal should be filed within 90 days of the decision appealed from. Short extensions to this deadline may be granted by the Office; longer extensions may be granted by the Senior Chair (or a Chair); even where an extension is granted, a panel of your Committee may dismiss an appeal on the basis that it is untimely.

The Student and the Faculty agreed to have the issue of the timeliness of the appeal decided by the Senior Chair of your Committee on the basis of their written submissions, in order to decide the issue on an expedited basis.

In the Winter 1990 session, the Student was enrolled in CLA300. In his original petition to his college registrar, dated June 27, 1990, the Student stated that during the examination in this course, “a power blackout occurred over all of downtown Toronto in the middle the final exam, interrupting it and the handing in of our essays.” He also stated that the examination was rescheduled but that, through no fault of his own, he was unable to attend on the rescheduled date, and so was unable either to write the examination or to hand in the final essay. The sequence of events following the filing of the Student’s original petition is not entirely clear, but eventually his petition reached the Faculty’s Committee on Standing. On April 24, 1991, that Committee ruled

that the Student would not be granted any extensions to submit course work, but that he would be permitted to write a special examination on June 14, 1991. The Student states that he then destroyed his final paper for the course, but immediately regretted having done so. The Student wrote the special examination and received a final grade of D- in the course. In his Notice of Appeal, the Student seeks a number of remedies, in particular that he be awarded a grade of 100% for his (destroyed) final paper for CLA300.

The Faculty submits that your Committee should not hear the appeal on the ground that the appeal has been filed too late, and in particular that there is an insufficient record on which the appeal could be heard. Any written materials concerning the proceedings in the Committee on Standing, including its written reasons (if any) for its decision, are no longer available. As the Faculty explains in its submissions, “the Faculty followed a retention protocol whereby records of received petitions, including all material presented and notes regarding the decisions, were kept for five years after the date of the petition decision and then destroyed.”

In response, the Student submits that between 1990 and 1991 all of his appeals were submitted “promptly,” and he restates his arguments on the merits of the appeal. The Student also points out that his original petition to his college Registrar and the decision of the Committee on Standing are still available, and submits that these materials provide a sufficient basis for hearing the appeal. There are two reasons, each sufficient on its own, for refusing to hear this appeal from a decision made more than 28 years ago. First, the Senior Chair of your Committee agrees with the Faculty that, owing to the passage of time and the Faculty’s reasonable retention protocol, there is no sufficient record on which a panel of your Committee could properly decide the appeal. The available materials do not include any information about the position that the Faculty took in the appeal to the Committee on Standing or the reasoning supporting the decision of the Committee on Standing. In particular, there is no information about how the Student’s position compared to that of other students who were affected by the blackout, information which would be highly relevant to your Committee’s assessment of the reasonableness of that decision. Second, although the Student may well have pursued his appeal with reasonable diligence during the period from April 1990 to June 1991, he has given no explanation whatsoever as to why he waited 28 years to appeal from the decision of the Committee on Standing. In short, he has not shown any “exceptional circumstances” to justify a lengthy extension from the 90-day deadline.

The Student’s appeal is therefore dismissed.

**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.