

UNIVERSITY OF TORONTO

GOVERNING COUNCIL

Report #382 of the Academic Appeals Committee
April 28, 2016

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Monday, April 11, 2016, at which the following members were present:

Professor Andrew Green (Chair)
Professor Andrea Sass-Kortsak, Faculty Governor
Mr. Alex Ivovic, Student Governor

Secretaries: Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances
Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances
Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Mr. A.W. (the Student)
Mr. Geoffrey D. K. Wiebe, Counsel

For the Toronto School of Theology:

Mr. Robert A. Centa, Counsel
Professor Alan Hayes
Dr. Daniella Mallinick
Professor Jaroslav Skira

The Appeal

This appeal relates to a decision of the Academic Appeals Committee of the Graduate Studies Council (“GSC”) of the Toronto School of Theology (“TST”) dated October 20, 2015 (the “GSC Decision”). The GSC Decision remitted the appeal of the Student back to an earlier stage in the appeal process. The Student had requested that the Academic Appeals Committee of the GSC allow him to “transfer from ‘ThD’ into ‘PhD’ nomenclature in the research doctorate in theological studies without being required to complete two further courses”.

The Facts

The Student commenced the Th.D. doctoral program within the TST in September 2013. He took courses in 2013 and the Winter of 2014.

In February 2014, the Student wrote to Professor Skira, the Director of the Graduate Centre for Theological Studies of the TST, inquiring about switching from the Th.D. program into the proposed new Ph.D. program. The TST and the University of Toronto were developing the Ph.D. program with a view to it replacing the Th.D. program. The Student requested information about the process for switching to the new program, including when the ‘two new required cohort courses’ would be offered and if Th.D. students who had completed the Th.D. courses would have to take them. The Director replied that they would try to offer at least one of the courses in the Fall and that ‘all students will need to do the Cohort courses and the Area Studies Course... it’s not a simple transfer.’ The Student also asked if students could take these required courses during or after their comprehensive exams. The Director replied that ‘it may be that students could progress into comps while doing the required course(s), but that is an issue the heads of colleges would have to approve (and which is not my decision to make).’

In August 2014, the TST emailed students enrolled in the Th.D. program that it had launched a Bridge Program to allow eligible Th.D. students to transfer into a new conjoint Ph.D. program. The Bridge Program was open to students admitted into the Th.D. program for September 2013 and September 2014. The Ph.D. program had gone through many layers of approval including the Association of Theological Schools, the University of Toronto Quality Assurance Process, an external review, the University of Toronto Committee on Academic Policy and Programs, Academic Board of Governing Council and the Executive Committee of Governing Council. The approval process contemplated the need for a process for existing Th.D. students to transfer into the new Ph.D. program.

Th.D. students who were admitted for 2013 or 2014 could either complete the Th.D. or apply to enter the Bridge Program. The August 2014 announcement of the Bridge Program stated that students who had entered the Th.D. in September 2013 had to meet certain ‘admission’ requirements including meeting a minimum GPA in their current program and the admissions requirements of the new Ph.D. program. Further, they ‘must successfully complete’ a minimum of eight courses including the two courses at the centre of this appeal. These two courses (the ‘Required Courses’) were TSJ5021 Research & Scholarship (“Research & Scholarship”), which was to be completed in the Fall 2014 semester, and TSJ5022 Area Studies and Course Design (“Area Studies”), which was to be completed in the Winter 2015 semester. The announcement set a deadline for application of September 12, 2014.

The Student continued with courses in the Fall of 2014 and Winter of 2015. Although the Student was eligible to enter the Bridge Program in the Fall of 2014 as he had entered the Th.D. program in September 2013, he did not apply under the program by the deadline. Instead on January 8 2015, the Student wrote to the Interim Director of the TST (Professor Skira) requesting to ‘transfer from ‘ThD’ into ‘PhD’ nomenclature’. He stated that he had essentially met the

objectives of the Required Courses because he had authored an academic book and designed and taught an undergraduate course.

David Wagschal, the Administrator of the Graduate Centre, replied to the Student on January 9, 2015 that it was still possible to join the Bridging courses, taking Area Studies in the Winter 2015 term and Research & Scholarship in the Fall 2015 semester. He asked the Student to complete the enrollment form. The Student replied that given that extra courses were required and that he was at the comprehensive exam phase of the Th.D., “I will remain in the Th.D.”.

On March 4, 2015, the Student again wrote to Professor Skira as Interim Director of the TST asking for a response as to why the work he had done was not equivalent in learning outcomes to the Required Courses. On March 10, 2015 the Interim Director responded, stating that he misunderstood the nature of the earlier email and that as no decision had been made on that email, he viewed the email as a “petition to be exempted from program requirements”. However, since the Student had not applied for the Bridging program, the Interim Director stated that the Student did not have any status and the Admissions Committee would make any decision on the transfer and admission. However, the Interim Director also noted that the Required Courses were required of all students and that he did not believe that it was possible to assess any potential equivalencies. He stated “these are just preliminary comments, and do not constitute an academic decision on my part. If you wish to pursue this, you will need to provide better justification for equivalencies in your petition to transfer and be admitted into the new PhD.”

