



**FOR INFORMATION**

**OPEN SESSION**

**TO:** Academic Board

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

**CONTACT INFO:** [christopher.lang@utoronto.ca](mailto:christopher.lang@utoronto.ca)

**PRESENTER:** See Sponsor

**DATE:** November 11, 2020 for November 18, 2020

**AGENDA ITEM:** 9b

**ITEM IDENTIFICATION: Academic Appeals Committee, Individual Reports, Fall 2020**

**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 18, 2020)**

**PREVIOUS ACTION TAKEN:**

The last semi-annual report came to the Academic Board on May 28, 2020.

**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.

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**DOCUMENTATION PROVIDED:**

- Academic Appeals Committee, Individual Reports, Fall 2020

**THE UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL**

Report #409 of the Academic Appeals Committee  
**August 17, 2020**

To the Academic Board  
University of Toronto

This appeal was conducted electronically, via Zoom.

**Academic Appeal Committee Members:**

Professor Hamish Stewart, Senior Chair  
Professor Douglas McDougall, Faculty Governor  
Ms. Olivia Batt, Student Governor

**Hearing Secretary:**

Mr. Christopher Lang, Director, Office of the Appeals, Discipline and Faculty Grievances  
Ms. Krista Kennedy, Administrative Clerk and Hearing Secretary, Office of the Appeals,  
Discipline and Faculty Grievances

**For the Student Appellant:**

Mr. Marcus McCann, Millard and Company LLP, Counsel for the Appellant

**For the Faculty of Law:**

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

**Overview**

The Student was enrolled in the first year of the JD program at the Faculty of Law (the Faculty) during the 2017/18 academic year. The Student confronted significant health challenges and received a number of accommodations throughout the year. He successfully completed the preliminary “Legal Methods” course in August 2017 and three courses in the Fall 2017 term, but did not complete three courses in the Winter 2018 term or his year-long small group course in Criminal Law. On April 4, 2019, the Student emailed Assistant Dean Alexis Archbold, requesting to resume his studies on a part-time basis. On April 8, Dean Archbold advised him by email that his registration could not be extended and that the appropriate next step was to reapply for admission to the JD program. The matter proceeded on the basis that this advice was a decision of the Faculty’s Student Accommodations Committee (composed of Dean Archbold and Assistant Dean Sara Faherty). A decision of the Accommodations Committee may be appealed first to the Associate Dean of the Faculty and then by way of petition to the Faculty’s Academic Standing Committee (ASC). The Associate Dean upheld Dean Archbold’s decision. The Student accordingly petitioned the ASC. In a decision dated June 26, 2019, and sent to the Student on July 16, 2019, the ASC dismissed the Student’s petition.

The Student appeals to your Committee from the ASC’s decision. The principal remedy sought by the Student is an order permitting him to complete his remaining work from the first year of the

program and then to resume studies at the Faculty on a part-time basis with appropriate accommodations. The Faculty submits that the appeal should be dismissed.

Your Committee is not unanimous. A majority of your Committee would dismiss the appeal. One member of the Committee would allow the appeal and order the Faculty to permit the Student to resume his studies, as explained in more detail below.

## **Chronology**

### 2015/16

The Student was admitted to the Faculty of Law and began the first year of the JD program in the Fall 2015 term. He did not complete his courses that term and petitioned the ASC, with supporting medical evidence, for a retroactive leave of absence and for permission to start the first-year program in the Winter 2016 term. Because the first-year program forms an integrated whole, the Faculty does not permit students to begin law school in a winter term. According to the law school's policies, normally at this point the Student would have been considered to have failed first year and would have had to reapply for admission. The ASC decided instead to provide the Student with the following accommodation: his admission to the Faculty was retroactively deferred. As a result, his transcript does not show his attendance in the Fall 2015 term and the tuition fees he paid for the 2015/16 academic year were credited to his account for the 2016/17 academic year.

In May 2016, the Student was involved in a bicycle accident, which caused a number of ongoing medical problems.

### 2016/17

The Student began the first-year program again in the Fall 2016 term. He registered with Accessibility Services and a counsellor recommended a set of accommodations, which the Faculty accepted. But the Student was unable to complete his work for the Fall 2016 term. He successfully petitioned the Accommodations Committee for a second retroactive deferral. The Accommodations Committee granted his request, but stated that "no additional retroactive deferrals will be available to you". Thus, the Student's transcript does not show his attendance in the Fall 2016 term and the tuition fees he had originally paid for the 2015/16 academic year were now credited to his account for the 2017/18 academic year.

### 2017/18

The Student began the first-year program for the third time in the Fall 2017 term, once again with a set of accommodations in place that had been recommended by Accessibility Services and accepted by the Faculty. The Student's transcript for 2017/18 currently reads as follows. (The Faculty's grading scale is: HH (high honours), H (honours), P (pass with merit), LP (low pass),

and F (fail). Some courses are taught on a CR (Credit) / NCR (no credit) basis. INC stands for incomplete.)

Fall 2017	Legal Methods	CR
	Legal Research and Writing	P
	Contracts	P
	Torts	HH
Winter 2018	Legal Process	INC
	Property	INC
	Constitutional Law	INC
Full-year 2017/18 (small group)	Criminal Law	INC

By April 30, 2018, students would normally have completed all of their written work and exams. The Student had not. There were two papers outstanding for his Criminal Law small group, referred to in the materials as paper #2 and paper #3. Paper #2 would originally have been due towards the end of the Fall 2017 term and paper #3 towards the end of the Winter 2018 term. The Student had already been granted extensions on these papers. The Student did not write his three exams at the scheduled time. On April 30, the Student met with Dean Archbold to discuss the completion of his work and later that day sent an email proposing a schedule. He proposed to submit paper #2 on May 7 and paper #3 on May 14, and he also proposed a schedule for his final examinations. Dean Archbold was “supportive” of the plan (Tab 24). Dean Faherty responded to the Student, stating “We will schedule your exams after you hand in your term work”, *i.e.*, the two papers for Criminal Law. On May 7, the Student wrote to Dean Archbold, stating “Continuing to work on Paper #2. Have been unable to complete.” Dean Archbold replied the next day, stating that the Student was required to complete all of his outstanding work by June 30, and that “It is important that you submit all of your written work before the end of May so that we can schedule your exams in June. If you are unable to complete all of your course work ... by the end of June, you risk losing your academic standing in the program, and may not be able to continue.” On May 16 and 18, the Student wrote to Dean Archbold, stating that he was continuing to make progress on the outstanding papers.

On July 3, 2018, the Student emailed Dean Archbold, stating that he was experiencing “a re-deterioration of my health status” and asking for more time to complete his work. On July 9, Dean Faherty replied to the Student’s email, stating:

Your note does not indicate that you are now in a position to do academic work. As you know, you have outstanding course work in your *Criminal Law* class. You will not write exams until that term work is submitted.

There was no further communication between the Student and the Faculty until April 2019.

The Student states that he “became debilitatingly sick in the winter of 2018” and that he was “too sick to complete the course work by the extended deadline [June 30] . . . , and too sick to respond to the Faculty’s email [of May 7].” (Notice of Appeal, para. 4). In his petition to the ASC, the Student stated that in the Winter 2018 term, “my mental health deteriorated to such a point that it left me unable to attend to even the most basic daily responsibilities. I was paralyzed with severe anxiety and depression that left me unable to do much.”

The Student’s appeal materials include a letter dated May 1, 2020, from Dr. David Tsai, MD, summarizing the Student’s medical history from March 24, 2014, to May 1, 2020. This letter was obviously not available to the ASC. With respect to the year 2018, Dr. Tsai states:

In 2018, [the Student] was seen for 5 office visits regarding injuries sustained from the May 2016 accident . . . . During this time, he suffered from severe anxiety and depression which incapacitated him, including activities of . . . daily living. This compounded on top of his physical ailments rendered him significantly disabled.

The Student’s appeal materials also include a letter dated May 1, 2019, from Dr. Tony Hoff, C.Psych. The ASC had this letter before it. Dr. Hoff states that the Student has been his patient since 2007. With respect to the period April 2018 to April 2019, Dr. Hoff states:

During the past year especially, [the Student] has experienced significant mental health challenges, including severe and debilitating anxiety and depression. During this period of severe debilitation, he was incapable of performing many basic activities of daily living. In many ways, he withdrew from the community at large, as well as from family and friends. He was certainly incapable of performing higher cognitive tasks relating to his academic responsibilities.

The Faculty does not contest the opinions of Dr. Tsai or Dr. Hoff concerning the Student’s health during 2018.

#### July 9, 2018 to April 4, 2019

There was no communication between the Faculty and the Student during this period. There were suggestions in the submissions of each party that there was some onus on the other party to make contact during this time.

Your Committee does not criticize either the Faculty or the Student for the lack of contact during these nine months. From the Faculty’s point of view, the Student had failed to complete his work within the (accommodated) deadlines and it was quite reasonable for the Faculty to wait to hear from him as to any proposed next steps. As for the Student, given that he had not completed the first-year program and was therefore not in a position to continue to the second year, it cannot have come as a surprise to him that he was not a registered student in the Faculty for the 2018/19 academic year. Nevertheless, your Committee finds that he was so seriously disabled that, during this period of time, it was unrealistic to expect him to contact the Faculty, much less to attempt to resume his studies.

### April 4 to July 16, 2019

On April 4, 2019, the Student emailed Dean Archbold. He requested “to resume my studies on a part-time basis.” Dean Archbold responded on April 8, stating that “the appropriate next step for you is to reapply to the [JD] program” and that he would not be registered for the 2019/20 academic year. The Student responded on April 11, asking “what specific policy was applied in coming to the decision you sent me.” Dean Faherty later explained to the Student that the Faculty had “treated your email as a request for accommodation”, that the Accommodation Committee had decided not to grant the request, and that the Associate Dean had confirmed that decision (email of May 31, 2019).

The Student petitioned the ASC, which (among many other functions) considers petitions from the Accommodation Committee. In his petition, he once again requested the opportunity to complete his outstanding work and then resume his studies part-time. In accordance with its usual procedures and practices, the ASC received the Student’s written petition and supporting materials, received written materials from the Faculty, and heard from both the current and former Associate Deans as well as Dean Faherty. In accordance with the Faculty’s grading policy, the materials before the ASC were anonymized; the Student is identified only by his first-year pseudonym “Oak.” The ASC met on June 5 and eventually released a carefully reasoned decision dismissing the Student’s petition.

The ASC’s decision is dated June 26, 2019, but it was not sent to the Student until some time later. On July 4, Reshma Dhrodia, an advisor from Accessibility Services, emailed Dean Archbold stating that the Student “now has a reduced course load/half time accommodation in place.” Ms. Dhrodia appears to have been unaware that the Student was currently engaged in an appeal about precisely this issue. Dean Archbold was understandably surprised to receive this message, since the Student was not currently registered at the Faculty; moreover, though the Faculty normally defers to the accommodations proposed by Accessibility Services, they must, at least in principle, be approved by the Faculty before being implemented. On July 5, she wrote to Ms. Dhrodia seeking clarification. Ms. Dhrodia replied the same day, indicating that she had recently learned of the Student’s appeal and that “there is a disability-related rationale for a half-time accommodation should [the Student] be allowed to return.”

On July 16, Dean Faherty emailed the ASC’s decision to the Student.

### **Preliminary Procedural and Legal Issues**

The issues in this section of the report were determined by the Chair alone.

Jurisdiction: When dealing with the matter in the spring of 2019, Dean Archbold and the ASC were both rightly concerned about whether the Faculty’s Accommodations Committee or ASC had any jurisdiction over the Student’s request. As the ASC put it, “did the Accommodations Committee have jurisdiction to make any accommodation decision in respect of Oak given that he was no longer a registered student?” (ASC decision, p. 1). The ASC chose to proceed on the assumption that it had jurisdiction (ASC decision, p. 6). The appeal to your Committee proceeded

on the same assumption. The Student submitted that “the question of the jurisdiction of the ASC is now moot [because] there is no question that *this* committee (the AAC of Governing Council) has jurisdiction to review and overturn a decision of ... the ASC” (Notice of Appeal, para. 29, original emphasis). The Faculty conceded that the AAC has jurisdiction (Submissions, para. 57).

Permitting the Student to appeal to the ASC and then to the AAC is a practical and effective way to obtain a formal and reasoned resolution, one way or the other, of the way the Faculty handled the issue he raised in his email of April 4, 2019. Moreover, your Chair, like the ASC, is reluctant to determine the question of jurisdiction without full submissions on the point. But, with respect, your Chair is concerned about jurisdiction and is not entirely persuaded by the position taken by either party on the appeal. The Student’s submission that the issue of jurisdiction is moot cannot be correct. It is hard to see how a question of jurisdiction could ever be moot, in that there is nothing a tribunal can decide, including the issue of mootness, if it does not have jurisdiction over a dispute. More concretely, if the Faculty’s Accommodations Committee had no jurisdiction to respond to the Student’s request, then on an appeal from its decision, the ASC would have no jurisdiction to decide anything other than the jurisdictional issue itself and any decision it made on the merits would be a nullity; an appeal from that decision to the AAC would then, presumably, also be limited to the jurisdictional question. On the other hand, the Faculty’s concession is not determinative because jurisdiction cannot be created by consent (*Phillips and Phillips v. The Queen*, [1983] 2 S.C.R. 161 at p. 164; *Canada (Attorney General) v. Haberman*, 2000 CanLII 15802 (Fed. C.A.) at para. 20); otherwise, any legal dispute could be decided by anyone on consent of the parties, regardless of any statutory grant of jurisdiction.

In the Chair’s view, jurisdiction in this matter depends on the proper characterization of the Student’s request and Dean Archbold and Dean Faherty’s response to it. There are (at least) three possible ways to characterize this matter. On the first view, the Student inquired into his status at the Faculty and, in response, Dean Archbold provided him information about his status. On that view, there was no application of any of the Faculty’s policies to the Student and there is no decision to appeal from; if so, your Committee would lack jurisdiction over this matter.

On the second view, the Student requested an accommodation, and the Accommodations Committee had jurisdiction over that request even though the Student was no longer registered. On that view, the jurisdiction of the ASC and the AAC is unproblematic. On the third view, the Student requested an accommodation, but the Accommodations Committee did not have jurisdiction over that request because the Student was no longer registered. The Chair’s view is that the AAC does have jurisdiction over this appeal on either of the second or third view, because on either view the Faculty was applying its accommodation policy to the Student (<https://handbook.law.utoronto.ca/guidelines-and-procedures/academic-accommodations>). The AAC’s jurisdiction does not depend on whether the Student appellant is currently registered at the University or not. One of the functions of the AAC 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 ...” (*Terms of Reference*, 2.1). This function does not depend on the student appellant being currently registered; indeed, it is not uncommon for the AAC to hear appeals from former students (see, for example, Report # 405, decided in 2019, concerning an appeal by a former student from a decision made in 1991; or Report # 398, decided in 2018, concerning an appeal by a former student who had recently graduated).

Put another way, if the Student was requesting an accommodation then the Accommodations Committee either had jurisdiction over that request (the second view) or it did not (the third view). If it did, then the jurisdiction of the ASC and the AAC is clear. If it did not, then the ASC also lacked jurisdiction and your Committee would have no jurisdiction to hear an appeal from the ASC's decision. But in that case, the Chair's view is that the AAC would have jurisdiction to hear the Student's appeal directly from Dean Archbold's decision of April 8, 2019, refusing the Student's request to resume his studies, because that decision was an application of academic regulations and requirements to the Student. In that event, although your Committee would not be hearing an appeal from the ASC, the ASC's decision would nevertheless be very helpful to your Committee in that it provides reasoned support for Dean Archbold's decision. Thus, regardless of whether the Accommodations Committee had jurisdiction to deal with the Student's request, your Committee has jurisdiction over the Faculty's response to that request.

The appeal therefore proceeded on the basis that your Committee had jurisdiction over it.

Standard of review. The Student submitted that your Committee should conduct a *de novo* review of the Faculty's response to the Student's request and determine whether that response was correct. The Faculty submitted that your Committee should limit itself to reviewing the reasonableness of the ASC's decision.

In support of his submission that the proceeding before your Committee was a hearing *de novo*, Mr. McCann made essentially three points, First, he relied on your Committee's Report # 322, dated January 29, 2009. This Report was written by Professor Emeritus Ralph Scane of the Faculty of Law, who was then Senior Chair of your Committee. On p. 3 of the decision, Professor Scane wrote:

Your Committee normally proceeds by a *de novo* hearing, that is, it hears evidence and cross-examination thereon, including evidence that may have been before lower tribunals, and reaches its own conclusions on that evidence. It does not restrict itself ... to a review of the record of the material before the lower tribunals, and a consideration, based upon that review, of the reasonableness of the conclusions drawn by the tribunals below.

Second, Mr. McCann pointed out that your Committee operates under the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22, and is therefore empowered to receive relevant evidence of all kinds (ss. 10.1, 16). Finally, he reminded your Committee that this case is ultimately about the University's obligations under the *Human Rights Code*, R.S.O. 1990, c.H.9 (the *Code*) to accommodate a person with a disability, which in his submission meant that your Committee should not limit itself to reviewing the reasonableness of the ASC's decision but should consider directly whether the accommodation requested by the Student was appropriate.

Your Chair did not understand Mr. Centa to be taking issue with the first two points. While he did urge your Committee to apply a standard of reasonableness, his principal submission was that regardless of the applicable standard of review, the Faculty had done more than enough to discharge its obligations under the *Code*.

Your Committee's *Terms of Reference* do not explicitly define the standard of review; on the other hand, Governing Council's *Policy on Academic Appeals within Divisions (2005)*, s. 2.ii, states that "The standard of review of an academic appeal is reasonableness". Moreover, in the experience of your Chair (who began serving as Senior Chair in 2012), your Committee normally proceeds not by asking whether a division's decision was correct but by asking whether that division's application of its policies was fair and reasonable in the circumstances.

Your Chair's view is that, in most cases, the issue before it is the reasonableness of the decision being challenged by the student appellant, whether or not it exercises its powers to receive additional evidence. Your Chair would be extremely reluctant to hold that a decision like the one made by the ASC in this case should be reviewed for correctness rather than for reasonableness. However, given the jurisdictional uncertainty about whether the AAC's task in this case is in fact to review the ASC's decision, and given that the party's submissions focussed largely on the adequacy of the accommodations that the Student had received, and had requested but not received, rather than the reasonableness of the ASC's decision, your Chair is of the view that the AAC should not review the ASC's decision as such. On the other hand, even if your Committee were to adopt a standard of review of correctness for the purposes of this case, there would nevertheless be a strong element of reasonableness embedded in that standard, because the duty to accommodate is a duty of reasonable accommodation. For these reasons, your Chair is of the view that the issue before the AAC is simply whether the Faculty's overall response to the Student's request of April 4, 2019, was a reasonable application of the Faculty's duty to accommodate (in accordance with its accommodation policy).

