

UNIVERSITY OF TORONTO
GOVERNING COUNCIL

Report 390 of the Academic Appeals Committee

December 4, 2017

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Tuesday, October 31, 2017, at which the following members were present:

Professor Hamish Stewart, Senior Chair
Professor Avrum Gotlieb, Faculty Governor
Ms. Mama Nii Owoo, Student Governor

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

Appearances:

For the Student Appellant:

Mr. G.B. (the Student)
Professor Donald Wiebe, Representative for the Student

For the Toronto School of Theology:

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

In Attendance:

Professor Elizabeth Smyth, Vice-Dean, Programs, School of Graduate Studies. University of Toronto

Dr. Jaroslav Skira, Director, Graduate Centre for Theological Studies (Toronto School of Theology), Associate Professor of Historical Theology, Regis College

The Appeal

The Student appeals from a decision of the Academic Appeals Committee (AAC) of the Graduate Centre for Theological Studies (GCTS) of the Toronto School of Theology (TST), dismissing his appeal from a decision of the acting Director of the GCTS, removing Professor Donald Wiebe as the chair of the Student's Ph.D. supervisory committee.

Overview of the Facts

The Student is a third-year student in the conjoint Ph.D. program in Theological Studies at TST. Professor Wiebe is a member of the Faculty of Divinity, Trinity College. Initially, Professor

Wiebe served as Chair of the Student's Ph.D. supervisory committee. On October 13, 2016, on behalf of the acting director of GCTS, the GCTS administrator emailed Professor Wiebe a letter appointing him to the GCTS graduate faculty. Within the hour, Professor Wiebe replied that "I do not wish to be a member of the GCTS ...". In a series of email exchanges over the following week, Professor Wiebe affirmed that he did not want to be appointed to the GCTS. In an email of October 19, the acting Director summed up these exchanges as follows (emphasis in the original):

As you know, the Toronto School of Theology's Memorandum of Agreement with the University of Toronto requires that all faculty involved in TST graduate work of any kind must have a GCTS appointment. To date, TST has made no exceptions to this policy. Last week, I, as Acting Director of the GCTS, sent you a letter appointing you to the GCTS for a term of five years. You have refused this appointment both in writing and in my own presence.

Therefore, I am writing to inform you that you now are *without GCTS status*, effective today, 19 October 2016.

As of today, all of your GCTS graduate responsibilities have been terminated. You ... no longer have the status required to be involved in any GCTS graduate supervision, graduate teaching or advising. ... You will be replaced on all doctoral PhD and ThD supervisory committees.

As a result, Professor Wiebe was removed as the chair of the Student's Ph.D. supervisory committee.

The Student appealed the decision removing Professor Wiebe to the AAC of the GCTS. In a decision dated May 3, 2017, the AAC of the GCTS dismissed his appeal. The AAC of the GCTS held that it was clear from the relevant policy documents that "all faculty members engaged in conjoint graduate degree programs must hold appropriate membership in the [GCST] and work within the academic policies established by TST/GCTS." The AAC of the GCTS found that Professor Wiebe was not eligible to supervise the Student and that there were no grounds to overturn the acting Director's decision.

Relevant Policies

Paragraph 32 of the Memorandum of Agreement between the University of Toronto, the TST, and the TST's Member Institutions (in effect as of July 1, 2014) provides:

All faculty members engaged in conjoint graduate degree programs must hold appropriate membership in the TST's Graduate Centre for Theological Studies, equivalent to the U of T's School of Graduate Studies categories of Full, Associate or Associate Restricted and conforming to the standards of the U of T.

In accordance with this term of the MoA, the TST's Guidelines for Graduate Faculty Appointments states (at p. 2):

At TST, members of teaching staff do not automatically have teaching and supervisory privileges in graduate ... programs. To be eligible for graduate faculty members, an individual must hold a faculty appointment ... at one of the TST colleges or its affiliates. Faculty members must also have been approved by the TST Director to teach in the TST consortium in accordance with the Policy on TST Academic Appointments.

