

**CITATION:** Bell v. Toronto Metropolitan University, 2025 ONSC 6206  
**DIVISIONAL COURT FILE NO.:** 390/23  
**DATE:** 20251104

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT**

**D.L. Corbett, Faieta, and Sutherland JJ.**

<b>BETWEEN:</b>	)	
	)	
JASON BELL	)	<i>Jason Bell, Self-Represented</i>
	)	Applicant
<b>- and -</b>	)	
	)	
TORONTO METROPOLITAN	)	<i>Tina Lie and Catherine Fan, Counsel for the</i>
	)	Respondent, Toronto Metropolitan
	)	University
	)	
Respondent	)	<b>HEARD:</b> June 23, 2025

**DECISION**

**SUTHERLAND J.**

**Introduction**

- [1] The applicant, Jason Bell, is a former graduate student enrolled in the Master of Building Science program offered by Toronto Metropolitan University (“TMU”).
- [2] This application for judicial review arises from the rejection of Mr. Bell’s Grade Appeal for the graduate course BL8102, taken in the Fall 2022 semester at TMU. Mr. Bell seeks to quash the decision of TMU, rejecting the application for a hearing before the Senate Appeal Committee (“SAC”) and requiring an independent reassessment of his coursework.
- [3] It is clear from the submissions of Mr. Bell, both written and oral, that reassessment of the assignment for which he received a grade of 12.5/30 is at the very heart of his concerns with his evaluation.
- [4] It is also clear that TMU has two distinct policies concerning grades. Policy 162 concerns a grade reassessment and recalculation for a graded component of a course (such as a test or assignment), and policy 168 concerns a whole course grade appeal and standing appeal.
- [5] Mr. Bell also contests the decision of TMU concerning his treatment and the application of the Discrimination and Harassment Prevention Policy (“DHPP”) in that it did not apply in the circumstances.

[6] Mr. Bell brought a motion to admit fresh evidence. This motion was not opposed by TMU.

[7] Mr. Bell also contends procedural unfairness in all aspects of his grade reassessment and appeals.

[8] For the reasons below, I dismiss the application.

### **Factual Overview and Policies**

[7] In Fall 2022, Mr. Bell enrolled in BL8102: Ecological and Resource Efficient Design offered through the Department of Architectural Science (“the Department”) within the Faculty of Engineering and Architectural Science (“the Faculty”). Professor Gorgolewski was Mr. Bell’s instructor and the Chair of the Department. BL8102 is a required course to complete the Master of Building Science program.

[8] BL8102 has four graded components. Each assignment was subject to a recommended submission deadline and an overall fixed deadline of December 7, 2022.

[9] Mr. Bell failed BL8102, which was primarily driven by his failing grade on Assignment 3 and was one of two individually graded components in BL8102. On December 31, 2022, Mr. Bell submitted Assignment 3 over three weeks late and with no pre-arranged extension.

[10] Students seeking to challenge their grade in a course have three primary avenues, all of which Mr. Bell sought to engage in various proceedings within TMU:

(a) Policy 162 allows a student to request a reassessment of a single graded course component. Under that process, students who believe their grade on a course component does not accurately reflect the academic merit of their work can request that a graded course component be reviewed and re-evaluated, either by the course instructor or by an independent assessor.

(b) Policy 168 allows students to appeal their final grade in the whole course or standing in a program on four enumerated grounds, which are described in detail in the policy whereby Academic merit is not one of the available grounds of appeal under Policy.

(c) The Discrimination and Harassment Prevention Policy allows students to raise allegations (among other things) that their course instructor or a TMU decisionmaker has discriminated against them on grounds protected under the *Human Rights Code*.<sup>1</sup>

[11] None of these policies or processes provide students the right to have their course work re-evaluated simply because they disagree with the instructor’s assessment of the academic merit of their work. Students are only entitled to have their request to reassess their coursework considered in accordance with TMU’s policies.

[12] If a student is not able to resolve their request with their instructor, they may request that

---

<sup>1</sup> R.S.O. 1990, c. H.19.

the Chair of the Department assist in resolving the dispute. They may also make a formal request that the Chair arrange for a formal grade reassessment by an independent assessor within 10 working days of an instructor denying their request. However, the Chair may deny that request with written reasons.

[13] Policy 168 governs the academic appeals process within TMU. Appeals filed under Policy 168 do not allow students to challenge their grade in a course on the grounds that it does not reflect their performance in the course. Section 2.4 of the policy confirms that “[g]rade reassessment and grade recalculation are not grounds for an academic appeal”.