The duty to accommodate. The University is obligated to reasonably accommodate a person with a disability to the point of undue hardship to the University. Sections 17(1) and (2) of the *Code* provide:

- (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.
- (2) No tribunal or court shall find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Here, having been admitted to the Faculty, the Student had a right to proceed through the program. "[T]he essential duties or requirements attending the exercise of the right" are that he should successfully complete the academic requirements of the program. He is disabled by reason of his health challenges. Section 17(1) of the *Code* indicates that the Student's rights are not violated if he is "incapable" of meeting those requirements, but s. 17(2) directs your Committee not to find him "incapable" unless his disability "cannot be accommodated without undue hardship".

The parties disagree about what factors should be taken into account in determining whether the point of undue hardship to the University has been reached. The parties' submissions on this issue were pointed but not extensive. Mr. McCann submitted that only the three factors explicitly

mentioned in s. 17(2) – cost, outside funding, and health and safety requirements – may be considered. Mr. Centa frankly conceded that this was not a case where these three factors weighted heavily, if at all, in determining the point of undue hardship; but it appeared to be implicit in his submissions that while these three factors must be considered, other factors are also relevant. Your Chair understood him to be arguing that damage to the academic integrity of the Faculty’s program could be considered under s. 17(2). In his submission, and in the view of the ASC, the first-year JD program is an integrated unit in which students learn how to learn law, not only through the specific subject-matter that is taught in each class but through the interaction of different parts of the curriculum (for example, the many intersections between the three main bodies of private law, or the influence of constitutional law on criminal law). Moreover, the first general principle of the Faculty’s accommodations policy specifically references academic integrity: “In the interest of fairness and equity among students and to protect academic integrity, accommodations will be designed within the framework of the Faculty of Law academic policy.”

Given this difference of opinion, the Chair invited the parties to provide additional written submissions on the issue of whether your Committee could consider “the effect of a proposed accommodation on the integrity of an academic program” in determining undue hardship. The parties provided extremely helpful submissions on this point. The primary submission of each party was that it was not necessary to determine the point, though understandably their reasons for taking that position differed. In the alternative, each party offered arguments and authorities in support of the positions they took at the hearing. The Chair notes particularly that, despite the arguably exhaustive working of s. 17(2), there are some Tribunal and judicial decisions from Ontario that have taken academic integrity into account in determining whether an academic institution has reached the point of undue hardship (*Cohen v. Law School Admission Council*, 2014 HRTO 537 at para. 130, commenting that a proposed accommodation would “undermine the integrity of the testing process [so] that it would result in undue hardship to the respondent”; *Longuepée v. University of Waterloo*, 2019 ONSC 5465 at para. 62, commenting that the accommodation in issue would not affect academic integrity).

Nevertheless, having read and considered the parties’ submissions, your Chair has concluded that the question he posed at the hearing may not have been properly framed. In the Chair’s view, whether or not academic integrity can be considered in determining undue hardship under s. 17(2), academic integrity is better considered in relation to “the essential duties or requirements attending the exercise of the right” under s. 17(1). Students are evaluated on the basis of the quality of their work in completing course and program requirements. Their success in completing these requirements should be a function of academically relevant factors, notably ability and effort, not of extraneous and academically irrelevant factors. Academic integrity, in this context, refers to the University’s efforts to ensure that the results reported on a student’s transcript, including the awarding or withholding of degrees and other qualifications, is a function only of academically relevant factors and effort and not of extraneous factors. Academic accommodations contribute to academic integrity by attempting to ensure that the extraneous factor of disability does not affect a student’s reported results; they are not, and could not be, designed to guarantee that the student succeeds. The university should not provide an accommodation that compromises academic integrity, whether or not doing so would amount to undue hardship, because it would not be possible to fairly assess a student’s performance under such an accommodation. Put another way, an accommodation inconsistent with academic integrity is of no value in determining whether a

student is capable “performing or fulfilling the essential duties or requirements” of their academic program. It is not contrary to the *Code* to refuse an accommodation that would compromise academic integrity because, if a student is unable to succeed without such an accommodation, that student “is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.”

The Human Rights Tribunal’s decision in *Fisher v. York University*, 2011 HRTO 1229, provides a good example of this point. A student was granted a number of accommodations in relation to a number of courses. The subject matter of one of those courses was French literature for young persons. A fairly high level of proficiency in the French language was a prerequisite. The course materials were in French; the course was taught in French; and all class discussions were conducted in French. The course instructor rejected the student’s request to give a required oral presentation in English “because it would compromise the academic standards of the course” (para. 49). Granting this accommodation would not have amounted to undue hardship in terms of the three factors specifically mentioned in s. 11(2) or s. 17(2), but it would have provided no basis for assessing the student’s performance in the course; refusing to grant it was therefore not contrary to the *Code*. The Tribunal found that the university had made “all reasonable efforts” to accommodate the student (para. 56).

### **The Student’s Appeal**

The Student raises two issues on appeal. First, he contends that the ASC denied him procedural fairness. Second, he argues, with the support of new evidence, that permitting him to continue the program on a part-time basis would be an appropriate accommodation.

The Faculty argues that the ASC’s process was fair and that “The Faculty has fulfilled its duty to provide the Student with reasonable accommodation.”

#### *First issue: Procedural Fairness*

Your Committee is unanimously of the view that the Faculty did not deny the Student procedural fairness.

The Student’s allegation of procedural unfairness ultimately turns on the following feature of the ASC’s process. The Student submitted a written petition to the ASC; but the ASC received written material and heard directly from Deans Archbold and Faherty as well as from the Associate Dean. So, as the Student put it in his Notice of Appeal, since he had not been provided with the Faculty’s submissions, “he could not respond to them”; and only one party—the Faculty—was permitted to appear in person and make oral submissions at the ASC’s meeting. In its response, the Faculty notes that the ASC proceeded in accordance with its own rules and that it provided the Student with reasons that are “comprehensive and clearly explain to the student how the [ASC] arrived at its decision” (Submissions, para. 62).

Your Committee had before it the written material that the ASC received from the Faculty. Mr. Centa correctly noted that there was no information in this written material that was unknown to

the Student. The only document in this material that the Student would not have seen is an item marked “Oak Timeline”, prepared by Dean Faherty on June 3, 2019. This document is mainly a summary of the Student’s history at the Faculty. However, Mr. McCann noted that the Oak Timeline directs the ASC’s attention to a copy of the Student’s undergraduate transcript from the University of Toronto and that on that copy someone has circled all occurrences of “WDR” or “LWD”. Mr. McCann urged your Committee to infer from this feature of the Oak Timeline that the ASC drew negative inferences about the Student’s academic history and used those improper and irrelevant inferences in reaching its conclusions. Your Committee declines to draw this inference. As Mr. McCann says, the Student’s undergraduate record was irrelevant to the issue before the AAC. But there is no indication the ASC’s reasons that it considered the Student’s undergraduate transcript at all, much less drew any inferences from it. The ASC appropriately focussed entirely on the Student’s history at the Faculty.

Thus, the allegation of procedural unfairness rests essentially on the asymmetry in the ASC’s procedure: the Student commenced the appeal by way of a written petition but was not permitted to see or respond to the Faculty’s written materials; moreover, the Student was not permitted to make oral submissions to the ASC, while the Faculty was. Yet this procedure was in accordance with the ASC’s rules. Hearing appeals from the Accessibility Committee is a small part of the ASC’s function. Its primary function is to “approve the academic progress of all students in the J.D. program”; in carrying out that function, it “decides on the granting of supplemental examinations, significant deferrals of examinations and extensions on written work and petitions for *Aegrotat*” (<https://handbook.law.utoronto.ca/guidelines-and-procedures/grading-and-honoursdistinction-standing>). As noted above, all of these decisions are made on an anonymous basis. This is not a process that lends itself to an adversarial format or that requires a hearing.

More fundamentally, it is well-established that your Committee’s function does not extend to invalidating the policies of a division, even if a panel of your Committee is of the view that those policies are flawed or unfair in some respect. To allow an appeal on the basis that a university division had acted unfairly even though it followed its own procedures would be tantamount to invalidating that policy and, as a remedy, would require the creation of *ad hoc* procedures on a case-by-case basis.

Mr. McCann was, however, able to identify a case where your Committee had done just that. In Report # 265, decided April 1, 2002, a student appealed a grade within his division. The division followed its own grade appeal procedure and dismissed his appeal. The student appealed to the AAC. Your Committee found no flaws in the way the division had applied its own appeal policy; however, it determined that the appeal process itself was not fair and reasonable, and ordered a reassessment of the student’s grade on the basis of a different process, which it created itself. Your Chair’s view is that Report # 265 is anomalous and should not be followed.

Mr. McCann also relies on *Khan v. University of Ottawa* (1997), 148 D.L.R. (4th) 577 (Ont. C.A.), in support of the proposition that the ASC should have granted the Student an oral hearing. The facts of *Khan* are very different from the Student’s case. Ms. Khan unsuccessfully appealed a failing grade to her Faculty’s Examinations Committee and then to her University’s senate. Her appeal depended crucially on an issue of credibility: she claimed that one of her examination booklets had gone missing, a claim that her Faculty had rejected. Yet neither appeal body allowed her to make oral submissions. Her appeals were dismissed and her application for judicial review

was initially also dismissed. But the Court of Appeal allowed her appeal, granted her application for judicial review, and ordered a new hearing at her Faculty's appeal committee. The Court was concerned about a number of procedural issues, but particularly about the lack of an oral hearing in a case where credibility was in issue. As Laskin J.A. said at para. 23:

Because Ms. Khan's appeal turned on her credibility and because of the serious consequences to her of an adverse finding, fairness required an oral hearing. The Committee disbelieved Ms. Khan's explanation for the [missing] booklet without hearing from her. This amounted to a denial of procedural fairness, which by itself fatally flawed the proceedings before the Committee.

The Student's case is different in several respects. Although, like Ms. Khan, he was unable to make oral submissions at the ASC, in contrast to Ms. Khan's experience, he was afforded a full hearing at your Committee; in particular, he could have testified had he chosen to do so. The proceedings before your Committee cured the unfairness (if there was any) at the ASC. More significantly, the Student's appeal does not involve a credibility determination in the same way as Ms. Khan's did. The Faculty has never seriously challenged the Student's descriptions of the way his disability has affected him or the medical evidence that he has filed in support of those descriptions. This is not a case where the ASC's failure to hold an oral hearing caused any unfairness.

*Second issue: The Duty to Accommodate*

Your Committee is in no way critical of the efforts that the Faculty made to accommodate the Student through the end of the 2017/18 academic year. The question now, though, is whether the Faculty's refusal to offer the additional accommodations that the Student requested in April 2019 was in accordance with its duty to reasonably accommodate his disability. Those two requested accommodations were: (i) providing him another opportunity in the near future to complete his outstanding work from the 2017/18 academic year and, if he successfully completes that work, (ii) to permitting him to continue through the second and third years of the JD program on a part-time basis. Your Committee is divided as to whether the Faculty's decision not to grant these accommodations was a reasonable exercise of its duty to accommodate.

A majority of your Committee would dismiss the appeal. The Faculty has, over the past several years, provided the Student with extensive accommodations. Despite these accommodations, in three attempts, the Student has not completed the first year of the JD program. The first element of the accommodation now sought by the Student would amount to a two-to-three-year extension on his uncompleted work from the Winter 2018 term. The second element of the proposed accommodation---part-time study---was twice proposed to, and rejected by, the Student. The medical evidence filed by the Student, though hopeful, must be weighed against the history of the Student's failure to succeed in the Faculty. As the ASC put it (p. 9),

The fact remains that [the Student] has had three unsuccessful, heavily supported attempts at completing the first year program. Indeed, the fact is that [the Student] has failed three times to even complete a single semester of the program. There is no realistic basis which we can have confidence that [the Student] is likely to succeed in the program even if undertaken on a part-time basis.

The majority of your Committee agrees with this statement.

One member of your committee would allow the appeal for the following reasons. Considering the second element of the proposed accommodation first, allowing the Student to continue part-time is clearly a reasonable accommodation of his disability. The Faculty already has a part-time program which students are permitted to enroll in for a variety of reasons. The Faculty previously suggested part-time studies as an accommodation for the Student, and he declined that suggestion. Your Committee does not see that this history has any bearing either way on the question whether part-time studies would now be an appropriate accommodation for the Student. Medical and other evidence (some of it post-dating the ASC's decision) suggests that the Student's disability has moderated to the point where the prospects for his success as a part-time student are good.

As to the first element of the proposed accommodation, permitting the Student to complete the first-year program at this late date undoubtedly has some impact on academic integrity. In 2017/18, the Student was extensively accommodated and was largely successful in the Fall 2017 term; but despite the accommodations he failed to complete the year's work by the final accommodated date of June 30, 2018. Nevertheless, the evidence presented by the Student suggests that, towards the end of the Winter 2018 term, his disability had become so severe that the accommodations previously put in place were no longer adequate; but that his disability has now abated to the point where he is now capable of resuming academic work. Some, though not all, of this evidence was available to the Faculty in the spring of 2019; but, in any event, the Faculty does not now challenge it. Allowing the Student to complete the work over the next several months is effectively a lengthy extension of time. The dissenting member of your Committee accepts the Faculty's description of the first-year program as an integrated unit, but also notes that, in the 2017/18 academic year, the Student largely had the benefit of experiencing that integrated unit.

The dissenting member would therefore make the following order. The Student cannot progress until he has completed the first year of the program. The Student must therefore complete his remaining work from the 2017/18 academic year before entering the second year, presumably on a part-time basis. Although the details need to be worked out by the Faculty, with advice from Accessibility Services, it appears to the dissenting member that a reasonable solution would be for the Student to complete the outstanding work at some point during the 2020/21 academic year and, assuming he is successful, to commence part-time studies in the Fall 2021 term.

Accordingly, the appeal is dismissed.

Your Committee is grateful to Mr. McCann and Mr. Centa for their clear and helpful submissions.

**THE UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL**

Report #410 of the Academic Appeals Committee  
**October 27, 2020**

To the Academic Board  
University of Toronto

Your Committee reports that it held an electronic hearing, conducted by Zoom on June 15, 2020 at 1:00 pm, at which the following members were present:

**Academic Appeal Committee Members:**

Professor Ariel Katz (Chair)  
Ms. Susan Froom, Student Governor  
Professor Paul Kingston, Faculty Governor

**Hearing Secretary:**

Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances  
Ms. Krista Kennedy, Administrative Clerk, Office of Appeals, Discipline and Faculty Grievances

**For the Student Appellant:**

Ms. Audrey-Anne Delage, Law Student, Downtown Legal Services  
Ms. Jennifer Fehr, Staff Lawyer, Downtown Legal Services

**For the University at Toronto Faculty of Information and School of Graduate Studies:**

Mr. Robert Centa, Counsel, Paliare Roland Rosenberg Rothstein LLP  
Ms. Emily Home, Counsel, Paliare Roland Rosenberg Rothstein LLP

**I. Appeal**

[1] The Student appeals a decision of the Graduate Academic Appeals Board (the “GAAB”) dated September 11, 2019. In that decision, the GAAB reviewed a decision dated December 21, 2018 by the School of Graduate Studies (“SGS”) to terminate her enrollment in the PhD program (“the Program”) of the Faculty of Information (“the Faculty”). The SGS termination decision followed a recommendation by the Faculty, based on the Faculty’s determination that the Student had failed to make sufficient progress towards completion of her degree.

[2] The Student has asked your Committee to grant her appeal and reinstate her to the PhD program at the Faculty with 14 months remaining to complete her PhD.

[3] Your Committee finds that the Faculty and SGS did not follow the relevant University regulations before the decision to terminate the Student's registration was made. We also find that the process did not comply with the requirements of procedural fairness; that it was unreasonable for the Faculty and SGS to terminate the Student's registration without considering whether other measures, such as extending her timeline for completion, were more appropriate; and that the level of supervision and support that the Student received fell short of the appropriate standard. Overall, not only did the Faculty and SGS not help the Student overcome institutional roadblocks that stood in her way to achieving her educational potential, but their actions and inactions entrenched them. Accordingly, we allow this appeal.

## **II. Background**

### *History*

[4] The Student began her studies in the Program at the Faculty in the Fall of 2012. She completed her course requirements and passed her qualifying examination in the Fall of 2014. In 2015, after two unsuccessful attempts to defend her thesis proposal, she was terminated from the Program. The Student appealed that decision but the matter was ultimately resolved after the Student and the University reached a settlement pursuant to which the decision to terminate her registration in the Program was rescinded, and she was allowed to continue her studies after identifying a new suitable professor willing to serve as her supervisor.

[5] The Student resumed her studies during the Fall 2016 semester with a new supervisor, Professor David Nieborg ("the Supervisor"). A full supervisory committee, which also included Professors Alessandro Delfanti and Olivier St-Cyr, was formed in the following months, and in March 2017, the Student successfully defended her proposal and achieved candidacy.

### *Meeting with Supervisory Committee and Annual Progress Review*

[6] On February 8, 2018, the Student received an email from Heather MacNeil, Chair of the Faculty's Doctoral Subcommittee of the Committee on Standing ("CoS"), informing her that she had to defend her thesis by August 31, 2018. An emergency meeting between the Student and her Supervisory Committee was promptly scheduled for March 12, 2018 to discuss her progress in light of that looming deadline and the Student was asked to send drafts of all the existing thesis chapters that she had. That deadline was based on the Faculty's six-year time-line for a PhD, counted from her initial registration in the Program, and therefore did not consider the two semesters during which the Student had not been registered in the program prior to her 2016 reinstatement. This error was rectified two days after the meeting and a new deadline of April 30, 2019 was identified.

[7] Prior to the meeting, all members of the Supervisory Committee provided the Student detailed and extensive feedback on her draft chapters. All of them identified numerous problems, which were also discussed in the meeting. That meeting was the first and only meeting between the Students and her Supervisory Committee.

[8] Following the meeting, Professor Nieborg asked the Student to send him revised drafts incorporating the Supervisory Committee's comments within a month so that he would be able to review them in providing his assessment for the Student's upcoming Annual Progress Review ("APR"). The Student informed him that she would not be able to submit her revised materials by that deadline, as she was working as a TA and had to mark students' papers. Professor Nieborg insisted that she would, but the Student did not submit the revised materials on time, and Professor Nieborg's assessment in the APR was based primarily on the drafts reviewed in March.

[9] On May 5, 2018, the Student submitted her report for her upcoming Annual Progress Review ("APR") for the May 1, 2017 – April 30, 2018 period. The Student's APR appears to have used a standard form comprising a set of questions answered by the student, a set of questions answered by the supervisor, and finally comments of the Doctoral Sub-Committee of the Committee on Standing ("CoS"). The last part of that the student's section of the form offers the student an option to provide information regarding "Special circumstances that have affected or will affect your progress, issues you would like the Review Committee to consider." In response, the Student wrote that "Given an interruption to my studies and some change in my dissertation's direction or focus, I require an extension, and the attached timetable reflects this."