The Student did not apply to the Bridge program following this email. Instead, on March 25, 2015 the Student filed a notice of appeal with the Advanced Degree Appeals Division of the TST. The notice stated that the decision to be appealed was that “I have not been permitted to transfer from ‘ThD’ to ‘PhD’ nomenclature in the research doctorate without being required to complete two further courses”. The Student stated that to enroll in the Bridge program would have delayed his studies and prevented him from maintaining the required two-year full-time residency. In addition to the arguments in his January 8 2015 letter, he noted that his time in the learning community in Trinity College satisfied the cohort requirement.

On October 20, 2015 the Academic Appeals Committee of the GSC released its decision. For the hearing, the Student had submitted a supporting letter from the Dean of Divinity of Trinity College that the Student ‘has substantially met the outcomes’ of the Required Courses and it would have been a serious delay in his studies to have taken these courses. At the hearing, the Student also had his supervisor (who is a former Dean of Divinity at Trinity College) support his position. The decision of the Academic Appeals Committee of GSC stated:

noting that the Appellant did not choose to pursue the avenue available through application to the conjoint PhD programme under the existing bridging option, and not finding his arguments made in support of his appeal persuasive, and determining that the channel of recourse had not been followed properly, the Panel refers the matter back to the appropriate parties involved in Step 2 of the channel of recourse (as described in section 14.2.1 of the “TST ThD and PhD Handbook”).

In terms of whether the Student's work was equivalent to the Required Courses, the Academic Appeals Committee's decision stated "efforts to resolve this matter should first be undertaken at earlier steps in the channels of recourse". Further, noting that the Director had been on sabbatical, the Academic Appeals Committee concluded "the second step of the resolution process was not satisfactorily concluded" and "there remains room for exploration of an accommodation within the existing bridging program." They sent "the matter back to that step for fuller consideration of possible resolutions."

The TST Th.D/Ph.D. Handbook contemplated three steps for the Student's appeal: an informal resolution with the Director of the Graduate Centre for Theological Studies (Step 1), an initial appeal to the Department 'if necessary' (Step 2) and an appeal to the AAC (Step 3). However, there was some confusion about what the 'second step' entailed or even if it existed. On November 3, 2015, in response to an email from the Student, the Director of TST informed the Student that the TST Academic Council held off considering next steps in the appeal until December as a new policy may then be adopted on transferring credits into the PhD program.

On November 27, 2015, the Student launched his appeal to your Committee. In this appeal, the Student seeks an order:

1. Declaring that he has met the academic requirements set by TST for transfer from the Th.D. into the Ph.D. program through equivalency to the Required Courses; and
2. Directing the TST to transfer him into the Ph.D. program immediately.

On December 18, 2015, the TST wrote to the Student informing him that the Academic Council had commissioned Professor Hayes who was Director of the TST to act on its behalf in place of the Step Two that was referred to in the GSC Decision. It noted that if the appeal was not resolved through meeting with Professor Hayes, the Student would have a right to appeal to a new TST appeals committee. Further, it noted that the Student had a right to appeal to your Committee.

Decision

This appeal comes before your Committee in a somewhat unusual manner. The GSC Decision did not decide on the merits of the Student's appeal but instead sent the matter back to an earlier internal stage in the appeals process. The Student appealed the GSC Decision to your Committee. Counsel for the Student rightly noted, and counsel for TST helpfully agreed, that no adverse inference should be drawn against the Student for coming before your Committee rather than pursuing further internal appeals in the circumstances of this case.

A central issue in this appeal is the jurisdiction of your Committee to provide the remedy requested by the Student. As noted by Chair Hamish Stewart in Motion Decision #359-1:

The purpose and function of the AAC, according to s. 2.1 of its Terms of Reference, is to decide "appeals made by students against decisions of faculty, college or school

councils (or committees thereof) in the application of academic regulations and requirements”. Its jurisdiction is therefore limited to considering whether those academic regulations and requirements have been applied correctly, consistently, and fairly. Its remedial jurisdiction is limited to making orders of an academic nature; such as allowing a student to withdraw late without academic penalty, granting aegrotat standing, granting a request to write a deferred examination. It is well-recognized that the AAC has no jurisdiction to re-read a paper or examination to consider the merits of the grade assigned, or to review decisions about admissions.”

Further, as noted in Report #368, “it is not the jurisdiction of this Committee to change Faculty policy but rather ensure that it was applied fairly and consistently.”

In this case, a key question is whether the appeal related to an unfair application of a policy or regulation or to a claim that a policy or regulation was unfair. The TST created the Bridge program to allow eligible Th.D. students to transfer into the Ph.D. program. The Bridge program included a requirement to complete the Required Courses. It did not include any provisions about substituting for the Required Courses. There were provisions for advanced standing for previous studies and advanced placement. These provisions, however, relate to substituting courses for required courses. The Student, however, does not wish to substitute courses for the Required Courses but other activities that he has undertaken including writing a book and creating and teaching a course. While the Student notes that he wrote his book and created and taught the course while at the TST, these activities were not course work. The TST did not provide for such equivalencies for the Bridge program.