[14] Policy 168 allows students to appeal their grade in a course on four grounds, the following three of which are pertinent here:

- a. Course Management applies when a student asserts that an instructor or the graduate program “has deviated significantly from ... the course outline, or the instructor has demonstrated personal bias or unfair treatment.”
- b. Procedural Error applies when “there has been an error in the procedure followed in the application of either this policy or any applicable policy of the University that has impacted a student’s grade or standing.”
- c. Prejudice applies when a student believes that their “final grade or standing has been impacted by prejudice based on a ground protected under the *Ontario Human Rights Code*”.

[15] Appeals raising the first two grounds of Course Management and Procedural Error are heard and decided by a decision-maker within the Department offering the course at first instance. If the student remains dissatisfied with the outcome of their appeal, they have a further right of appeal to the Faculty that oversees the Department, and ultimately SAC.

[16] Allegations under the third ground of appeal, Prejudice, are heard and decided under a separate process overseen by TMU’s Human Rights Services (“HRS”) which is also charged with overseeing the DHPP.

[15] Because Prof. Gorgolewski was the department head, the Dean of the Faculty appointed Associate Dean of the Faculty, Professor Horvat, who was the person Mr. Bell made his request to under policy 162. If the instructor would not agree to reassess voluntarily then Mr. Bell had to appeal the whole course grade under policy 168. Under policy 162, the student was required to approach the instructor within 10 days of receiving the grade to seek a reassessment. Mr. Bell did not do that.

[16] Prof. Gorgolewski was not prepared to reassess the grade component voluntarily.

[17] The appeal process under policy 168 was engaged. Mr. Bell did not comply with the timelines under the policy that any appeal had to be made within 10 days after the final course grades were posted. Final course grades for BL8102 were posted on January 12, 2023. Associate Dean Horvat gave Mr. Bell an extension to appeal by January 31, 2023 at 5:00 pm.

[18] On February 12, 2023, the Department denied Mr. Bell’s appeal.

[19] Mr Bell appealed to SAC. The Senate issued a notice of intent to recommend dismissal without a hearing per s. 5.1 under Policy 168. The Senate invited Mr. Bell to provide further submissions on why his appeal should be heard and how it meets the criteria for an appeal under SAC’s jurisdiction. The Senate provided Mr. Bell with a further two weeks to respond.

[20] After receiving the response, SAC dismissed Mr. Bell’s appeal without a hearing.

[21] In February 2023, Mr. Bell forwarded the correspondence with the Associate Dean to the Vice President of Equity and Community Inclusions. His complaint was forwarded to HRS for investigation. On February 24, 2023, HRS advised Mr. Bell that his complaint did not fall within the DHPP because his complaint did not identify or connect his alleged poor treatment to any of his personal characteristics and was primarily a claim of general unfairness. His complaint was not proceeded with.

### **Jurisdiction**

[22] The Divisional Court has jurisdiction over this application pursuant to ss. 2 and 6(1) of the *Judicial Review Procedure Act*.<sup>2</sup>

### **Standard of Review**

[23] The presumptive standard of review for all such questions on judicial review is reasonableness.<sup>3</sup> A decision is reasonable where the decision is transparent, internally coherent, displays a rational chain of analysis, and is supported in relation to the facts and the law that constrain the decision-maker.<sup>4</sup>

[24] For issues engaging constitutional questions, general questions of law of central importance to the legal system as a whole, and questions related to the jurisdictional boundaries between two or more administrative bodies, the presumption of reasonableness is rebutted in favour of correctness.<sup>5</sup>

[25] Concerning procedural fairness, the court must apply the factors outlined in *Baker v. Canada (Minister of Citizenship and Immigration)*<sup>6</sup>. Factors the Court may consider in assessing procedural fairness include the particular circumstances of the case, the statutory regime, the importance of the decision to the individual and the choices of procedure made by the agency itself.<sup>7</sup> “The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly,

---

<sup>2</sup> R.S.O. 1990, c. J.1.

<sup>3</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at paras. 16 and 25. (“**Vavilov**”) and *Transportation Safety Board of Canada v. Eden*, 2022 ONSC 3781 (Div. Ct.), at para. 45.

<sup>4</sup> *Vavilov*, at paras. 16 and 25.

<sup>5</sup> *Vavilov*, at para. 53.

<sup>6</sup> [1999] 2 SCR 817 (“**Baker**”).

<sup>7</sup> *Baker*, at paras. 21-28.

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>8</sup>

### **Issues**

[26] The issues to be determined are:

- a. Does the Court accept the amendment to the application seeking review of the Associate Dean’s decision not to refer the coursework for reassessment?
- b. Should the decision of the Associate Dean under policy 162 be set aside?
- c. Should the decision of the Faculty Appeal and SAC under policy 168 be set aside?
- d. Should the decision not to proceed with the HRS complaint be set aside?
- e. Was there a denial of procedural fairness?