[10] On May 21, 2018, her Supervisor provided his assessment for the APR. He noted that the concerns identified during the March 12, 2018 meeting had not yet been incorporated into newer drafts, and while he acknowledged the considerable work the Student had undertaken that year, he considered her progress insufficient. He also remarked that the current completion deadline (April 30, 2019) did not seem appropriate, nor achievable, considering the progress made thus far. He also noted that "there are some fundamental issues with the ability to work autonomously and to produce written material that will be accepted by an external reader". Professor Nieborg's comments did not acknowledge the Student's indication that she would need an extension, and his concerns about meeting the deadline referred to the deadline current at the time, not the extended one proposed by the Student.

[11] On June 28, 2018, the Student received the full APR, which included, as noted, the comments of the CoS. The CoS wrote that "taken as a whole, your academic progress, community participation, and academic goals are NOT in keeping with the standards set by the University and the Faculty for a student at your stage of the doctoral program", indicating that the Student's "supervisory committee's assessment of [her] progress to date raises extremely serious concerns", and noted that the Student's progress thus far raised doubts about the likelihood that she would complete and defend her dissertation by the April 2019 deadline. The CoS reminded the Student that according to SGS policy "a student must make satisfactory progress towards the completion of their degree in order to maintain good academic standing", and quoting from that policy, the CoS noted that "Failure to maintain good academic standing may result in various sanctions, including ineligibility for financial assistance, lowest priority for bursaries and assistantships, and even termination."

[12] The CoS then informed the Student that "[g]iven our assessment that you have not made satisfactory progress this year and therefore are not in good academic standing we have determined that closer monitoring of your progress over the coming months is necessary." It requested the Supervisory Committee to provide the CoS an update on the Student's progress on September 17, 2018, and listed four items that the Student should provide by that date:

- (i) A detailed timeline to completion with specific deliverables and deadlines;
- (ii) Revised versions of at least two of the six draft chapters that the Student's Supervisory Committee would sign-off on;
- (iii) A completed draft of the methods chapter;
- (iv) Completed Research Ethics Board (REB) approval, if such approval was necessary.

[13] The CoS then explained that based on what the Supervisory Committee reports in September, they would decide whether the Student's academic status continues to be "not in good standing" or can be adjusted to "marginally in good standing" or "in good standing", adding that if insufficient progress were achieved, they would have to determine whether and how the sanctions identified in the SGS Policy should be applied.

#### *The APR Aftermath and the September 17, 2018 Report*

[14] On July 6, 2018, the Student received an e-mail from the University's Office of Research Ethics confirming that her research would not require research ethics review.

[15] On July 20, 2018, the Student provided a written reply to the APR comments. Among other things, she noted that the reference in the APR to obtaining REB approval surprised her, based on her previous research experience, from which she learned that the research methods she had been planning to use did not require such approval. She added that following the APR, she looked into whether there were any changes made to the conditions under which a protocol is deemed necessary. She did not explicitly say that she could not find any such change, nor did she mention the e-mail from the University's Office of Research Ethics confirming the same.

[16] On September 8, 2018, the Student received an e-mail from Professor Seamus Ross, Director of the Faculty PhD program, reminding her to submit the requested materials by September 17, 2018.

[17] On September 10, 2018, the Faculty Registrar informed the Student that her completion deadline had finally been officially moved to April 30, 2019. He also added that should the Student require further time to complete her degree, she would "need to have a first extension approved in the winter 2019 term", from which she understood that she would have to wait until the Winter 2019 term to request an extension.

[18] On September 14, 2018, the Student submitted to her supervisory committee two revised chapters and an updated timeline to completion based upon a completion deadline extended to January 2020. Three days later, she also submitted the required revised methods chapter.

[19] On September 17, 2018, the Student's Supervisory Committee reported back to the CoS. Apparently, the Committee formulated its report prior to receiving the methods chapter and noted that no methods chapter had been submitted. With respect to the two chapters, the committee noted that while "there had been identifiable progress" in those chapters and that the chapters have improved in their structure and in the literature they referred to, "[u]nfortunately, several major issues remain and new ones are introduced", which prevented them from signing-off on those two chapters as being ready.

[20] The Committee also reported that the Student's submission did not include a methods chapter, and did not include any documentation related to REB approval.

[21] The Committee neither approved nor disapproved the Student's proposed timeline, noting that it was difficult to make a sensible judgement on the Student's proposed timeline, since their report considered only two out of six chapters. Nevertheless, they faulted the proposed timeline for not accounting for a methods chapter (which, as noted, had been submitted the same day), and commented that the proposed timeline "assumes an extension up until January 30, 2020". "In sum," they concluded, "the two chapters still require substantial revisions and additions that, taking the current pace into consideration, will take months rather than weeks. While we believe there is some identifiable progress in these two chapters, we are still far from the PhD-level scholarship that would be expected of a dissertation draft."

[22] Even though the Supervisory Committee received the revised methods chapter later the same day, they never updated their report or otherwise informed the CoS that the Student had in fact submitted it.

[23] On October 22, 2018, the CoS informed the Student that based on the September review, it was determined that she had failed to meet the four specific academic objectives set out in the APR, because:

1. The Supervisory Committee was unable to sign off on the revised chapters that had been submitted;
2. The submission did not include a methods chapter;
3. The submission did not include any documentation related to REB approval;
4. The estimated timeline included an unapproved extension to January 2020.

Accordingly, the CoS notified the Student that it had determined that the Student's status remained not in good standing, and that as a result the Faculty decided to proceed with a recommendation to SGS to terminate the Student's enrollment in the Program. The CoS then invited the Student to attend a meeting with the PhD Director and other Faculty representatives to ask questions or offer "any new information that might influence our decision".

[24] At the meeting, which took place on November 1, 2018, the Student noted that she had actually submitted the methods chapter in September and that no REB approval was necessary for her research. The Faculty requested the Student to submit all of her accumulated thesis material, including the two revised chapters, the methods chapter, her timeline to completion, and confirmation that REB approval was not required for her project. The Student submitted those materials on November 13, 2018 and the Faculty then requested Professor Nieborg to review the material to confirm that all the previously requested materials had indeed been submitted. It is not clear if he confirmed that or not but he also reported that the materials he reviewed did not affect his conclusion that the Student was not making adequate progress.

[25] On November 19, 2018 the Faculty informed the Student that the materials she provided did not contain any new evidence offered at the meeting that would compel them to change their earlier decision to recommend SGS to terminate her registration, and the Faculty sent SGS such a recommendation on November 26, 2018.

[26] On November 26, 2018, the Student submitted to SGS a written response. She emphasized that contrary to what was written in the recommendation to terminate her

registration, a methods chapter had indeed been submitted and that her research did not require REB approval. Among other things, the student also raised issues concerning the quality of her supervision by Professor Nieborg, and took issue with being faulted for building in an unapproved extension.

[27] Finally, the Student requested that her background as a racialized female who is a first-generation graduate student would be considered before the SGS makes its decision, referring to SGS guidelines, which recognize the unique pressures that students coming from such backgrounds experience.

[28] On December 21, 2018, SGS informed the Student that SGS accepted the Faculty's recommendation and terminated her registration in the Program.

### *The Appeal Before the GAAB*

[29] The Student appealed her termination to the GAAB. She submitted that the SGS decision to terminate her registration was not reasonable because:

[i] It failed to consider that the Student had substantially delivered the materials requested for the September review, including the provisions of a methods chapter and information on REB;

[ii] Termination was not an anticipated result of failure to meet deliverables;

[iii] The request for an extension was reasonable and should have been considered;

[iv] The November 1, 2018 meeting was an opportunity to ask questions and provide information but not an opportunity to submit new work; and

[v] The inadequacy of the supervision she received and its impact on her materials.<sup>1</sup>

[30] The GAAB dismissed the appeal and upheld the SGS decision. While the GAAB agreed with some of the Student's arguments, it did not find any of them serious enough to justify interfering with the SGS decision.

### *The Present Appeal*

[31] Following the dismissal of her appeal by the GAAB, the Student brought this appeal to the Academic Appeals Committee. Her appeal focuses on the following issues:

- The Faculty's refusal to consider her request for an extension: the Student argues that this refusal rendered the decision to terminate unreasonable; and that the GAAB's conclusion that the extension, even if granted, would not have made a difference is unreasonable.
- The standard for procedural fairness in the decision to terminate: the Student argues that the requisite standard had not been met because she was not given sufficient

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<sup>1</sup> The GAAB decision listed only the first four grounds, but its decision also addressed arguments about the quality of supervision.

notice of the possibility of termination; and that the Faculty failed to consider her materials adequately and impartially.

- The level of supervision from the Supervising Committee: the Student maintains that the level of supervision she received did not meet SGS Guidelines.

[32] SGS disputes all of these arguments and asks your Committee to dismiss this appeal.

[33] Following the hearing, which took place on June 15, 2020 through video teleconferencing, your Committee requested the parties to make additional submissions on Section 8.5.2 of the 2012 – 2013 School of Graduate Studies Calendar (“the Calendar”) which, among other things, discusses the termination of doctoral students.<sup>2</sup> This section was mentioned briefly in the submissions of SGS, but none of the parties made submissions on whether its requirements were complied with and whether they had to be complied with. Nevertheless, your Committee thought that this section could be highly relevant to the case, and requested the parties to make additional submission on its applicability. The Student submitted that the requirements of this section had to be complied with but were not. This failure, she argued, made the Student’s termination procedurally unfair. SGS submitted that complying with s 8.5.2 was not mandatory so long as other sections were complied with, and that in any event, even though the Faculty did not follow this section, the process complied with it in substance.

### III. Analysis

[34] The role of the Academic Appeals Committee is to evaluate the decisions of the bodies it reviews and “consider[] whether the relevant academic regulations and requirements have been applied correctly, consistently, and fairly.”<sup>3</sup> Normally, your Committee asks whether that division’s application of its policies was fair and reasonable in the circumstances.”<sup>4</sup>

[35] The principal regulation relevant to this appeal is the SGS Calendar, which sets out the circumstances in which SGS may terminate the registration of a student. Under s 8.1, SGS may terminate the registration and eligibility of a student (1) who fails to comply with the General Regulations of the School of Graduate Studies, the relevant Degree Regulations, or the specific degree requirements of the graduate unit in which the student is registered; or (2) who fails to maintain satisfactory progress in the degree program in which the student is registered, as measured either by the general standards of the School of Graduate Studies or by the specific standards of the graduate unit.<sup>5</sup>

[36] SGS considers graduate students to be making satisfactory progress “only if the student satisfies and completes the various requirements for that degree in a manner consistent with the SGS General Regulations and Degree Regulations and the graduate unit’s timeline for completion of the degree program.”<sup>6</sup> Further, “[a] graduate unit may recommend to the

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<sup>2</sup> The relevant Calendar is the Calendar that was in force when the Student began her studies in the Program.

<sup>3</sup> Motion Decision 359-1 of the AAC, August 25, 2011.

<sup>4</sup> Report 409 of the AAC, August 17, 2020.

<sup>5</sup> SGS Calendar, s 8.1.

<sup>6</sup> SGS Calendar, s 8.3.

School of Graduate Studies that a student's registration and degree eligibility be terminated when a student fails to maintain satisfactory progress towards the completion of the degree.”<sup>7</sup>

[37] Termination of registration (as well as a recommendation to terminate made by the graduate unit), however, are discretionary decisions and not a mandated outcome of a student’s failure to maintain satisfactory progress. This is clear from the language chosen in the SGS Calendar. First, the Calendar uses the word “may”, which is usually construed as permissive, as opposed to “shall”, generally construed as imperative.<sup>8</sup> Second, s 8.1 of the SGS Calendar contemplates consequence other than termination. It provides that failure to maintain good academic standing “may result in various sanctions, including ineligibility for financial assistance, lowest priority for bursaries and assistantships, and even termination.” Third, the fact that according to the Calendar, the graduate unit only recommends termination but the decision to terminate is made by the SGS underscores the non-automatic nature of the decision. Last, the SGS Termination Guidelines, which set out various steps for a termination process, explicitly contemplates a situation where a Graduate Unit Chair/Director decides not to proceed with a recommendation for termination of registration and pursue alternate actions, and even when the Graduate Unit recommends termination, the SGS Vice-Dean, Students, is not obligated to accept the recommendation and may choose to “refer the recommendation back to the Chair/Director requesting further information or other actions”.<sup>9</sup> It follows that failure to maintain satisfactory process may be necessary for a decision to terminate a student’s registration, but not a sufficient one.

[38] There is no dispute between the parties that the Student’s progress in the Program has not been satisfactory. There is also no dispute that the steps described in the Termination Guidelines were followed.<sup>10</sup> Thus, the central disagreement in this appeal concerns what follows from the Student’s failure to maintain satisfactory progress. Essentially, SGS and the Faculty maintain that once the Student’s Supervisory Committee concluded that they were not able to sign off the revised drafts of the two chapters submitted in September 2018, it was open for the Faculty to recommend the termination of the Student’s registration and for SGS to accept the recommendation, provided the steps described in the Termination Guidelines were followed. By contrast, while not framed in this way, the Student maintains that the finding that she failed to make satisfactory progress and the steps described in the Termination Guidelines are only necessary conditions, but not sufficient ones. In her view, the Faculty should have provided her with clear notice about the potential for termination, and should have considered and granted her an extension instead. Her complaints about failure to consider her materials adequately and impartially and about the quality of supervision may also be viewed as additional conditions that must be fulfilled before a valid termination decision may be made.

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<sup>7</sup> *Ibid.*

<sup>8</sup> See e.g., *Taylor v Sage Electric Limited*, [2015] 2015 ONSC 2684 at para 16. *Cf* Interpretation Act, RSC 1985, c I-21, s 11 (“The expression “shall” is to be construed as imperative and the expression ‘may’ as permissive”).

<sup>9</sup> “School of Graduate Studies—Termination of Registration Guidelines”, online: <<https://www.sgs.utoronto.ca/policies-guidelines/termination-of-registration-guidelines/>> (“Termination Guidelines”).

<sup>10</sup> We note that there is ambiguity in the Termination Guidelines which allow a different reading of what each of the steps entails. This alternative interpretation could suggest that the procedure had not been followed. We explain this ambiguity and make some recommendations that SGS might wish to consider at the end of this decision.

## (1) Compliance with s 8.5.2

[39] We will consider s 8.5.2 (“Supervision and Satisfactory Progress”) first. This section is a subsection of s 8.5 titled “Doctoral Students” and deals with matters that are specific to doctoral students. Section 8.5.2 deals with several such issues, not all of which are relevant to this appeal. For the present purposes, the key language from s 8.5.2 is the following:

... A [doctoral] student is expected to meet with [the supervisory] committee at least once a year, and more often if the committee so requires. At each meeting, the supervisory committee will assess the student's progress in the program and provide advice on future work. In each of two consecutive meetings, if a student's supervisory committee reports that the student's progress is unsatisfactory, the graduate unit may recommend to the School of Graduate Studies the termination of registration and eligibility of that student. ... (emphasis added)

[40] The Student met with her Supervisory Committee once, in March 2018. There is no dispute that following that meeting the Committee considered the Student's progress to be unsatisfactory. There is also no question that based on the Supervisory Committee report from September 17, 2018, the CoS determined that the Student's progress remained unsatisfactory and recommended the Student's termination. However, the language of s 8.5.2 specifies that a graduate unit may recommend the termination of a doctoral student if the student's supervisory committee reports that the student's progress was unsatisfactory in each of two consecutive meetings between the student and their committee. The record shows that a meeting between the Student and her Supervisory Committee occurred only once. Therefore, even if the Supervisory Committee's September 2018 report to the CoS is a report by a supervisory committee that a student's progress was unsatisfactory,<sup>11</sup> this second report did not follow a meeting between the Student and her Committee. The question, therefore, is whether the Faculty's termination recommendation complied with what s 8.5.2 requires, and if not, what are the implications of such failure.

[41] In her supplementary submission, the Student pointed out that unlike Sections 8.1 and 8.3, which apply to all graduate students, s 8.5 applies only to doctoral students and gives specific directions to address issues unique to doctoral students. Accordingly, because s 8.5.2 provides that a graduate unit may recommend a *doctoral* student's termination if the student's supervisory reports unsatisfactory progress in each of two consecutive meetings with the student, it follows that the unit may *not* make such a recommendation *unless* the supervisory committee makes such two consecutive reports following such two consecutive meetings with the student.

[42] The Student added that to read “satisfactory progress” in Sections 8.1 and 8.3 without reference to s 8.5.2 deprives this section of any purpose, which could not have been the intention of the drafters. Moreover, in her view, the two consecutive meetings requirement provides a warning and a safeguard for students who may be struggling. Accordingly, s 8.5.2

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<sup>11</sup> It is arguable that it is not. When the CoS requested the Supervisory Committee to report back in September, they did not ask them to reassess the Student's overall progress and decide whether it was satisfactory or not. Rather, they requested the Supervisory Committee to report whether they could sign off on two revised chapters and a revised timeline for competition, and whether the Student submitted two additional items. This report was meant to provide the basis for decision by the CoS on whether to update the Student's status. The report itself does not contain any statement on whether the Student's overall progress was satisfactory.

gives students a right, which the graduate unit must respect. Further, compliance with s 8.5.2 requires a synchronous “meeting” between the student and their committee, which a mere “report” is not. In the present case, there has been only one meeting between the Student and her supervisory committee. Accordingly, the two-meetings requirement, which is a prerequisite for initiating a termination process, has not been fulfilled, and the decision of the Faculty to recommend the termination of the Student’s registration and the decision of SGS to accept the recommendation were made in violation of the clear regulation set out in s 8.5.2 of the Calendar.

[43] SGS agreed that only one meeting between the Student and her Supervisory Committee took place, but disagreed with what this fact entails. According to SGS, s 8.1 gives SGS general power to terminate a student’s registration, and s 8.5.2 does not limit this general power. SGS submits that s 8.5.2 should be read together with ss 8.3, 8.4. It maintains that those three provisions merely illustrate examples of specific circumstances that constitute a failure to maintain satisfactory progress without limiting the general standard set out in s 8.1. Accordingly, compliance with any one of the tests in Sections 8.3, 8.4, or 8.5.2 constitutes compliance with s 8.1, but as long as SGS complies with s 8.1, it need not also comply with one (or more) of the tests in Sections 8.3, 8.4, or 8.5.2.