In Report #371 Chair Hamish Stewart addressed a jurisdictional issue relating to the conversion of a grade a student received while on exchange in France. The Faculty had a grade conversion scale. The Report states:

The Student’s central complaint in this case is that the conversion formula does not adequately reflect the difference between French and U of T grading scales. The Faculty says it does. This is in essence a disagreement about the wisdom of the procedure, not about the fairness of its application to the Student. On p.4 of his submissions, the Student makes precisely this point: “I deemed the policy itself is ‘unfair’”. But the AAC has no jurisdiction over the fairness of the policy. The AAC cannot change the Student’s grade or otherwise modify his transcript on the basis that the procedure for converting Institut grades to U of T grades is unfair or unwise.

The essence of the Student’s argument is the same in this case. The Student is in effect arguing it was unfair not to count his activities, including the publishing of a book and creating and teaching a course, to be equivalent to completing the Required Courses. There are arguments why such a policy of equivalencies would be fair including a recognition that such activities may lead to deeper learning in certain cases. Equally, there are arguments why such a policy might be unfair, such as that there is no consistent, fair way to assess such equivalencies. Notably, the GSC did not recommend a policy to allow such equivalences when considering the issue with respect to Th.D. students not eligible for the Bridge program.

However, the key for this appeal is that the TST did not allow such equivalencies. It created the Bridging program to allow certain students in the Th.D. program to transfer to the Ph.D. program if they wished. It clearly stated that the students had to apply for the program and must complete the Required Courses. The Student knew of this requirement as far back as February 2014. The Student did not apply for the Bridge program nor seek other accommodations such as taking the Required Courses and the comprehensive exams at the same time. The TST has not granted such an exemption to other students, as it does not grant these types of exemptions. There was no unfairness in the application of policies or regulations in not permitting the Student such equivalencies. In fact, allowing such an exemption in this case would be unfair to the students who did apply for the Bridging program and completed the Required Courses. Further, the Student will be competing against students from the TST with a Ph.D. because he chose not to enter the Bridging program.

There was considerable discussion at the hearing about procedural fairness. Your Committee would like to express its disappointment with the TST process. As the Student pointed out, the Handbook was not updated to reflect the current structure of the TST, the Academic Appeals Committee sent the matter back to what may have been a non-existent step in the process and, at least when the Director was on sabbatical, the same person may have been responsible for the two initial stages of the appeal. Your Committee strongly recommends that the TST undertake a review of its appeal process to ensure that its processes are fair and transparent for students.

However, given the facts of this case, your Committee does not believe the Student was treated unfairly. The Student did not avail himself of his many opportunities to enter the Bridging program. The Student was clearly aware in February 2014 of the nature of the Bridging program including the Required Courses and the concerns about potentially not being able to sit his comprehensive exams while taking courses. He did not approach the TST to see if he could obtain an exemption to allow him to take the courses and the comprehensive exams at the same time. He did not enter the program in the Fall of 2014, although that would have given him the opportunity to seek an accommodation in a more timely manner. He did not apply to the Bridge program and give greater support for his request for exemption in January 2015 and instead clearly stated he would stay in the Th.D. program. He was provided with the opportunities to invoke mediation including with the Director of the TST who had returned from sabbatical, to seek discussions with the Director following the Academic Appeals Committee decision (and if they fail, return to the Academic Appeals Committee) or to come before your Committee. As we noted above, we draw no adverse inference against him that he made a particular choice – to bring this appeal to your Committee. However, the TST did provide him with ample other opportunities to seek resolution of his appeal, including altering the process when it was clear the process as written was not possible.

Further, the Student stated that the process was procedurally unfair because of a lack of reasons by the Academic Appeals Committee. In particular, counsel for the Student noted that the issue is of great importance to the Student and so, under *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, the Student is deserving of more than minimal fairness. Counsel for the Student also pointed to *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 to the effect that a complete

absence of reasons is a breach of procedural fairness. However, your Committee finds that there was not a complete absence of reasons from the Academic Appeals Committee. The Academic Appeals Committee sent the matter back to an earlier stage in the appeal process. The Committee gave reasons for this decision – that the Student had not entered the Bridging program and the earlier steps had not been properly followed and ‘there remains room for exploration of an accommodation within the existing bridging option.’ As noted above, your Committee finds that there was no policy that would have allowed the accommodation that the Student was requesting. However, returning to earlier steps in the process may have led to alternate accommodations.

Even if we were to find that there were no reasons provided below, as noted in Report #350 the Student was able to proceed to the next step and was able to obtain a hearing before your Committee. At most a finding that there were no reasons would militate in favour of sending the matter back to the Academic Appeals Committee to reconsider and provide reasons. However, neither party felt remitting the matter to the Academic Appeals Committee was the appropriate remedy and your Committee agrees in this case as there was no evidence that a policy or regulation was applied unfairly.

Finally, at the hearing both sides stated that they would be willing to talk about possible avenues for resolving the Student’s concerns about his degree. The Student seems clearly to be a strong, hard-working scholar. Your Committee strongly encourages the TST and the Student to work together to see if they can find a solution to the Student’s concerns.

The appeal is dismissed.