(See also the GCTS's Graduate Conjoint Degree Handbook at p. 1.)

These policies are consistent with the policies of the University's School of Graduate Studies (SGS). No-one may serve as a Ph.D. supervisor or as a member of a Ph.D. committee unless they are a member of the graduate faculty. Membership in the graduate faculty must be approved by SGS (on the recommendation of the Chair of the relevant SGS unit) (see <http://www.sgs.utoronto.ca/facultyandstaff/Pages/Graduate-Faculty-Memberships.aspx>).

Decision

On behalf of TST, Mr. Centa submitted that these provisions are clear on their face. Moreover, he submitted that to order TST to depart from them would be effectively to rewrite the MoA, which the AAC has no jurisdiction to do.

On behalf of the Student, Professor Wiebe submitted that the policies, though seemingly clear on their face, should be applied with a measure of discretion, and that this discretion should have been exercised to permit him to continue supervising the Student notwithstanding his explicit refusal to be appointed to the GCTS.

Your Committee agrees with TST that the relevant policies are clear on their face and do not permit persons who are not members of GCTS to serve on doctoral supervisory committees. Thus, the acting Director did not exercise any discretion and there is no need to consider whether any exercise of discretion was reasonable. In short, the acting Director applied the relevant policies correctly.

Nevertheless, your Committee would like to comment on the Student's argument that the acting Director should have exercised a discretion to allow Professor Wiebe to continue supervising the Student. It is conceivable that a policy that on its face permits no discretion might in practice be applied with a measure of discretion. If so, then your Committee might well consider (in accordance with its terms of reference) whether that discretion had been exercised fairly in particular cases. But the evidence available to your Committee established beyond any doubt that neither TST nor SGS exercises any discretion on the kind of decision at issue here. The TST states, and your Committee accepts, that since the conjoint Ph.D. program was established in 2014, there has been no instance where someone who is not a member of GCTS has been permitted to serve on a doctoral supervisory committee. Moreover, Professor Elizabeth Smyth, Vice-Dean of Programs for SGS, states, and your Committee accepts, that she has not and would not approve a person to act as a Ph.D. supervisor if that person was not a member of the University's graduate faculty. Under the SGS policy cited above, there are several ways in which a person, including a faculty member from another university, can be appointed as a member of

the graduate faculty for the purpose of serving on a doctoral supervisory committee, but an appointment to the graduate faculty is essential for this purpose. Professor Smyth has served as Vice-Dean for nine years and during that time has approved more than 8,000 Ph.D. supervisory committees. Professor Smyth is the faculty member to whom the University has entrusted the important responsibility, among others, of carrying out the University's policies concerning the composition of doctoral supervisory committees. To the extent that the practices of SGS serve as a model for those of GCTS, her statement is powerful evidence that there is no discretion in the GCTS's policy on membership in the graduate faculty.

The Student was able to point to only one case where it might be said that the SGS relaxed its policy requiring Ph.D. supervisors and committee members to be members of the graduate policy. It appears from the material filed by the Student that in the academic year 1993/94, a Ph.D. student in the University's Centre for the Study of Religion was permitted to retain on his committee a faculty member who had recently resigned from the Centre and was therefore, according to SGS policy, no longer eligible. Curiously, that faculty member was Professor Wiebe. Your Committee cannot say why or on what basis that decision was made or whether it was correct, reasonable, unreasonable, or simply wrong at the time it was made. But it is inconsistent with SGS practice of the past decade and, more significantly, inconsistent with the TST policies and practices that are applicable here. This anomalous and dated incident does not establish the existence of any discretion in the application of TST's policy regarding eligibility to serve on a doctoral supervisory committee.

Conclusion

The appeal is dismissed. Your Committee notes that, as of the date of the hearing, TST remained willing to offer Professor Wiebe an appointment to GCTS.