[44] According to SGS, nothing in the text of s 8.5.2 suggests that this provision sets out the only way to determine that a student’s progress has not been satisfactory for the purpose of s 8.1, and there are other provisions (such as s 8.3 or 8.4) that set out other ways that the test in s 8.1 may be met. Thus, meeting the test in s 8.5.2 is sufficient, but not necessary, to meet the termination standard described in s 8.1. If compliance with s 8.5.2 was mandatory, it would impermissibly limit the provisions in s 8.1 and eliminate the Faculty’s specific power to recommend termination given to it in s 8.1.

[45] Both parties therefore seem to agree that s 8.1 gives SGS general power to terminate the registration of a student who fails to comply with various regulations or degree requirements, or for failure to maintain satisfactory progress in the degree program. They disagree, however, on the extent to which s 8.5.2 may modify or limit that power. The Student argues that s 8.5.2 must be read as limiting the ability of SGS to rely on the general language of s 8.1, while SGS argues that SGS could rely solely on the general language of s 8.1 and without regard to s 8.5.2.

[46] Your Committee agrees that s 8.1 gives SGS general power to terminate the registration of a student who fails to comply with various regulations or degree requirements, or fails to maintain satisfactory progress in the degree program. We also agree that ss 8.3, 8.4, or 8.5.2 may be seen as dealing with specific circumstances that may constitute such failures. We disagree, however, that those three subsections do not limit SGS’ general power and that SGS could rely on the general language of s 8.1 and simply ignore the requirements set out in those provisions.

[47] Your Committee notes that s 8.5.2 contains not only requirements directed at doctoral students, but also requirements that apply to the graduate unit. For example, while it provides that doctoral students should identify a supervisor and supervisory committee as early as practicable in their program and no later than certain specified deadlines, it also provides that the graduate unit should assist in selection of the supervisor where appropriate, and that both student and supervisor should be involved in the selection and approval of other supervisory

committee members. Likewise, s 8.5.2 provides that a student is expected to meet with their supervisory committee at least once a year (and more often if the committee so requires), and that a student who, through their own neglect, fails to meet with the supervisory committee in a given year will be considered to have received an unsatisfactory progress report from the committee. But this provision implies a duty on members of the supervisory committee to make themselves available for such a meeting, and it also includes an explicit duty on the Chair, Director, or Graduate Coordinator of the graduate unit to assist a student who encounters difficulties arranging a meeting with their supervisory committee. In addition, s 8.5.2 requires the supervisory committee to assess the student's progress in the program and provide advice on future work in each such meeting. It seems conceivable that a doctoral student who has not been able to identify a suitable supervisor and supervisory committee, or has not been able to set up meetings with their committee, or that never received helpful feedback and advice on future work, will not be able to maintain satisfactory progress in the program. Under SGS's interpretation, so long as SGS could show that such a student's progress has not been satisfactory, it could terminate that student's registration. We cannot accept such an interpretation as it would treat the student's obligations set out in s 8.5.2 as mandatory while treating the graduate unit's corresponding duties as merely optional.

[48] In the same vein, s 8.5.2 specifies a process for evaluating a doctoral student's progress, and provides that the graduate unit may recommend to SGS the termination of registration and eligibility of that student if the student's supervisory committee reports that the student's progress is unsatisfactory in each of two consecutive meetings of the student and the committee. This provision sets out cumulative requirements. A meeting between the student and their committee, during which the committee assesses the student's progress in the program and provides advice on future work must take place before the committee reports on the student's progress. It is not enough that the committee reports unsatisfactory progress twice, but to serve as a basis for a recommendation of termination, the committee must do so in each of two consecutive meetings.

[49] Your Committee cannot accept SGS's position that there is nothing in the language of s 8.5.2 that limits its ability to terminate a doctoral student's registration on the basis of the language of s 8.1. We agree with the Student that terminating a student's registration on the basis of s 8.1 without regard to the requirements of s 8.5.2 could deprive s 8.5.2 of its purpose and render it obsolete.<sup>12</sup>

[50] Your Committee also agrees with the Student that s 8.5.2 provides an important safeguard for doctoral students. Pursuing a doctoral degree commits a doctoral student to significant investment and requires the student to incur high mental, emotional, financial, and opportunity costs for a period of several years. Success during the program (and often after) requires advice and mentoring by the supervisor and other committee members. Termination of a student's registration not only deprives the student of the possibility to realize the benefits arising from this investment, but may also inflict on the student reputational harms and instill a sense of failure.

[51] Elements of 8.5.2 provide important safeguards against an arbitrary or capricious decision to terminate a student's registration: first, it requires the supervisory committee to meet with the student at least annually and not only assess the work that was done but also

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<sup>12</sup> *Lévis (City) v Fraternité des policiers de Lévis Inc*, [2007] 1 SCR 591 at para 58.

provide advice on how to proceed. This requirement helps ensure that students do not go adrift and that they receive the support and advice they need with an honest assessment of their work. Second, by tying the unit's power to recommend termination to reports of unsatisfactory progress by the supervisory committee, s 8.5.2 ensures that the assessment of the student's progress be made by a committee of three persons, not only one, and that those persons have the closest and most intimate knowledge of the student and their work. Third, the two consecutive meeting requirement recognizes that a student's progress may not always be linear. Some aspects of the work may be more challenging than initially thought; a promising line of inquiry may lead nowhere; a student may encounter a writer's block; mental health issues may slow down progress; other life circumstances may impede progress. By requiring that the report of the student's progress would follow a meeting of the student with their committee, and that the meeting involve both an assessment of the work to date and advice on moving forward, s 8.5.2 ensures that the student and their committee have an opportunity to understand the challenges that a student might have faced and chart a way forward. This also ensures that the committee report and its recommendations are responsive to such challenges. Fourth, the requirement of two consecutive reports of unsatisfactory progress recognizes that progress in a doctoral program is not always linear and constant, and setbacks are not uncommon. A single year in which no or insufficient progress was made may be a poor predictor of the student's ability to complete the program successfully. Therefore, the two consecutive meetings requirement ensures that a recommendation to terminate the registration of a doctoral student would not be made on the basis of a snapshot assessment.

[52] SGS Guidelines for Departmental Monitoring of Progress Through the PhD ("Monitoring Guidelines")<sup>13</sup> also underscore the important safeguard against rushed and arbitrary termination decisions which s 8.5.2 provides. These Guidelines note that the "[Supervisory] Committee has the authority to recommend termination of a student's program if insufficient progress or scholarly achievement is observed", but they emphasize that "[t]he student must be provided with adequate warning of problems and be given a chance to correct deficiencies" and "[e]very effort should be made to identify problems early in a student's program so as to avoid termination for cause late in the program."

[53] In light of the above, your Committee finds that s 8.5.2 includes not only requirements that doctoral students must comply with but also requirements that apply to the graduate unit. The graduate unit's adherence to those requirements provides an important safeguard designed to protect doctoral students from rushed and ill-considered termination decisions. Accordingly, s 8.5.2 establishes a process that must be followed before a graduate unit may recommend the termination of a doctoral student's registration.

[54] SGS' interpretation also ignores the important distinction between SGS' power to terminate and the graduate unit's decision to recommend the termination. S 8.1 gives SGS the power to terminate a student's registration and describe when it may *decide* to do so, while ss 8.3, 8.4, and 8.5.2 discuss circumstances following which the graduate unit may *recommend* termination. Importantly, s 8.1 does not specify any process that would allow the SGS to determine whether the circumstances that may give rise to termination exist.

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<sup>13</sup> "Monitoring Doctoral Progress – School of Graduate Studies", online: <<https://www.sgs.utoronto.ca/policies-guidelines/monitoring-doctoral-progress/>> s 2.

[55] SGS' interpretation and its assertion that nothing in ss 8.3, 8.4, or 8.5.2 limits its general power under s 8.1 implies that SGS could decide to terminate a student's registration without a recommendation by the unit—after all, s 8.1 does not mention any such requirement. It could lead to other absurd or unreasonable results. For example, it could allow SGS to terminate a student (with or without the unit's recommendation) for unsatisfactory completion of coursework arguing that even though the student took all the required courses and finished them with grades that meet or even exceed the minimum specified in s 8.4, that minimum does not limit SGS' power to determine that the student's performance was nonetheless unsatisfactory.

[56] Accepting SGS's interpretation would not only allow SGS to bypass the unit and terminate without a unit's recommendation, but it would also allow the unit to recommend termination while ignoring the provision that specify when it may make such a recommendation. This interpretation also would allow the unit to sidestep the supervisory committee. If complying with s 8.5.2 is not mandatory, and the unit may recommend termination following only one report stemming from a meeting between the student and the supervisory committee, then the unit can choose to recommend termination by relying on no report whatsoever, or on the opinion of one member of the committee with which the other members may not agree. Under SGS' interpretation, the unit may make such a recommendation and SGS may accept it, so long as it feels sufficiently confident that it could show that progress has not been satisfactory, regardless of whether the determination followed the procedures set out in ss 8.3, 8.4, or 8.5.2. This is a recipe for arbitrariness, which your Committee cannot endorse.

[57] We wish to qualify this conclusion by clarifying that our conclusion is not intended to foreclose the possibility that there might be some circumstances under which SGS might be able to rely on s 8.1 and decide to terminate a doctoral student's registration without complying with the two consecutive meeting requirement. For example, if, after receiving the supervisory committee's comments and recommendations, a doctoral student declares that they will not be making any changes to the submitted materials and when the time for the next progress review arrives, the student resubmits the same materials and explains that no change was made because no change was necessary, then perhaps the unit can be excused if it decides to recommend termination before a second meeting takes place. Such is not the case before us, and the answer to the question of whether s 8.1 leaves in the hands of SGS some residual power not modified by s 8.5.2 can wait another day. We expect, however, that if such residual power exists, its exercise would require SGS to explain it could not follow the process set out in s 8.5.2 or why following it would be futile. SGS did not provide any such explanation. Instead, it insisted that it has no obligation to follow this process, a position we reject.

*Did the Faculty comply with the intent of s 8.5.2?*

[58] In the alternative, SGS argued that even if it had to comply with s 8.5.2 (which it denied) the Faculty complied with the intent of that regulation: the meeting between the Student and her committee on March 12, 2018 would count as one such meeting for the purposes of s 8.5.2, and the additional review by the committee of the materials submitted in September 2018 served the same functional purpose as the second meeting described in s 8.5.2

would. Accordingly, the Faculty could justifiably rely on s 8.5.2 when it made its recommendation to SGS.

[59] Your Committee rejects this argument. First, s 8.5.2 requires *two* meetings between the student and their committee, not one meeting of the committee with the student and another one without the student. Even if the section could be interpreted as permitting a functional equivalent of such meetings (e.g., a videoconference meeting when an in-person meeting is impracticable) a meeting involving only members of the supervisory committee cannot serve as a functional equivalent of a meeting of the committee with the student, and a report following the one cannot serve as a functional equivalent of the other.

[60] The SGS Monitoring Guidelines provide additional support to our conclusion. These Guidelines recommend that the meeting begin with an oral and written report by the student giving details of progress to date, work remaining, and timetable for completion, followed by questions, in a format similar to a doctoral final oral examination. The committee members should then discuss the student's progress and their discussion should be recorded on a standard evaluation form for the record. Next, the Committee should discuss its report with the student, and the student should be given an opportunity to respond to all comments of the Committee, and should be encouraged to include their comments in the report, before the final report is signed and filed. Accordingly, the focus of a s 8.5.2 meeting is a thorough conversation between the student and the committee and the production of a report is merely ancillary to that purpose.

[61] Clearly, the Supervisory Committee's September 17 report did not stem from any meeting having a similar purpose and following a similar procedure. The report was made at the request of the CoS and it had a limited scope: to report back on whether the Student made progress with respect to four specifically identified issues. In addition, the CoS only asked the Committee to make specific findings, not to provide an overall assessment of the Student's progress or to make any recommendations, and none in fact were made. Although the record suggests that the committee members met before they sent their report, the CoS did not request any meeting, only that the "supervisory committee check in with us on September 17, 2018 and give us an update...". The Student was not invited to make an oral presentation, nor to write a written report on her progress, and she was not given an opportunity to shape the Committee's findings before they were formulated, and was not invited to add her own comments. Accordingly, we reject SGS's submission that the Faculty complied with the intent of s 8.5.2 and that the September 17 review served the same function of a second s 8.5.2 meeting.

[62] Further, your Committee notes that if a proper meeting between the Student and her Supervisory Committee took place before the Committee sent its September 17 report, the resulting report would very likely have looked radically different. The Committee might not have changed its conclusion that the two submitted chapters still required substantial revisions and additions, but a conversation between the Student and them could have allowed the Student to better clarify how the two chapters fit into an overall argument as well as respond to other concerns, resulting, potentially, in less critical assessment of the two chapters. The report would not have referred to a missing REB approval because the Student could have clarified that such approval was not required, and the report would not have stated that no methods chapter had been submitted because the Student could have clarified that it was submitted before the report was finalized. Finally, the issue of timeline for completion would

have been discussed, including the possibility of an extension and when and how to apply for it, and the report would record the conclusion of such discussion instead of faulting the Student for proposing a timeline with an unapproved extension. There can be little doubt that if a proper meeting between the Student and the Committee took place, the resulting report would have been less critical, and might have even been more favourable.

[63] In conclusion, your Committee finds that the Faculty did not comply with the requirements of s 8.5.2 before it recommended the Student's termination. We also find that the Faculty's compliance with s 8.5.2 in circumstances such as those of this case was mandatory. As a result, the recommendation to terminate the Student's registration was made in breach of an applicable university policy and was invalid. We further find that SGS' power under s 8.1 to terminate a doctoral student's registration does not allow SGS to do it without a valid recommendation made by the student's graduate unit. In the present case, SGS decided to accept the Faculty's invalid recommendation, with the result that the SGS decision to accept the recommendation was also made in breach of the applicable university regulations and requirements.

[64] Our conclusion that the SGS decision to terminate the Student's registration did not comply with the applicable university regulations and requirements is sufficient for allowing the Student's appeal. However, your Committee will now consider the parties' other submissions, which not only raise additional important issues, but also underscore how several of these issues could have been averted if s 8.5.2 were complied with.

## **(2) The Faculty's treatment of the Student's extension request**

[65] The Student argues that the Faculty and SGS acted unreasonably in failing to consider whether she was entitled to the extension and how additional time could have affected her ability to complete her thesis. She notes that the fact that SGS guidelines allow for up to four extensions makes the refusal to consider even a first extension request even more unreasonable. She adds that the mere fact that such four extensions are available indicates that the Faculty expects that some doctoral students will require more than six years to complete their studies. She draws further support from a self-study that the Faculty conducted in 2013, showing that the average PhD completion time in 2011-2012 (just before the Student was admitted to the Program) was 7.83 years. She notes that if her extension request were granted, her completion time would be consistent with this average.

[66] In addition, the Student argues that had the Faculty considered her request, they would have found that extension was warranted considering the disruption to her studies occasioned by her previous termination and the additional time it took her to restart her studies after her reinstatement, find a new supervisor and new additional supervisory committee members. Not only did the Faculty not consider her request for an extension, but it also penalized her for building a proposed extension into her revised timeline when it treated the inclusion of an unapproved extension as one of the justifications for her termination. The fact that her need for an extension stemmed in part from her previous rescinded termination makes the Faculty's action all the more unreasonable.

[67] In its response, SGS disputes that there was any extension request to consider, noting that the Student only included a theoretical extension in her proposed timeline, without ever formally applying for one. SGS also notes SGS regulations limit the grant of extensions to

“exceptional circumstances” and argues that the Student did not provide evidence of any exceptional circumstances that would justify such an extension.

[68] SGS also disagreed that the various delays the Student experienced in restarting her studies after being reinstated would justify an extension. SGS relied on the Minutes of Settlement, which the Student signed as a condition for her reinstatement to the Program. SGS noted that the agreement specified timelines for identifying a supervisor, supervisory committee members, and defending a revised thesis proposal and argued that the Student was not entitled to any further extension to account for delays beyond those agreed-upon timelines.

[69] The first issue that your Committee has to decide is whether the Student requested an extension and whether the Faculty failed to consider such request. It is true that the Student never submitted a Program Extension Form. However, the Student explained that the Faculty Associate Registrar informed her that if she needed to have her completion deadline extended beyond April 2019, she would “need to have a first extension approved in the winter 2019 term”, from which she understood that she would have to wait until the 2019 winter term to formally apply for an extension. SGS did not dispute this explanation, and since the Student was not advised otherwise, we would not count the failure to submit a formal request against her. In any event, the absence of a formal extension request could explain why an extension had not been formally granted, but it does not mean that there was no extension request to consider in assessing the Student’s progress towards completion.

[70] The Student clearly indicated that she would need an extension. She did that first in May 2018, in her comments on the APR form, and she did it again in September, when she submitted a revised timeline that included an extension. Part D on her APR form invited the Student to report “special circumstances that have affected or will affect your progress, issues you would like the Review Committee to consider”. Her response was: “Given an interruption to my studies and some change in my dissertation's direction or focus, I require an extension, and the attached timetable reflects this” (emphasis added). Yet, neither her Supervisor nor the CoS seem to have considered it. The Supervisor’s comments only discussed the then existing deadline of April 30, 2019, which he considered (as did the Student) as not appropriate nor achievable. The CoS comments also did not acknowledge the Student’s request. It only instructed the Student to prepare “a detailed timeline to completion with specific deliverables and deadlines” by September 17, 2018 and have it signed off by her supervisory committee. The CoS did not advise the Student that if the revised timeline contemplated an extension, then she should apply for one have it approved beforehand. It certainly did not warn her that she could be penalized if she did not do that.

[71] In our opinion, submitting a revised timeline that included an extension was the most sensible thing to do. Not only because the Student had already estimated that she would need an extension but also because her Supervisor had already indicated that the then existing timeline was unrealistic. Therefore, it would have made no sense for her to submit a timeline based on the then-existing completion deadline, which her Supervisor already indicated was unrealistic. Having done that, the sensible thing for the Supervisory Committee to do, was to discuss the revised timeline with the Student, tell her whether they agreed with it, and instruct her on how and when to apply for it. However, the Supervisory Committee’s report declined to say anything useful about the new proposed timeline but emphasized that it assumed an extension up until January 30, 2020, implying that this was something she should not have

done. The CoS then treated the inclusion of an unapproved extension in the revised timelines as a failure to meet the academic objectives set out in the APR.

[72] Your Committee finds that the Student indicated to the Faculty, clearly and in writing, that she would need an extension and the Faculty has handled the issue in a grossly unfair way. The CoS instructed the Student to submit a revised timeline: if she submitted a revised timeline based on the then existing deadline, she would surely be faulted for submitting an unrealistic timeline and ignoring her Supervisor's comments. Yet she was also faulted for submitting an updated timeline with an extended completion time, which, as we noted, was the most sensible thing to do following the CoS' instruction. As a result, the Faculty handled the issue of extension in a way that doomed the Student to failure. Such handling cannot be considered reasonable and fair. We note that the GAAB reached the same conclusion, although it ultimately found that this unfair treatment had not been consequential, an issue we will return to later.

[73] In its submission, SGS further questioned the Student's entitlement to an extension. If this appeal arose from a decision of the Faculty to deny a request for an extension, then determining whether the Student was entitled to it or not might be necessary for evaluating the reasonableness of the decision to deny it. However, the Student does not attack a refusal to *grant* her an extension but a failure to *consider* the potential impact of an extension on her ability to complete her thesis successfully and the decision to rely on the inclusion of an unapproved extension in her revised timeline as one of the justifications for her termination. Therefore, strictly speaking we do not need to decide whether the Student was entitled to an extension or not. However, the question may not be entirely irrelevant because the Student's entitlement for an extension may impact the assessment of whether the Faculty handled the matter reasonably and fairly. If, for example, it was plain and obvious that the relevant regulations preclude the granting of an extension in the circumstances of this case, then the Faculty's failure to consider it might look more reasonable. We interpret SGS's submissions on this point as denying the Student's eligibility for an extension and will consider them accordingly.

[74] SGS submitted that the Student was not entitled to an extension because extensions may only be granted in exceptional circumstances and the Student did provide evidence establishing the existence of exceptional circumstances that would justify an extension. SGS's position implies that extensions are rarely granted and that a student needs to satisfy an evidentiary burden regarding the exceptionality of the circumstances in order to justify an extension.

[75] Both propositions are incorrect. Regarding the rarity of extensions, SGS did not dispute the finding of the Faculty study showing that the average time of completion was longer by nearly two years than the expected six, nor did it challenge the inference that the Student had asked us to draw from this study. SGS also did not dispute the Student's argument that the existence of regulations allowing for up to four one year extensions indicates that SGS expects that some students would require more than six years to complete their program, and that extensions are quite common. We also note that the Calendar states that the the first two extension requests require only graduate unit approvals while the second two require graduate

unit and SGS approvals.<sup>14</sup> This indicates that the first two extensions are meant to be approved more easily and quickly.

[76] Moreover, there is nothing in the Calendar or any other policy presented to us suggesting particular evidentiary burden regarding the exceptionality of circumstances that would justify such an extension. On the contrary, the Calendar<sup>15</sup> and the extension form only require the student to explain the causes for the delay, not to provide evidence to justify why the extension should be granted based on the exceptionality of the circumstances causing the delay.<sup>16</sup> They only require evidence concerning the ability of the student to complete the remaining degree requirements within the period of the extension requested. Similarly, most of the ten specific questions that the Extension Form asks the student's supervisor to answer aim at soliciting information about the likelihood that the student will be able to complete the program within the extended period. This indicates that the focus of the inquiry is not on why a student was unable to complete the work within the existing time, whether the delay resulted from circumstances beyond the student's control, whether such circumstances could or should have been foreseen, or other consideration of this kind. Rather, the Calendar and the Form indicate a forward looking and pragmatic inquiry. Understanding the causes of the delay is important not because the grant of extension depends on a whether an extension would be morally just given the circumstances that caused the delay, but because understanding what caused a delay may indicate whether the proposed work plan is realistic and achievable.

[77] Your Committee also notes that the concept of "exceptional circumstances" is very flexible and courts have frequently noted that it defies any helpful definition.<sup>17</sup> In many cases, the best a tribunal can do in applying it is to refer to earlier cases in which exceptional circumstances have been recognized as justifying departure from the general rule.<sup>18</sup> The evidence before us indicates that the regulations recognize that extensions can be expected, and they are indeed granted regularly. We have not been referred to any evidence showing that extensions in the context of doctoral programs have been regularly limited to a narrow type of circumstances, or that students need to provide evidence to justify the exceptionality of the circumstances. The record before us does not preclude the possibility that a doctoral student's mere inability to make sufficient progress within an existing timeline could be viewed as an "exceptional circumstance" given the flexibility of this concept. Arguably, if

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<sup>14</sup> SGS Calendar, s 7.1.10.2.

<sup>15</sup> SGS Calendar, s 7.1.10.2 ("In exceptional circumstances, a doctoral student who has not completed all the requirements for the degree within the time limit for doctoral degree is eligible to apply for four one-year extensions. The first two extension requests require graduate unit approvals; the second two require graduate unit and School of Graduate Studies approvals. To qualify for an extension, the student must complete the Program Extension Form ([www.sgs.utoronto.ca/informationfor/students/inform/stuforms.htm](http://www.sgs.utoronto.ca/informationfor/students/inform/stuforms.htm)) and present to the graduate unit concerned the causes for the delay and evidence that the remaining degree requirements may be completed within the period of the extension request. No registration beyond the four year extension period will be permitted. ...").

<sup>16</sup> The Student submitted another SGS document which looks like guidance document for students and which does not even mention any exceptionality requirement. It states simply that "If you do not complete all degree requirements within the time limit for your degree, you may submit a request for program extension" and then directs the student to "complete a program extension (current regulations) form and submit it to your graduate unit along with an explanation for the delay and evidence that the remaining degree requirements may be completed within the period of the extension request".

<sup>17</sup> *R v Tran (A)*, [2015] 2015 MBCA 120 at para 18.

<sup>18</sup> *Ibid* at para 21.

“exceptional” means “unusual” or “not typical”,<sup>19</sup> then the length of the program defined in the relevant regulation can be considered as identifying the period expected to be sufficient in typical cases. If so, then a student’s inability to progress sufficiently within this timeline constitutes an exception. Hence, this may be enough to conclude that the circumstances are exceptional and extension may be granted because they involve a case in which the normal timeline has proven to be insufficient and this justifies a longer timeline than that which is normally expected. Therefore, considering what the Calendar requires, its pragmatic forward looking inquiry, the evidence with respect to the practice of granting extensions, and the inherent flexibility in the concept of “exceptional circumstances” allow us to find that the circumstances of this case, the Student’s inability to achieve satisfactory progress within the original deadline could justify extending the completion deadline. At the very least, granting an extension was something that the Faculty had to consider.

[78] Your Committee also finds no need to decide whether the delays in identifying a supervisor and additional members of the supervisory committee justify the extension, and who should be held responsible for those delays. As noted earlier, delays in the completion of a major research project such as a PhD happen for a variety of reasons, and the time needed to complete such research does not involve a zero-sum game where any extra time given to a student is a “win” for the student that comes with a corresponding “loss” to the university. Supervising graduate research and training the next generation of researchers is a core mission of the university and successful completion of a PhD program is a “win” for both the students and the university. Of course, if a student shows no possibility of successful completion or if helping a student to progress requires diversion of significant resources then the university’s “win” may be a “loss”. That is why when delays occur, is it important to understand why they happened, not for determining who is to blame for the delay but to learn whether the cause for the delay persists, how it may be mitigated, and what other reasonable measures may be taken in order to ensure successful completion. If additional time may allow the student to achieve progress, then giving an extension may be a “win-win” solution.

[79] We note that s 2 of the Monitoring Guidelines note that even though a Supervisory Committee may recommend termination (presumably to the unit, who may then decide whether to proceed with a recommendation to SGS), the student “must be provided with adequate warning of problems and be given a chance to correct deficiencies [and] [e]very effort should be made to identify problems early in a student’s program so as to avoid termination for cause late in the program.”<sup>20</sup> This direction indicates that termination should only be pursued as a matter of last resort and if lesser measures have failed or determined to be futile, and that if there is a reasonable likelihood that if an extension is granted, a struggling student may be able to achieve satisfactory progress, then this measure should be preferred to termination.

[80] We can base this proposition on a broader principle. The powers to terminate the registration of a doctoral student who fail to maintain satisfactory progress and the power to recommend such terminations are discretionary. Discretion is never absolute and untrammelled and must only be exercised to further the purposes for which the power was granted, and must “be based upon a weighing of considerations pertinent to the object of the

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<sup>19</sup> *Exceptional*, Canadian Oxford Dictionary, 2nd ed (Don Mills, ON: Oxford University Press, 2005).

<sup>20</sup> *Supra*, note 13 s 2.

administration.”<sup>21</sup> Unlike an admission committee, or an awards committee, whose goal might be to select the best or more fitting candidates to an academic program or an award and reject the rest, the goal of a supervisory committee, a graduate unit, or SGS, with respect to doctoral students who have been admitted and achieved candidacy, is not to weed out those who are struggling but to help all and each of them to achieve their academic potential. For this purpose, the goal of the procedures set up to monitor doctoral students’ progress is “to ensure that the student is achieving, in a timely manner, the level of academic excellence and technical maturity expected of a PhD graduate from this University.”<sup>22</sup> Termination, by definition, denies the student the ability to achieve those objectives within the program, but the existence of the power to terminate a doctoral student is not fully incompatible with those goals if it becomes evident that the student is unable to progress towards successful completion in a timely manner, or that providing the student the support that would allow them to progress requires directing unreasonable amount of resources, including supervisory attention, to the student, and away from other equally important objectives. Since the main goal of the process is sustaining the student, not terminating their registration, the decision to recommend or proceed with termination must be made only after it becomes evident that there is no longer any reasonable prospect of successful completion.

[81] At the hearing, the panel asked representatives of the Faculty several times what other options, including an extension, were considered after it was determined, following the September 2018 review, that the Student’s progress had not been satisfactory and before the decision to proceed with a termination recommendation was made. The answer was that no alternatives were considered. Since the purpose of the Program and the monitoring process might have been better advanced if the Student were given an extension or more attentive support than if her registration were terminated, the failure to consider such alternative options rendered the decision deficient, because “the failure of an administrative decision-maker to take into account a highly relevant consideration is just as erroneous as the improper importation of an extraneous consideration.”<sup>23</sup>

[82] Accordingly, we find that the failure, in the present circumstances, to consider whether an extension or other alternatives would be more appropriate than termination, made the decision seriously deficient. The deficiency was compounded because despite not submitting a Program Extension Form, the Student clearly indicated to the Faculty that she required an extension. Having communicated her need for an extension, the Faculty should have considered whether an extension could help the Student to achieve satisfactory progress. The Faculty should also have advised her on how to apply for an extension and should not have penalized her for building in an extension to her new proposed timeline. The Faculty’s failure to consider an extension and to advise the Student on how to apply for it were unreasonable, as was its decision to penalize the Student for including an unapproved extension in her revised timeline. This unreasonable behaviour tainted the Faculty’s recommendation to terminate the Student’s registration and it tainted the SGS decision that was based on that recommendation.

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<sup>21</sup> *Roncarelli v Duplessis*, [1959] 1959 SCR 121 at 140.

<sup>22</sup> note 13 s 2.

<sup>23</sup> *Oakwood Development Ltd v St-François Xavier*, [1985] 2 SCR 164 at para 16.

**(3) Was the GAAB conclusion that the extension would not have made a difference reasonable?**

[83] SGS urges us to endorse the GAAB's conclusion with respect to the failure to consider an extension. The GAAB accepted that "it [was] not fair to penalize a student for building a proposed extension into the estimate of time to completion when the only way to produce a realistic timeline is to assume the extension"<sup>24</sup> but then found that that unfair treatment of the Student was of no consequence because comments and answers of the Student's Supervisor to questions from the GAAB members at the hearing indicated clearly that he did not think more time would solve the issues with the Student's satisfactory progress.

[84] The Student argues that it was unreasonable for the GAAB to rely on the Supervisor's testimony concerning the impact of the extension, when there is no indication that in making the decision to terminate her registration, SGS gave any consideration to how an extension could affect her progress. She maintains that if the failure to consider the potential effect of an extension made the Faculty's decision to recommend her termination and SGS's decision to accept the recommendation unreasonable, then this flaw cannot be saved by an after-the-fact consideration. While there is merit to this argument, we hesitate to endorse it fully if it implies that it was unreasonable for the GAAB to even admit this testimony because it was irrelevant to the issue at hand. We do not need to decide this question because in our opinion even if the GAAB did not err in hearing this testimony, it erred in the weight it accorded to it and in concluding that it showed that unfairness to the student was inconsequential. We reach this conclusion for several reasons.

[85] First, we note that even if the Supervisor, in his testimony before the GAAB, was unequivocal in his belief that an extension would not have made a difference, the Supervisory Committee September 17, 2018 report did not convey such a message. That report noted that while the two revised chapters were still far from reaching PhD-level scholarship, the Student had made some identifiable progress in these two chapters. The Committee noted that the chapters "still require substantial revisions and additions that, taking the current pace into consideration, will take months rather than weeks." Notably, the Supervisory Committee did not report that in their assessment there was no reasonable prospect of successful completion of the thesis, even if more time was given. In our view, the report of the Supervisory Committee does not support the futility of an extension but its potential utility, which stands in contrast to the Supervisor's testimony before the GAAB. Given the inconsistency, the GAAB should have decided which evidence should be given greater weight. In our opinion, greater weight should have been given to the report, because it reflected the real-time assessment around the time the decision was made, rather than on assessment given a year later. Moreover, the written report reflects the shared opinion of three committee members and not just the opinion of one of them. The Supervisor might have had the same opinion all along, but the other supervisors might have disagreed. The GAAB did not hear the other supervisors but the report sent on behalf of all members should have been given more weight than the testimony of one of them.

[86] In addition, even if in the fall of 2018 the Supervisor was confident that an extension would make no difference, the Student was entitled to apply for an extension and the decision

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<sup>24</sup> GAAB decision, at p 4.

would be made by the Faculty, not the Supervisor. Granted, the Program Extension Form requires the Supervisor to answer questions about the likelihood that the Student would be able to complete her work within the proposed extension period, and if the Supervisor's answers were not favourable to the Student, the Faculty might have denied her application. But we cannot tell what the Faculty would have decided. The Faculty might have decided that the Student deserved a chance to prove her Supervisor wrong. And if the Faculty refused to grant her even a first extension, the Student could have appealed that refusal before the matter escalated to a termination decision and appeals thereof. Moreover, if she was given the opportunity to apply for an extension (prior to her termination), the need to have her Supervisor's assessment might have presented an opportunity for a constructive conversation between the Student and her Supervisor. She might have persuaded him that an extension would be useful, or at least that she deserves a chance to prove him wrong.

[87] All of that is speculation, of course, but so was the Supervisor's opinion that an extension would not have made a difference. The fact of the matter is that the Student had a right to apply for an extension, the Faculty had a duty to consider it, and instead of considering it, the Faculty penalized the Student for suggesting an extension. This was sufficiently unfair and the Supervisor's assessment in his later testimony could not have undone this unfairness.

[88] Accordingly, your Committee finds that the GAAB conclusion that the extension would not have made a difference was unreasonable.

#### **(4) Was the standard for procedural fairness met in the decision to terminate?**

[89] The Student argues that the standard of procedural fairness has not been met in the decision to terminate her registration. She notes that termination of registration is not a direct result of a student's failure to maintain satisfactory progress, but is a result subject to discretion which must be reasonably exercised having regard for standards of procedural fairness. Relying on *Baker v Canada (Minister of Citizenship and Immigration)*,<sup>25</sup> the Student maintains that a decision to terminate a doctoral student is a significant event: it is a decision that ends her ability to achieve a PhD degree, which she had been working towards for several years, effectively shutting her off from an academic career, and otherwise drastically impact her future career prospects. Accordingly, it is a decision that requires a high degree of procedural fairness. SGS does not contest these propositions, but maintains that the standard of procedural fairness was met.

The Student's arguments concerning procedural fairness focus on whether the Faculty gave her sufficient notice of the possibility that the September 2018 review of her materials could result in termination; on the way her Supervisory Committee conducted the review and reported its conclusions; and on events occurring after the Supervisory Committee submitted its report. We will address these issues in this order.

##### *Did the Faculty give the Student sufficient notice of the possibility of termination?*

[90] The Student submits that she was not sufficiently informed that the September 2018 assessment could result in termination. She claims that the CoS comments on the APR, which

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<sup>25</sup> *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

requested the September 2018 review, did not contemplate the possibility that the review could result in termination. She only learned that termination was in fact a possible outcome of the September review when the CoS notified her on October 22, 2018 that they would recommend SGS to terminate her registration. Given what was at stake, had she been made aware that termination was a potential outcome of a negative assessment, she might have made further sacrifices in her personal and work life to ensure her submissions would meet her Supervisory Committee's approval. Yet, by the time she was made aware termination was a serious possibility the process was already in motion, leaving her no realistic option to reverse its course.

[91] SGS maintains that the CoS comments on the APR provided the Student ample notice that her registration might be terminated if her performance did not improve. In those comments, the CoS notified the Student that she was “not in good academic standing” and warned her that if the assessment by her Supervisory Committee in September did not warrant upward adjustment of her academic status, then the CoS would have to determine “whether and how the identified sanctions should be applied.” The phrase “identified sanctions” referred to the following language from the Calendar that the CoS quoted in its comments: “Failure to maintain good academic standing may result in various sanctions, including ineligibility for financial assistance, lowest priority for bursaries and assistantships, and even termination.” In addition, SGS argues that PhD students are expected to be aware of the rules and regulations governing their enrolment, including the fact that if a student's supervisory committee deems their work unsatisfactory in two consecutive meetings, the graduate unit may recommend to SGS the termination of registration and eligibility of that student.

[92] The argument that PhD students are expected to be aware of the rules and regulations governing their enrolment is not helpful for SGS. The argument that PhD students are *expected* to be aware does not mean that they are *in fact* aware. Moreover, the Student could only be aware of the outcome of a process if that process was set out in those rules and regulations, which is not the case. The September review was an ad hoc process, set up by the CoS, and its precise purpose and consequences could not be gleaned from reading the relevant regulations, only from what the CoS wrote. Therefore, the question is whether the notice of this ad hoc procedure gave the Student sufficient notice that termination was seriously considered and this procedure could result in her termination. The argument further does not help SGS because even if the Student, as a PhD student, should have been aware that the Faculty may recommend her termination if her Supervisory Committee considered her work unsatisfactory in each of two consecutive meetings with her, she certainly could not have been aware that the Faculty would recommend her termination after only one such meeting. We therefore dismiss this argument.

[93] A somewhat more difficult question is whether the reference in the CoS's comments on the APR to the “identified sanctions” constitute sufficient notice. The explicit mention of termination among those identified sanctions make it difficult to accept that the APR made no mention of the possibility of termination. Since the APR contained specific language contemplating such a possibility, it did contain a notice, at least of some sort. The question, however, is whether such notice was a *sufficient* notice.

[94] Whether notice was given is a question of fact, but whether that notice was sufficient is a question of law. The existence of notice does not necessarily make the notice sufficient, as a matter of law. “Sufficient notice” is a legal concept and an aspect of the duty of fairness,

which “relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision.”<sup>26</sup> This principle, with the aid of the non-exhaustive factors identified in *Baker, supra* will guide your Committee in deciding whether the listed “identified sanctions” provided the Student sufficient notice. Whether the comments of the CoS provided sufficient notice will depend, in large part, on examining what the CoS said in the APR, what it did not say, and what the Student could have reasonably expect from reading those comments.

[95] The CoS wrote the following:

Given our assessment that you have not made satisfactory progress this year and therefore are not in good academic standing we have determined that closer monitoring of your progress over the coming months is necessary. To that end we are requesting that your supervisory committee check in with us on September 17, 2018 to give us an update on your progress and to provide us with a detailed timeline to completion with specific deliverables and deadlines, prepared by you and signed off by the committee. By that date we expect you to have revised and resubmitted at least 2 of the 6 draft chapters you have already written and we will ask the committee to confirm that it has signed off on those chapters. We also expect you to have completed a draft of your methods chapter in which you delineate and flesh out the methods to be used in your research. If those methods require REB approval you must also have completed and submitted the necessary ethics protocol.

Depending on what your supervisory committee reports to us at that time we will decide whether your academic status continues to be “not in good standing” or can be adjusted to “marginally in good standing” or “in good standing.” We sincerely hope that your progress by that point will warrant an upward adjustment of your current status. However, if that is not the case, we will have to determine whether and how the identified sanctions should be applied. In the meantime, we strongly advise you to focus your time and energy on meeting the deadlines specified above over the next 2 months and avoid taking on any commitments that will distract you from that goal.

[96] Nowhere did the CoS write that the purpose of the September assessment is to the determine whether the Student should maintain her registration in the Program. Those comments did not notify the Student that based on what the Supervisory Committee reports, a decision whether to recommend SGS to terminate her registration will be made. There is nothing in these comments indicating that the outcome of the September assessment will be determinative to her ability to maintain her registration. Rather, the CoS indicated that based on what the Supervisory Committee reports, it would decide whether the Student’s academic status continues to be “not in good standing” or can be adjusted to “marginally in good standing” or “in good standing.” That was the sole outcome contemplated in those comments. The following two sentences indicate that the CoS contemplated two steps. The first step was to determine, based on the Supervisory Committee report, whether the Student’s academic status continues to be “not in good standing”. If, and only if, the CoS determined that the status continues to be “not in good standing” then, a second decision would have to be made, “whether and how the identified sanctions should be applied.”

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<sup>26</sup> *Ibid* at para 28.

[97] The phrase “whether and how the identified sanctions should be applied” encompasses a wide range of options: from no sanction at all to the most severe sanction. If the CoS intended to provide the Student notice that termination was being considered as a serious possibility it could have written something along the lines of “We sincerely hope that your progress by that point will warrant an upward adjustment of your current status. However, if that is not the case, we will recommend SGS to terminate your registration” or “if that is not the case, we will determine whether to recommend SGS to terminate your registration or apply a lesser sanction.” Such language would have put the Student on notice that termination was being considered seriously, but the language chosen does not. The CoS comments merely quoted language from the Calendar that lists termination among several possible sanctions that may or may not be applied even if the review results in a determination that her status remains not in good standing. They included no language that could allow the Student to understand that the goal of the contemplated September assessment was to decide whether to apply the most severe among those sanctions. Probabilistically, fair reading of the CoS comments would rationally assign a very low probability for the possibility that the September assessment would result in termination.

[98] In addition, the ad hoc process set out in the CoS’s comments could be reasonably understood as pedagogic rather than disciplinary; designed with an eye towards providing assistance to a struggling student, rather than deciding whether she warrants termination. The CoS wrote that they have determined that “closer monitoring of your progress over the coming months is necessary.” The words “monitoring” and “supervising” are synonyms and the sentence “we have determined that closer monitoring of your progress over the coming months is necessary” may well be interpreted as indicating the CoS’ determined that given the lack of satisfactory progress to date, it requests the Supervisory Committee to provide a more “hands on” type of supervision over the coming months to ensure that the Student can improve her academic standing. The next sentence, beginning with the words “to that end we are requesting your supervisory committee” is consistent with this interpretation. The CoS did not just provide an open-ended expression of that closer supervision over the coming months is necessary, but chose to identify specific items and goals that should be accomplished. Notably, those directions were not only a “to do” list for the Student, but also included “to do” items for the Supervisory Committee.

[99] The pedagogical focus of the CoS’s comments is also reinforced by the advice “to focus your time and energy on meeting the deadlines specified above over the next 2 months and avoid taking on any commitments that will distract you from that goal,” and by the instruction to review with her supervisor the SGS Guidelines for the Doctoral Final Oral Examination (“FOE”) and the information the CoS provided about specific timelines that the Faculty established in preparation for her FOE. If the CoS’s comments on the APR were supposed to put the Student on notice that termination was being considered as a serious possibility, then why devote a considerable part of it to the details of her final oral examination, which should, at that point, been considered as a serious impossibility? If the CoS intended to convey the message that unless the Student makes sufficient progress over the next couple of months she will likely be terminated, then a more prudent advice could be to start considering a “plan B”.

[100] Your Committee cannot accept that the CoS’s comments on the APR provided the Student sufficient notice that maintaining her registration in the Program was in serious

jeopardy. It also did not provide her sufficient notice that the report of her Supervisory Committee in September would be determinative for her continued registration. Even if it did, then the process set up by the CoS was seriously deficient in terms of procedural fairness because it only provided the Student an opportunity to provide materials relevant to the narrow question of whether sufficient progress was made since the APR was conducted, not an opportunity to make submissions on why she should not be terminated before a report that would be determinative of that question were submitted.

[101] If the CoS thought at the end of June 2018 that there was a serious probability that by the end of the year the Student would no longer be a PhD student, then it should have been very clear about that. If the CoS intended that the September report would be determinative of the Student's ability to continue her studies then it should have been clear about that as well, and it should have given the Student not only a chance to submit materials for assessing her academic progress but also a meaningful opportunity to make submissions on whether she should remain in the Program.

[102] Your Committee agrees with the Student that had she been aware that termination was a likely outcome of a negative assessment, she might have made further sacrifices in her personal and work life to ensure her submissions would meet her Supervisory Committee's approval. But this is not the only thing that she could have done. She could attempt to have a productive conversation with the Faculty about the challenges she was facing; she could have tried convincing them that it was unfair to impose on her a deadline that would compel her to make further sacrifices in her personal and work life; she could have escalated the issue and involve the PhD Director, the Dean, or SGS; she could have sought legal advice before the decision was made; she could have raised the problems she experienced with the quality of her supervision and explain why they might have contributed to her unsatisfactory progress before a decision to proceed with termination was made.

[103] In sum, the CoS's comments on the APR contemplated an ad hoc process whose purpose was to reassess the academic standing of the Student *as a doctoral student*, not to determine whether she would remain a student. The CoS only mentioned termination as one among several potential outcomes that may be decided at a later stage, depending on the outcome of that review. These comments did not indicate that termination was seriously considered at the time and would be determined by the results of the September review. The stated outcome of that review, its structure, and the CoS's comments in setting it up all indicate that it was designed for assisting her to succeed in the Program, not for ascertaining whether she would be kicked out. If the CoS intended otherwise, then it failed to communicate it with the necessary clarity, and thus did not allow the Student to understand the gravity of the situation she was facing and denied her the opportunity to influence a report that became determinative in the making of a decision of such a profound importance to the her.<sup>27</sup> The reference to the "identified sanctions" might have given the Student some notice, but this notice did not satisfy the legal conditions for being "satisfactory" and therefore did not accord with the high level of procedural fairness that a decision to terminate a doctoral student entails.

[104] Your Committee notes that we reach a different conclusion on this point than that of the GAAB. The GAAB acknowledged that a better process could have been followed in this case, including providing an explicit warning that termination was being considered before

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<sup>27</sup> *Alberta (Funeral Services Regulatory Board) v Strong*, [2006] 2006 ABQB 873.

the October 22 letter, but ultimately, did not find that sufficient to overcome the Faculty's submission that the reference to termination among the "identified sanctions" in the CoS's comments had put the Student on notice that termination was a serious possibility. In reaching this conclusion, the GAAB erred in not appreciating the difference between the empirical fact of a notice and the legal issue of its sufficiency.

**(5) Did the Supervisory Committee conduct its review and report its findings in a way that satisfied procedural fairness?**

[105] The Student claims three deficiencies in the way her Supervisory Committee reviewed the materials submitted in September 2018. First, the Committee sent its report to the CoS on September 17, 2018, before the Student submitted her methods chapter, and without giving her notice that they intended to go ahead with their report without waiting for this outstanding document. This failure resulted in a report indicating that the methods chapter had not been submitted, where indeed it was. Second, having already reported to the CoS, the Supervisory Committee made no attempt to update their report when they received the chapter later that day. Third, the Committee gave inadequate attention to the submitted materials because only three days passed between the day the Student submitted the revised two chapter and the outline and the day the Supervisory Committee wrote their report. To support this claim, the Student cites the SGS 2012 Graduate Supervision Guidelines ("2012 Supervision Guidelines") which, she says, state that a "thorough reading and commentary for a lengthy chapter should reasonably be expected to be completed between a week and three weeks from submission".

[106] Your Committee finds no merit in the third claimed deficiency. Despite the quotation marks in the Student's submission, the Student did not include the relevant page in its book of authorities, and the language in the actual Guidelines, while similar, leaves no doubt that the Guidelines do not say that a supervisor needs at least a week for thorough reading and commentary. The Guidelines ask "What is a reasonable turnaround time for drafts?" and provide an answer that seeks to be reasonable from the perspective of both student and supervisor. The answer is "Expecting a thorough reading and commentary for a lengthy chapter in less than a week would probably be unreasonable. Equally unreasonable would be for a student not to hear back for more than two or three weeks." In our opinion, supervisors who are willing to provide comments within three days should be praised, not criticized, and if the Student considered that three days did not allow sufficient time to fairly review her materials she could have submitted them earlier, or request an extension of the September 17 deadline.

[107] Regarding the first claimed deficiency, your Committee supposes that inadvertent oversight in the deadlines that the CoS had set out created a potential for some mischief. The CoS specified September 17, 2018 as the date in which two consecutive things had to happen: the Student was required to submit her materials on that date, and the Supervisory Committee was also required to report back to the CoS on that date. That created a potential for an inability to comply with both requirements. The problem was averted in the case of the materials that the Student submitted on September 14, but came to a head in the case of the methodology chapter, which the Student submitted on September 17. The Student could not be faulted even if she submitted the methods chapter on September 17 at 11:59 p.m., as she was entitled to.

But the Committee was required to report back on the same day, and cannot be faulted for not waiting until 11:59 p.m. in anticipation of receiving the methods chapter. The Committee received all of the other materials three days earlier, the Student did not inform them that the methods chapter was forthcoming, it was not unreasonable for them to assume that it was not. While the Committee could have asked, the Student could have informed, and better communication between the Student and the Committee could have also allowed them to alert the CoS of the potential for trouble in choosing the same deadlines ahead of time. However, miscommunication does not necessarily amount to breach of procedural fairness. We therefore reject the submission that the Supervisory Committee breached a duty of procedural fairness when they submitted their report without notifying the Student that they would do so without waiting for her methods chapter.

[108] That said, your Committee cannot reach the same conclusion with respect to the conduct of the Supervisory Committee after receiving the methods chapter. Once they received the methods chapter, it must have been clear to the Supervisory Committee that the report they had just sent to the CoS contained a false answer with respect to one of the questions they were requested to answer, or at least a highly misleading one. The CoS instructed the Student to submit certain materials by September 17 and instructed the Supervisory Committee to report, among other things, whether those materials were submitted. The Supervisory Committee's report stated: "Sept 14 we received the following four documents: 2 revised chapters (chapter 2 & 5), 1 change document, and 1 document outlining a timeline. No methods chapter, nor any documentation related to REB approval was submitted." Technically, the statement that no methods chapter was submitted on September 14 remained factually true even when they received the chapter on September 17. However, by failing to update the CoS that the missing chapter had been submitted, the Committee created a false impression and thus mislead the CoS into thinking that the Student failed to submit the chapter, when in fact she did.

[109] The Supervisory Committee must have also known that the information they provided in their report was going to be relied on by the CoS in determining whether the Student's academic status should remain as "not in good standing", and thus ought to have known that not correcting the information could be detrimental to the Student. Therefore, by failing to update the CoS, the Supervisory Committee introduced additional unfairness to the process.

[110] SGS did not attempt to explain or justify the failure of the Supervisory Committee to update its report. Instead, it tried to minimize its importance. It submitted that even though the Supervisory Committee did not review the methods chapter prior to submitting its September 17 report, it was not required to do so because it already determined that the two chapter that it had reviewed were inadequate. SGS adds that in any event, Professor Nieborg subsequently reviewed that chapter and all other materials in November and concluded that most of the materials were the same as the Student had submitted in September and there was no improvement in quality in any of those materials.

[111] These arguments miss the point. The CoS did not request the Supervisory Committee to review the methods chapter, only to confirm that the Student submitted it. The Committee reported that she had not and failed to inform the CoS when it learned that the Student actually did. The result was that in considering whether an upward adjustment in the Student's academic status, the CoS relied on a report containing false information. Because the Supervisory Committee failed to set the record straight, its report to the CoS was more

damning than what the true facts could support. An assessment of two reviewed chapters was only one of several pieces of information that the CoS requested. Whether the Student submitted a methods chapter was another. The Supervisory Committee's assessment of two reviewed chapters was already bad news for the Student. Reporting that she submitted the methods chapter should have been good news that could work in her favour in the overall assessment of her status by the CoS. But instead of receiving good news about the methods chapter, the CoS received additional bad, yet incorrect, news. It is evident that this accumulation of bad news had an impact because when the CoS notified the Student of its intent to proceed with a recommendation to terminate her registration, it mentioned her failure to submit a methods chapter as one of the reasons.

[112] The damage created by the Supervisory Committee's incorrect report has proven resistant to correction. Even though by the time the Faculty sent its termination recommendation to SGS the Faculty already knew that the methods chapter had been submitted, the letter to SGS informed SGS that on September 17, 2018 the Supervisory Committee reported that the methods chapter had not been submitted. The letter later mentioned, without any specificity, that the Student was invited to resubmit all of her materials after she expressed concern that her Supervisory Committee did not have all of her most-recent chapters, but added that the Student's "PhD Supervisor reviewed the materials to identify any changes that may alter the Supervisory Committees earlier report of her progress, and it was concluded that there were no grounds for a change in determination of progress based on the most recent submission." No reasonable reader of this letter could infer that the methods chapter, which had been reported as missing, was indeed submitted. The misleading reporting concerning the methods chapter, thus, continued to influence every step of the process, and the Student's attempt to correct the record on that issue proved futile. In the opinion of your Committee, this has tainted the process with profound unfairness.

#### **(6) Procedural fairness after the Supervisory Committee submitted its report**

[113] On November 1, 2018, a meeting with the PhD Director and members of the CoS was convened to allow the Student to ask questions before the Faculty submits its termination recommendation to SGS and for the Faculty to learn if there was any new information that might influence their decision. At the meeting, the Student explained that contrary to what was stated in the September 17 report and the subsequent October 22 letter, she had submitted the methods chapter, and reiterated that her research did not require additional REB approval. In response, the CoS asked the Student to resubmit all of her materials, including confirmation that REB approval was not required. As the GAAB found, the CoS requested the Student to resubmit all of her materials in order to make sure that none had been missed, not for conducting a new qualitative assessment of the Student's materials.

[114] What happened next remains a source of contention. Apparently, the CoS asked the Student's Supervisor, who was invited to the meeting but did not attend, to review the materials. In the letter to SGS recommending the Student's termination, the Faculty stated that purpose of that review was "to identify any changes that may alter the Supervisory Committees earlier report of her progress". This implies a very limited review, simply to affirm that the Student had indeed submitted all the required materials. This was also the Student's understanding. However, the GAAB found that the Supervisor did not simply affirm

that all the previously-requested materials were indeed submitted, but conducted a new qualitative assessment and reported that “while there were new materials, most were the same as what had been submitted in September and in all of the material there had been no improvement in quality.” The GAAB also found that the even though the Faculty did not expect to receive an additional qualitative assessment, it had used that new assessment in making its final determination about satisfactory progress.

[115] The parties present opposing perspectives on this additional qualitative review. SGS maintains the fact that the Student’s Supervisor provided an additional qualitative assessment of her materials just prior to the final decision to proceed with the termination recommendation demonstrates that the Student’s materials were considered adequately. By contrast, the Student maintains that this additional review and the reliance on its conclusion constituted another breach of procedural fairness. Given this shared understanding of what the purpose of the November 1 meeting was and of the request that she resubmit all of her materials, it was unreasonable for the Faculty to give any weight to Professor Nieborg’s subsequent reassessment of her chapters. It was unreasonable, she argues, because she was not advised that there would be a further substantive review and she was poorly positioned to prepare for it.

[116] In the opinion of your Committee, there is merit in the Student’s complaint. Whatever the Faculty’s intentions were, its reliance on a report that the Student had not seen, did not have an opportunity to examine and respond to, and which was based on review of her submissions that took place without her knowledge, and contrary to the parties’ shared understanding of the narrow purpose of that submission, was inconsistent with the high degree of procedural fairness that she was entitled to. It forced her to chase a moving target: her complaints about problems in how one review was conducted were rejected on the basis of the finding of another review that took place without her knowledge. The Student was entitled to know “what evidence has been given and what statements have been made affecting [her]: and then [...] must be given a fair opportunity to correct or contradict them.”<sup>28</sup>

[117] Moreover, the reliance on such additional evidence was a breach of the high standard of procedural fairness that the Student was entitled to, irrespective of whether it prejudiced the Student, because the issue is not “whether the evidence did work to the prejudice of one of the parties; it is sufficient if it might have done so.”<sup>29</sup> This would be enough to accept the Student’s complaint. But we can also determine that the acceptance and reliance of that additional review worked to her prejudice. Professor Neiborg’s assessment did not merely repeat what the Supervisory Committee reported in September, but added that even though the November submission included some new materials, most of the materials were the same as the Student had submitted in September and there was no improvement in quality in any of the materials.

The GAAB explained, based on the Faculty’s submission, that that additional review constituted the last in a three-step reviewing procedure: where the first step was the APR, the second step was the September review, and the third was this additional review in November. The conclusion that there no improvement in the quality of the materials was made since September creates an

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<sup>28</sup> *Kane v Bd of Governors of UBC*, [1980] 1 SCR 1105 at 1114 (quoting *Kanda v The Government of the Federation of Malaya*, [1962] UKPC 10, [1962] AC 322, at 337.

<sup>29</sup> *Kane v. Bd. of Governors of U.B.C.*, *supra* note 30 at 1116.

impression of a student who consistently fails to improve her work: not only did she not make sufficient progress between the June APR and September, she continued not to make any improvement between September and November. This is also how her lack of progress was portrayed in the Faculty's letter to SGS as well as in SGS's submissions to your Committee. However, the Student was not requested in November to submit materials showing improvement since September, nor did she offer to submit such materials. She was only requested to resubmit the same materials (which, by definition, could not include any improvement). Nevertheless, the Faculty used that resubmission as evidence showing that the Student continued not to make any progress. Essentially, the same materials were counted against the Student twice. This was profoundly unfair.

**(7) Did knowledge of the Student's previous termination deprive her of an impartial assessment of her work?**

[118] The Student's last argument concerning procedural fairness concerns the influence that knowledge of her previous termination deprived her of an impartial assessment of her work. The GAAB found it "difficult to believe that this history was not influencing the way in which the Student was perceived by members of the administration in the Faculty, the Supervisory Committee, and the Supervisor." The Student relies on the GAAB findings and also notes that the small size of the Faculty makes it more likely that members of the administration and the Student's Supervisory Committee would have been aware of her history.

[119] SGS asks us to reject the argument, stating that there is no evidence that any knowledge that Professors Duff and MacNeil (who were members of the CoS, which decided to recommend her termination, and who were also deeply familiar with the circumstances surrounding her first termination) had caused them to treat the Student unfairly. SGS also states that there is no evidence to support the Student's "serious allegations" that her Supervisor likely knew about her previous termination and that that knowledge could have impacted his perception of her.

[120] SGS, however, did not argue that it was unreasonable for the GAAB to conclude that it was difficult to believe that the Student's history influenced how members of the Faculty's administration, the Supervisory Committee, and the Supervisor perceived her. Nor did SGS make any attempt to present new evidence casting doubt on the GAAB finding on this issue. Therefore, your Committee is compelled to accept the GAAB findings.

[121] SGS also does not contest the Student's reliance on Report Number 297 of this Committee. In that case, which involves circumstances similar to those of the present case, the Chair of the panel, Professor Emeritus Ralph Scane, noted that

In considering the allegation that there was a sufficient perception of bias to require that the decision in question be vitiated, your Committee understands that it is not necessary for the Student to prove, or your Committee to find that bias actually existed and entered into the decision to fail the Student in the second practicum in order to give effect to this ground of appeal. A test approved by the courts is, "whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator."<sup>30</sup>

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<sup>30</sup> *Report Number 297 of the Academic Appeals Committee, 2005 at 2-3.*

This holding, in our opinion, further answers SGS's contention that there is no evidence that bias existed and affected the decision. The relevant question is only whether a reasonably informed bystander could reasonably perceive bias on the part of the decision maker. The GAAB clearly perceived such bias, and we see no basis to conclude otherwise.

[122] The rationale behind the decision in that case is worth repeating. In the words of Professor Scane,

[T]he majority note that the evaluation [of the student's performance] was by no means totally negative, and cannot dismiss the possibility that, had the Student been able to muster more vigour, the Associate teacher might have been able to persuade herself that the Student had edged past the required threshold. It is here that the issue of possible bias comes in. A decision to fail a student is one which few teachers arrive at without great regret, except in the most obvious cases, and it is seldom made without reconsidering to ensure that everything which might be put forward in the student's favour has been fully weighed. The danger of knowing that the student has previously failed in the same subject matter is not only that the assessor might be positively predisposed to find negative factors to justify failing the student again, but more insidiously, might unconsciously be discouraged from trying harder to find positive reasons to raise the student to a pass.<sup>31</sup>

[123] During oral arguments, the panel asked the representatives of the Faculty more than once if the Faculty considered whether measures less severe than termination (such as an extension) could be appropriate. The answer was no. This answer, in combination with the other evidence in the case, left your Committee with a strong impression that the decision to recommend the Student's termination—the most extreme measure and irreversible reaction to a failure to make satisfactory progress—was rushed. The Faculty decided to proceed with termination, even though the regulations do not mandate it, and even though the Supervisory Committee did not recommend it and its September assessment had not been totally negative. Moreover, since the Faculty did not consider whether satisfactory progress could be made if more time or closer supervision were available, it could not conclude that there was no reasonable prospect that satisfactory progress could be made. In addition, the fact that the Student was unjustly penalized for including an unapproved extension in her revised timeline, which, as noted earlier, was a very sensible thing to do; that fact that the Faculty continued to refer to the failure to submit a methods chapter and REB approval as indications for the Student's inability to meet the required academic objectives, even after it was known that the Student had in fact submitted the methods chapter and that no REB approval was necessary; and the Supervisor's after-the-fact statement that the Student would not have made progress even if an extension was granted all provide very strong and uncomfortable indications that at some point after the September review, the Student had been written off, and the case became an example of those uncommon cases where a decision to fail a student was made "without reconsidering to ensure that everything which might be put forward in the student's favour has been fully weighed."<sup>32</sup> We note that the GAAB observation that "another student whose work the Supervisor or Supervisory Committee judged to be more promising might have been given more time, more guidance in terms of meeting Faculty expectations, or more warning that a request for termination was impending" is consistent with our impression. Accordingly, we find that knowledge of the Student's earlier history could very likely have created a bias,

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<sup>31</sup> *Ibid* at 3.

<sup>32</sup> *Ibid*.

at least subconscious one, which deprived her of an impartial assessment of her work and led to a rushed decision to terminate her.

**(8) Did the level of supervision from the Supervising Committee meet SGS Guidelines?**

[124] The Student's last ground of appeal concerns the quality of the supervision she received from her Supervisory Committee, which, she argues, did not meet SGS Guidelines. More specifically, she argues that "the quality of [her] chapters does not reflect an inability to produce doctoral level work on her part but rather the lack of feedback she received from her Committee in the months leading up to her termination." Moreover, she argues specifically that Professor Nieborg provided no guidance or input into the development of her outline despite submitting several versions of it since April 2018. She maintains that the lack of such feedback affected the quality of her other submissions. She also notes that in its September 2017 report, the Supervisory Committee wrote that it was "challenging to see how exactly the two chapters fit into the overall argument", and attributes this difficulty to her Committee's failure to review and provide feedback on her outline.

[125] In response to the Student's general point (that the quality of chapters reflects the lack of feedback from her Committee) SGS submits, in equally general terms, that the supervision the Student received exceeded SGS expectations in terms of quality, timeliness, and availability. As a specific example for this general claim, SGS provided the extensive and detailed feedback on the Student's draft thesis that Professor Neiborg and the other Committee members each provided in March 2018. The problem, SGS argues, "is not the lack of adequate feedback, but rather [the Student's] inability to respond adequately to the feedback and to improve her academic work." With respect to the specific issue of not receiving feedback on the Student's outline, the SGS claims that this was the Student's fault, because her Supervisor requested that she provide him certain materials in order to give her effective feedback on her outline and she never did.

[126] Identifying what single cause prevented the Student from producing doctoral level chapters may be an intriguing question. The parties presented two competing hypotheses, added a few empirical findings, and claimed that those empirical findings affirm their respective hypotheses. We trust that parties, both being involved in research in a leading research university, will appreciate that there is very little we can do with their respective submissions on this point. Instead, what we have is unproductive mutual mudslinging. We regret, however, that while the Student limited her criticism to her supervisors' *actions*, SGS, in saying that the problem was "not the lack of adequate feedback, but rather [the Student's] inability to respond adequately to the feedback and to improve her academic work", has chosen to attack the Student's *abilities*. We have no way to determine the Student's abilities and SGS provided no evidence to substantiate it. Therefore, attacking the Student's abilities was unhelpful, unnecessary, and insensitive in the context of this appeal. Given our previous comments on unconscious bias, an informed bystander could also perceive such unsubstantiated criticism as reflecting unconscious bias.

[127] In any event, the record shows that after receiving her supervisors' feedback, the Student revised two chapters in light of this feedback and incorporated some of their comments. While the supervisors concluded that more work and more time was necessary in

order to bring those chapters to PhD-level scholarship, they noted that “identifiable progress” was made, and the two chapters had indeed improved.

[128] We do not know why the Student’s progress between March and September 2018 was not as good as expected. We note, for example, that SGS submission’s contained an email chain between the Student and her Supervisor in which the Student mentioned (on June 4, 2018) that “a family emergency has arose and I have to help arrange a funeral, so I’ll be working on this for the next couple of weeks”. In her letter to SGS from November 2018, the Student mentioned how the past year had been “quite stressful and somewhat demotivating” and she mentioned “struggling with various forms of pain and insomnia”.

[129] We cannot tell to what extent these issues affected the Student’s progress, but we also did not find evidence indicating that the Supervisory Committee, the Faculty, or SGS, attempted to understand what obstacles might have stood in the Student’s way. We note that in fact, Professor Nieborg did not seem to think that finding this out was part of his job. His responses to the questions on the APR, indicate that he understood his role as supervisor was limited to providing feedback on polished drafts submitted on time and nothing else.

[130] His response to the question “Are there specific ways in which you and/or others in the Faculty can help the student achieve their goals for the coming year?” was “All members of the supervisory committee offered significant feedback on [the Student’s] work over the past year. Going forward, the ball is in [the Student’s] court as we can only offer feedback on polished drafts that are submitted on time.” And his response to the question “Are there any other comments you wish to make regarding the student’s progress last year and/or their plans for the coming year?” was “I advise the Candidate to remove any and all future distractions to be able to fully focus on the project.” He did not seem to consider whether there were any obstacles: personal, institutional, or otherwise, that might have caused such “distractions” and if there was any way that he could help removing them or mitigate their impact.

[131] Your Committee notes that there are certain challenges in making findings about the quality of graduate supervision, especially if we are asked to decide who is to blame when a student’s progress is unsatisfactory. As the 2012 Supervision Guidelines recognize “[f]or both student and supervisor, the path toward successful completion can sometimes become difficult. Problems can arise in many ways, though most involve academic, personal, and/or financial issues”, and “[p]roblems are rarely completely one-sided: solutions often need compromise and flexibility.” Another difficulty concerns your Committee’s mandate, which is limited to deciding questions regarding the application of academic regulations and requirements, and “consider[] whether the relevant academic regulations and requirements have been applied correctly, consistently, and fairly.”<sup>33</sup> To be within the purview of our mandate, a claim about inadequate supervision must point to an academic regulation or requirement that allege that such regulation or requirement has been applied incorrectly, inconsistently, or unfairly.

[132] The Student anchored its argument concerning the adequacy of supervision in the following language from the SGS 2012 Supervision Guidelines:

Good graduate supervision should help students successfully navigate the journey through their program with a clear understanding of the appropriate requirements, rules and

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<sup>33</sup> Motion Decision 359-1, *supra* note 3.

procedures, and with any emerging problems handled in a timely fashion with compassion and clarity.<sup>34</sup>

[133] We have some doubts whether this statement from the introduction to those Guidelines constitutes an academic regulation or requirement, and even if it is, more may have to be said about what a correct, consistent, and fair application of this statement entails. However, SGS did not object to the view that there is a required level of supervision and that your Committee can determine whether it was applied, nor did it take issue with the relevance of the Supervision Guidelines, including this statement, in determining what that standard is. Instead, SGS maintains that the Student received supervision that exceeded SGS expectations in terms of quality, timeliness, and availability, and presented the written feedback that the Student received as a proof that such standard has been exceeded. It also argued that there is no indication or evidence that the relevant supervision policies were applied inconsistently or unfairly.

[134] We disagree with these submissions. While we accept that the feedback the Student received on her draft chapters in March 2018 was more than adequate, we are not aware that the Student received any similar feedback, not before and not since. Therefore, we cannot accept, as the GAAB did and as SGS urges us to follow, that that specific feedback showed that the level of support the Student received over the nearly two years since her reinstatement and termination was adequate. The evidence presented does not support such a conclusion.

[135] Moreover, the GAAB's conclusion about the adequacy of the support the Student received from the Faculty was based on a very restrictive concept of what good supervision entails. Providing feedback on a student's writing and meetings between a student and their supervisor are important components of good supervision, but the Supervision Guidelines recognize that supervision entails much more than that. "Over the course of the graduate program, the supervisor may be mentor, guide, teacher, rule enforcer, collaborator, and judge."<sup>35</sup> We therefore, reject the suggestion that we could infer from a single set of detailed written comments that supervision over the course of the program, was adequate.

[136] The Supervision Guidelines acknowledge that "[f]ulfilling all the sometimes conflicting [abovementioned] roles of a good supervisor is a challenge, particularly in the absence of any formal training for the task."<sup>36</sup> Not all students require the same type of supervision, or experience their journey through the program in the same way. Likewise, not all good supervisors are natural-born. Developing the skills necessary to provide good multi-faceted supervision may require time, experience, and guidance from the unit or more experienced supervisors, but it is the responsibility of the Faculty to ensure that students receive the level and type of support that suits their needs and the challenges they face.<sup>37</sup> Demanding that the support a student receives is responsive to the student's needs, life circumstances, and the obstacles, institutional or otherwise, that hinder their ability to fulfill their academic potential is not a demand for "extraordinary support", as the GAAB

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<sup>34</sup> Graduate Supervision – Guidelines for Students, Faculty and Administrators, Second Edition (2012), at 3.

<sup>35</sup> *Ibid*, at 9.

<sup>36</sup> *Ibid*.

<sup>37</sup> While we disagree with the GAAB's conclusion on this point, we believe it correctly referred to the level of support by the Faculty, not simply by the supervisors.

characterized them, but a demand for adequate support.<sup>38</sup> This mischaracterization reinforces our conclusion that the GAAB’s finding with respect to the adequacy of supervision was unreasonable.

[137] Contrary to the assertion of SGS, the record before us contains numerous indications that question the proposition that the support the Student received in this case was adequate, let alone that it exceeded SGS expectations. Beginning at a high level of observation, your Committee notes that if “[g]ood graduate supervision should help students successfully navigate the journey through their program”<sup>39</sup> and if “[a] faculty member’s primary task as a graduate supervisor is to guide and inspire his or her students to reach their scholarly potential”,<sup>40</sup> then the fact that within approximately six months after her first and only meeting with the Supervisory Committee, the Student found herself in a one-way street leading to the terminus of her journey through the Program, calls for a serious pause before concluding that the support she received from the Faculty was adequate (let alone that it exceeded SGS expectations). However, there is more than this proof-in-the-pudding indication.

[138] The Student’s written submission to SGS Vice-Dean, Students, (“SGS VDS”) details a long list of problems with the quality of her supervision, referring to concrete issues, and explaining how they were inconsistent with relevant policies. This evidence—most of which had not been contradicted—is in the record. Also in the record are concerns the Student expressed in her response to the CoS’s comments in the APR, concerns that as far as we can tell, have not even been acknowledged by the Faculty.

[139] We do not need to determine whether any of those complaints were justified, but they are in the record and for the most part have not been contradicted. Accordingly, they allow us to disagree with SGS’s claim that there is no indication or evidence of inadequate supervision, and they prevent us from accepting that the evidence SGS relied on to demonstrate the adequacy of supervision (the feedback from March 2018) shows that the supervision the Student received over the course of the two years between her reinstatement and termination exceeded SGS expectations.

[140] Also in the record is the GAAB’s reference to the Student’s description of “how the Supervisor, who had previously been complimentary about her work, became negative about everything she did, referred her to the work of the previous supervisor emphasizing the excellence of that supervision and stopped referring to her by name, ‘denigrating me to something less than human, not even worthy of being addressed by name’”.<sup>41</sup> SGS did not argue that the GAAB erred in finding that this is how the Student felt, nor suggested that there was no basis for that feeling. On its own, the fact that a student felt denigrated does not necessarily mean that the supervisor had done anything inadequate, but it does not support a conclusion that the supervision the student received “exceeded SGS expectations”. On the

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<sup>38</sup> “Supervision Guidelines for Faculty – Section 6: Creating Equality and Equity When Working with Students – School of Graduate Studies”, online: <<https://www.sgs.utoronto.ca/resources-supports/supervision-guidelines/supervision-guidelines-for-faculty-section-6-creating-equality-and-equity-when-working-with-students/>>.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*, at 9.

<sup>41</sup> GAAB decision, at 6.

contrary, SGS expects supervisors to provide a supportive environment and handle “emerging problems with compassion and clarity.”<sup>42</sup>

[141] Clarity was another area in which the Faculty far from excelled: from the February 2018 message about a wrong completion deadline that led to the emergency meeting with the Supervisory Committee and seemed to have an unfortunate chain of events, to unclear information about when an application for an extension should be made, to insufficient notice about the purpose of the September review, and using the November review for purposes other than those intended, clarity was clearly not the Faculty’s forte in dealing with the Student.

[142] SGS submitted that “[a]t no time prior to the termination of her registration did [the Student] raise any complaint about the quality of supervision offered to her by her supervisory committee.” This is factually incorrect. As already noted, the Student raised some issues in her response to the APR comments and she raised several complaints in her letter to the SGS VDS. We also note that 2012 Supervision Guidelines recognize that “there is a real power imbalance in the supervisory relationship: students may not feel able to speak freely and may worry about recriminations. Committee members and the graduate coordinator may be able to help, but can be perceived as part of the “power group.” Therefore, there is nothing unusual or suspicious in the fact that the Student did not raise all of these complaints until she made her final submissions to SGS. It is regrettable that SGS has chosen to discredit the Student by raising this argument.

[143] The quality of supervision has not been a central issue in this appeal. The Student’s written submissions about the adequacy of supervision were limited to very few issues, as described at the beginning of this section of the decision. If those submissions were the only grounds of appeal, then they might not be sufficient for allowing us to find that the level of supervision had not been adequate. However, we note that many of the other grounds of appeal could also be framed as problems of inadequate supervision. For example, we would expect supervisors to consider whether an extension could allow the student to progress towards completion, and we would expect them to try understanding what obstacles a student is facing; we would expect supervisors to correct reports on a student’s progress as soon as they learn that the report they submitted is misleading. If unconscious bias results in a more negative assessment of a student, then this also may be characterized as a problem with the adequacy of supervision. Therefore, our findings on the other grounds of appeal reinforce the Student’s submission regarding the quality of supervision and weaken the submissions of SGS.

[144] We also note that the GAAB observed that “[i]f the relationship between the Student and the Faculty had been better or had the relationship with the Supervisor been more positive, more support might have been forthcoming”<sup>43</sup> and that “another student whose work the Supervisor or Supervisory Committee judged to be more promising might have been given more time, more guidance in terms of meeting Faculty expectations, or more warning that a request for termination was impending”.<sup>44</sup> While the GAAB did not, in our opinion, draw the correct legal conclusions from these findings, the findings themselves further reinforce our conclusion that the supervision the Student received fell below SGS standards.

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<sup>42</sup> 2012 Supervision Guidelines, at 3.

<sup>43</sup> GAAB Decision, at 6.

<sup>44</sup> *Ibid*, at 5.

#### IV. Additional Comments

[145] Finally, your Committee wishes to comment on three matters related to and arising from this appeal. None of the parties made any direct submissions on them so we are not ready to form any definite conclusion at this time, but we hope that the Faculty and SGS will consider them moving forward.

##### **(1) Ambiguity in the Termination Guidelines**

[146] The first issue concerns the process outlined in the Termination Guidelines. The parties seem to be in agreement that the process leading up to the Student's termination followed the steps outlined in those Guidelines, but we find the language of the Guidelines rather ambiguous. This ambiguity, could suggest that the process contemplated in those Guidelines might not have been followed. The first three steps are as follows:

###### Step 1

**The graduate unit decides that a student's academic progress is unsatisfactory or has failed to meet the required academic standards.**

Many graduate units use a committee on academic standing or other graduate committee to review cases where a student is failing to maintain good academic standing or has failed to meet the required academic standards before termination is recommended. This is recommended as good practice.

###### Step 2

**The Graduate Chair/Director or designate meets with the student or otherwise offers the student an opportunity for discussion or for sharing of information.**

Prior to submitting a recommendation for termination of registration to SGS, the Chair/Director invites the graduate student to meet with the relevant faculty member(s) (including the Chair/Director or designate) to discuss the student's academic progress, or make alternate arrangements if meeting is not feasible.

###### Step 3

**The Chair/Director decides to recommend termination of the student's registration or decides to recommend alternate action.**

The Chair/Director informs the student of the decision, explains the process, and directs the student to the web page for **Termination of Registration—Information for Graduate Students** (see For Reference, below).

If the Chair/Director decides not to proceed with a recommendation for termination of registration, the Chair/Director will advise the student accordingly and explain what alternate actions may occur. The Chair/Director's decision to take alternate action normally would arise only in the event that new information is presented to the Chair/Director at the meeting with the student (see Step 2) or shortly thereafter. In such cases, the Chair/Director normally will consult with the SGS Vice-Dean, Students, and/or others.

[147] The Faculty's CoS appears to be the committee contemplated in Step 1. Based on the May, 2018 APR, the CoS determined that the Student had not made satisfactory progress and

was not in good academic standing. The CoS sought to revisit the issue within a few months, based on what the Supervisory Committee reports in September 2018. The October 22, 2018 letter from the CoS Chair to the Student indicates that the CoS determined that insufficient progress was made and that the Student remained not in good standing. All of this seems to be within the purview of Step 1.

[148] The ambiguity in the Guidelines concerns what happens next. The October 22 letter did not only inform the Student that she remained not in good standing, but it also informed her that “it is the decision of the Faculty of Information to proceed with a recommendation to the School of Graduate Studies to terminate your enrolment in the Doctoral of Information Studies program at the University of Toronto.” The letter also invited the Student to meet Professor Ross, the PhD Director and other relevant faculty members. This appears to be the Step 2 meeting. The letter described the meeting as an opportunity for the Student “to ask questions ahead of our submission to [SGS] and added “We are interested in learning if there is any new information that might influence our decision”. Following the meeting, on November 19, 2018, Professor Kelly sent another letter to the Student informing her that “We have assessed the situation, taking into account the information that you provided to us at our Nov. 1 meeting, and the materials electronically submitted, and unfortunately you did not offer any new evidence that would compel us to change the recommendation to the [SGS] to terminate your registration.” On November 26, 2018, Professor Kelly sent SGS a letter, on behalf of CoS, recommending the Student’s termination.

[149] It is clear that the decision to recommend termination was made by CoS, on behalf of the Faculty, that the CoS made the decision before the Step 2 meeting took place, and believed that the purpose of the Step 2 meeting was limited to providing the Student an opportunity to present evidence that would compel CoS to change a decision that had already been made.

[150] We doubt whether this is the process contemplated by the Guidelines. The language describing Step 3 is clear that the decision to recommend termination is to be made by the Chair/Director, not by the CoS. It is also clear that the Chair/Director can decide whether to recommend termination of the student’s registration or recommend alternate action. The language of the Guidelines also indicates a different and broader purpose for the Step 2 meeting. The Guidelines provide that the purpose of the Step 2 meeting is “to discuss the student’s academic progress”, and then, based on that discussion and the information presented in it, the Chair/Director will decide whether to proceed with a termination recommendation or recommend alternate action. This suggests that the purpose of Step 2 is to provide an opportunity for a comprehensive discussion with the student on the student’s academic progress in order to inform the Chair/Director in their decision what to do next. This is quite different from a meeting whose purpose is simply to give the student an opportunity to present evidence that would compel a change in the decision already made by the CoS.

[151] The source of the ambiguity seems to be that the language of the Guidelines leaves a gap concerning what happens between Step 1 and Step 2. The language describing Step 1 speaks only about a determination by the CoS about academic standing. Then, two options are possible. One, that a Step 2 meeting flows automatically from a Step 1 determination that a student is not in good standing. Alternatively, a Step 2 meeting would be convened only if the CoS thinks that termination is the right course of action, in which case the CoS’s role would be to recommend the Chair/Director to proceed with a termination recommendation to SGS.

Either way, it is the Chair/Director who makes the decision whether to recommend termination or recommend alternate action, not the CoS.

[152] The difference between our proposed reading of the process and the one that took place is not merely semantic or technical. It seems to us that our findings regarding the procedural fairness and the sufficiency of notice given to the Student reflect the differences. Under our proposed reading, the purpose of the Step 2 meeting is first and foremost to have a discussion about the student progress to understand what might have caused the student's unsatisfactory progress. Next, based upon the information gleaned through this discussion, the Chair/Director decides what should be the response to the student's insufficient progress: should the student's registration be terminated or should an alternate action be pursued. If such a process were followed in the present case, then the deficiencies in procedural fairness that we found could have been allayed. The outcome of the September review would remain limited to that stated in the APR, namely reassessing the Student's academic standing. Then, if the CoS determined that the Student's progress remained unsatisfactory, the Chair/Director would have invited her to a Step 2 meeting, during which the Student would have the opportunity to discuss the challenges she was facing, including problems with her supervision. If sufficient notice was given to the Student that the meeting she was invited to is a Step 2 meeting, she would also have had clear notice that following that meeting a decision would be made on whether to recommend her termination or take alternate actions, and she could make arguments regarding this question and attempt to influence the decision before any decision were made.

[153] This would have been a much fairer process than the one that did take place, as discussed above.

[154] Your Committee does not need to decide whether the Guidelines mandate our proposed reading, or also allows the process as it took place, but it recommends that the process they set up be reconsidered in this light.

## **(2) The role of SGS in the decision to terminate a doctoral student's registration**

[155] Second, your Committee wishes to comment on the role of the SGS Vice-Dean, Students ("SGS VDS") in the termination process. Under Steps 4, 5, and 6 of the Termination Guidelines, if, following Step 3, the Chair/Director decides to recommend termination, they submit a written recommendation the SGS VDS. The Chair/Director must also send a copy of the written recommendation to the student. The SGS VDS then requests a response from the student. Next, the SGS VDS considers both the reasons stated in the recommendation and the student's response before deciding whether to approve the recommendation or reject it. Alternatively, the SGS VDS may also choose to refer the recommendation back to the Chair/Director requesting further information or other actions.

[156] Normally, if Steps 1-3 were followed properly; if the student had sufficient notice and took the opportunity to fully present their case before the Chair/Director decides, and the Chair/Director decides fairly and reasonably, one would expect the SGS VDS to approve the recommendation because in such a case the question had already been fully and thoroughly considered and presumably the student's response would not add anything that was not known before and that could have changed the recommendation. However, we say "one would expect the SGS VDS to approve" and not "the SGS VDS should approve". The difference is crucial.

The Calendar provides that the decision to terminate is a decision of SGS, and the graduate unit's role is limited to recommending a termination. The Guidelines are fully consistent with that. In deciding whether to accept the unit's recommendation, the role of the SGS VDS is not limited to confirming that the unit's recommendation was made according to procedure and looks reasonable. Rather, in deciding whether to accept, reject, or take another action, the SGS VDS exercises original decision-making authority, requiring exercise of the SGS VDS own discretion, based on full consideration of the reasons provided by the unit and the response of the student. Even if the recommendation of the unit is reasonable under the circumstances, the SGS VDS is not compelled to accept it and could choose a different course of action. The unit's recommendation and the reasons provided therein along with the student's response inform the SGS VDS' decision, but the SGS VDS must exercise their own independent discretion before making a decision.

[157] Even though this appeal concerns the decision of SGS to terminate her registration, the Student chose to limit her arguments to the Faculty's decision to recommend her termination and did not raise additional or separate arguments concerning the exercise of the SGS VDS' discretion in accepting the Faculty's recommendation. Had she decided to expand the scope of her appeal she could have questioned whether the discretion exercised by the SGS VDS was sufficient. She could have noted that in the letter informing the Student about the decision to terminate her registration, the Professor Charmaine Williams, then Acting SGS VDS, wrote: "After careful consideration of the recommendation, and having offered you the opportunity to submit a written response, the School of Graduate Studies has accepted the recommendation." This language only states that careful consideration was given to the Faculty's recommendation, but it fails to mention that any consideration was given to the Student's response. In fact, the letter does not even acknowledge that the Student submitted a response; only that the Student was offered the opportunity to do so.

[158] While the language included in the letter would be adequate in the case of a student who failed to submit a written response, it is inappropriate in the case of a student who had submitted a written response, because it does not convey confidence that the Student's submission received the same careful consideration given to the Faculty's recommendation and that decision was made after considering both.

[159] During the hearing Professor Williams assured us that she had considered the Student's written submission. We have no reason to question that she did, although we did not have the opportunity to understand how careful that consideration was, given that the Student had not raised the issue. We trust that the language in the letter reflects inadvertent error in drafting and not a deficiency in the decision-making, and we flag it so that SGS would avoid a similar error in the future. We also make no comments on whether the SGS VDS should, in a case like this one, explain why they accepted the unit's recommendation and reject the student's submissions. We note, however, that in *Baker, supra* the Supreme Court held that "in certain circumstances, the duty of procedural fairness will require the provision of a written explanation for a decision." Given that SGS agreed that a decision to terminate a doctoral student's registration warrants a high level of procedural fairness, we recommend that in the future SGS consider whether this also entails the provision of reasons.

### **(3) The Student’s background as a racialized female who is a first-generation graduate student**

[160] Our final comment concern the comment the GAAB made at the end of its decision. Referring to the Student’s letter to the SGS VDS, the GAAB wrote:

The Student’s background as a racialized female who is a first-generation graduate student warrants comment ... Students who cannot draw on family experience with higher post-secondary education and/or financial support might sometimes require more help and assistance navigating the challenges of a doctoral program. If the relationship between the Student and the Faculty had been better or had the relationship with the Supervisor been more positive, more support might have been forthcoming. However, the Faculty is not required to provide extraordinary support (even if many students often receive it), so long as what they do provide is adequate, which it seems to have been the case here, as judged by the amount of feedback the Student received (in March 2018) and number of meetings with her Supervisor (four).

[161] The Student did not make the issue of her background as a racialized female who is a first-generation graduate student part of her grounds of appeal, and naturally this limits the record before your Committee on this issue, the scope of what we can say about it, and the implications of what we say. We share the GAAB’s view that this is an issue that warrants a comment, but we feel that we can say more than the GAAB did. In fact, we feel we are compelled to say more.

[162] The hearing before us took place three weeks after the brutal killing of George Floyd by a police officer, and two weeks after the University’s President and the University Vice-President, Human Resources & Equity each issued a statement in solidarity with U of T’s Black community members. In his statement, President Meric Gertler noted and affirmed “our institutional commitment to equity, diversity and inclusion; that we support each other and continue working together to confront and eradicate anti-Black racism and all forms of discrimination, both on our campuses and in the world around us.”<sup>45</sup> In her statement, Vice-President Kelly Hannah-Moffat, noted how the recent events occurring in our city, the US and around the world “demonstrate the need for us to come together and combat the intersectional structural inequality that persists in our society.”<sup>46</sup>

[163] Our comments would not refer to those statements as university regulations, and we would not consider them as creating new binding requirements. Rather, we consider them as a reflection of our community’s evolving understanding of what our *existing* policies demand. Accordingly, if we are institutionally committed to confront and eradicate anti-Black and all forms of discrimination on campus and to combatting the intersectional structural inequality that persists in our society (including in our campus), then this commitment must translate into something more than statements of solidarity and expressions of sympathy. We do not purport to have answers or offer prescriptions on how to eradicate all forms of discrimination on campus or eliminate intersectional structural inequality. But at the very least, we would

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<sup>45</sup> “Statement from President Meric Gertler in solidarity with U of T’s Black community members - Office of the President”, online: <<https://www.president.utoronto.ca/statement-from-president-meric-gertler-in-solidarity-with-u-of-ts-black-community-members>>.

<sup>46</sup> “Statement from Vice-President, Human Resources & Equity in solidarity with U of T’s Black community members – The Division of Human Resources and Equity”, online: <<https://hrandequity.utoronto.ca/memos/in-solidarity-with-u-of-ts-black-community-members/>>.

think that interrogating the University’s various rules, procedures, and practices, in order to understand their operation and where possible to remedy them, has to be part of the solution. The processes for evaluating the progress of doctoral students and the measures taken when their progress is deemed unsatisfactory should not be exempted from such interrogation.

[164] In raising the challenges that she, as a racialized, first-generation, female student, has been facing, the Student was referring to a set of new supervision guidelines that SGS issued in 2017, and which includes an entire chapter on “Creating Equality and Equity When Working with Students”.<sup>47</sup> The relevant section reads:

In some cases, graduate students will experience unique pressures because they are the first in their families to enrol in higher education.<sup>13</sup> Studies have shown that doctoral students who are the first in their families to enrol in graduate studies are more likely to be women and racialized individuals and, in many cases, they carry significant levels of financial stress (e.g., debt) for pursuing higher education.<sup>14</sup>

Taken together, these characteristics can make the process of completing graduate school more stressful for these students. They often do not have the support in their immediate family to help them navigate the complex system of higher education, and supervisors should take this into consideration in their approach to supervision. Students in this category might require explicit support with expectations and more information on University processes.<sup>15</sup>

[165] These new guidelines affirm our earlier concern that the GAAB’s conclusion about the adequacy of the support the Student received ignored the multi-faceted aspects of supervision, and our disagreement with the suggestion that the Student’s complaints about the support she received implied that she was asking for extraordinary support. These guidelines recognize that students come from a diversity of backgrounds, abilities, and life experiences, and these differences can impact the graduate student-supervisor relationship. If we are committed to treating all students equitably, then “a student’s personal or social circumstances, as well as gender, race, ethnicity, or socio-economic background, should not stand as roadblocks to the student achieving their educational potential.”<sup>48</sup> When the Student requested that her background would be taken into consideration, she did not ask anything extraordinary. She only demanded to be treated equitably, as the new guidelines urge supervisors to do.

[166] Moreover, a commitment to combating the intersectional structural inequality that persists in our society must recognize that it is not enough that we tell supervisors that such personal or social circumstances *should not* stand as roadblocks to students achieving their full educational potential. The problem with structural inequality is that even if everyone agrees that the roadblocks it creates should not exist, the roadblocks do not tend to remove themselves—they are structural. Therefore, a true commitment to removing them requires institutional action.

[167] We would not purport to prescribe what institutional action may be taken. But we would comment on some action that could have been taken in this case. It may be true that the Student only raised how her background affected her experience in the Program late in the process, just before the final decision was made. But if, as we noted earlier, power imbalances

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<sup>47</sup> note 39.

<sup>48</sup> *Ibid.*

and concerns about recriminations could deter all students from speaking freely, we can expect students to be even more hesitant to raise issues when their background may exacerbate the power imbalances. An institutional commitment to eradicate discriminatory barriers cannot place the burden of identifying them solely on those who experience them. Moreover, because those barriers are often invisible to those who do not experience them, the institution benefits when those affected by them speak up. Therefore, when they do, the institution should, at the very least acknowledge that they did. This did not happen in this case. As we already noted, in notifying the Student of the decision to terminate her registration, the SGS VDS only mentioned that she was given the opportunity to make a written submission. The letter from SGS did not respond to any of her concerns and did not even acknowledge that she raised them. Even if SGS was convinced that the Student's background played no role in the negative assessment of her progress and the decisions that followed, once the Student raised the issue, she deserved to receive an answer responsive to the concerns she raised.

[168] Going forward, we believe that action stemming from an institutional commitment to combating structural roadblocks must involve some kind of protocol that triggers action when a student raises equity concerns. We are not in a position to tell what action has to be taken, but we note that the Termination Guidelines explicitly allow the SGS VDS to refer the recommendation back to the Chair/Director requesting further information or other actions.<sup>49</sup> Therefore, it would probably be within the SGS VDS powers, in response to equity concerns, to refer a termination recommendation back to the unit for reconsideration or to ask the unit to report back, perhaps after consultation with the University Anti-Racism & Cultural Diversity Office or similarly qualified individuals. Such an approach may not only encourage more students to overcome the reluctance to complain, but will also provide graduate units, supervisor, and graduate administrators an opportunity to learn more about the ways systemic discrimination operates in their own departments and how their own actions may reflect and perpetuate it. We hope SGS and the Faculty will take these suggestions into consideration.

#### **IV. Decision**

[169] In light of the above, your Committee finds that:

- The Faculty and SGS did not follow the relevant University regulations before the decision to terminate the Student's registration was made.
- We also find that the process did not comply with the requirements of procedural fairness;
- It was unreasonable for the Faculty and SGS to terminate the Student's registration without considering whether other measures, such as extending her timeline for completion, were more appropriate; and
- The level of supervision and support that the Student received fell short of the appropriate standard.

Accordingly, we allow this appeal and order that the Student be reinstated into the program with the same time to complete her thesis that she would have received had her request for

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<sup>49</sup> Termination Guidelines, Step 6.

extension been granted, that is, with 18 months remaining to complete her PhD.<sup>50</sup> Should further extensions be required, the Student would be entitled to request them as per the relevant policies.

[170] Presumably, the Student's reinstatement implies that she would continue to work on her thesis with the same Supervisor and Supervisory Committee. We hope that a joint effort will be made to develop better working relationships and restore some of the mutual trust that seems to have eroded over the course of the events giving rise to this appeal, and we encourage the Faculty to consider if there are any actions it may take to facilitate that.

[171] In her journey through the Program, the Student has faced many challenges: personal and institutional. The Student's determination to complete her PhD and overcome challenges, including by going through this long and difficult appeal process, is a testament to her tenacity and resolve. We are sorry that she had to face such obstacles and sincerely hope that the Faculty and SGS will find the way to give the Student the support necessary to enable her to harness her determination to a successful completion of her PhD.

The appeal is allowed.

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<sup>50</sup> If instead of deciding to recommend the Student's termination, the Faculty and SGS in October 2018 granted the Student a one-year extension of the April 2019 completion date, then the Student would have had 18 months remaining to complete her PhD.