#### **A. Does the Court accept the amendment to the application seeking review of the Associate Dean’s decision not to refer the coursework for reassessment?**

[27] During submissions, an issue emerged that Mr. Bell did not raise an issue for review concerning the Associate Dean’s decision not to refer for assessment the Course Work.

[28] In oral reasons delivered on February 26, 2025 and a written endorsement released March 12, 2025, the Court decided to permit Mr. Bell to amend the Notice of Application accordingly.

[29] The Court then decided to adjourn the hearing to permit the parties to file any further records and allow submissions only on the amended issue.

[30] Further records from the parties were received.

[31] The Court did hear further submissions from the parties.

[32] Thus, the amendment was permitted. Both parties were given the opportunity to provide further written record and oral submissions. The judicial review continued on the basis of the Amended Application.

#### **B. Should the decision of the Associate Dean under Policy 162 be set aside?**

[33] The decision of the Associate Dean under policy 162 is an internal re-assessment.

[34] It is a process with precise conditions that permit a student to seek assessment of a grade on a course component. The record is clear that Mr. Bell did not comply with the conditions of

---

<sup>8</sup> *Baker*, at para. 28.

seeking redress from the instructing professor within the 10-day period. Nor did Mr. Bell comply with the strict jurisdiction of this policy, that is, the reassessment of only a course component.

[35] In addition, policy 162 is clear. Policy 162<sup>9</sup> provides that the decision can be appealed only on procedural grounds. Consequently, policy 162 does not give students an automatic right to reassessment of a graded course component.

[36] I see no grounds to interfere with the decision of the Associate Dean. This ground of review is dismissed.

C. Should the decision of the Faculty Appeal and SAC under policy 168 be set aside?

[37] Mr. Bell did appeal his grade for the course under policy 168. Mr. Bell argues that the decision of the Faculty Appeal and SAC are unreasonable. Both bodies did not follow their own policies and did not consider relevant evidence.

[38] I would not give effect to these arguments.

[39] Both the Faculty Appeal and SAC appeal followed their own policies. They considered the evidence provided and the lack of evidence provided.

[40] Their decision is transparent, internally coherent, and a rationale analysis of the evidence provided and the terms of the policy.

[41] The Faculty Appeal determined that the failure of Mr. Bell to provide evidence (emails from the Associate Dean) for them to determine if there was a procedural error or course management error complied with their role as described in the policy and the evidentiary basis needed to conclude that a ground of the appeal has been satisfied.

[42] Mr. Bell's submissions at SAC were similar, if not the same, as the ones he argued at the Faculty Appeal. There were no grounds provided to set aside the issues already reviewed and considered. Moreover, SAC determined that the new evidence provided by Mr. Bell was not relevant in the appeal process to be considered by SAC and was insufficient for the granting of a SAC hearing on the grounds of course management or procedural error. Hence, there were no grounds to hold a hearing based on the ground of course management or procedural error.

[43] I do not accept Mr. Bell's argument that these decisions were unreasonable. I find the opposite. Both decisions were reasonable based on the applicable policy and the evidence provided.

[44] I dismiss this ground for review.

D. Should the decision not to proceed with the HRS complaint be set aside?

---

<sup>9</sup> Policy 162: Grade Reassessment and Grade Recalculation. ss. 5.7 and 5.8.

[45] Mr. Bell challenges the HRS decision on the grounds that the evidence submitted shows *prima facie* discrimination.

[46] The Court is cognizant that Justice Davies, on December 16, 2024, did permit Mr. Bell to seek judicial review of the HRS decision and the review of the SAC decision to be heard at the same time.

[47] Based on the decision of Justice Davies, the Court is prepared to entertain Mr. Bell's request to review the HRS decision.

[48] Mr. Bell contends that with new evidence provided that it is clear that there is discrimination and that the decision of HRS should be set aside.

[49] Without determining whether discrimination as alleged by Mr. Bell exists, my concern is that it is our role to ascertain on the evidence before HRS at the time whether their decision was unreasonable or an error in law. On a judicial review application, this Court does not adjudicate a hearing *de novo*.

[50] Based on the evidence before HRS at the time the decision was made, I find no error in law or that its decision was not reasonable.

[51] The evidence presented to HRS by Mr. Bell did not, as correctly determined by HRS, identify or connect his alleged poor treatment to any of his personal characteristics. His complaint read as a general complaint of unfair treatment and not a complaint of mistreatment on the basis of a personal characteristic, be it race, religion, or disability.

[52] This finding was available to HRS on the reading of the complaint provided by Mr. Bell. Thus, I find that the decision was reasonable.

[53] I dismiss this ground of review.

#### E. Was there a denial of procedural fairness?

[54] Mr. Bell argues that he was treated unfairly throughout the entire process. Mr. Bell submits that he had a legitimate expectation of an impartial reassessment and that TMU failed to do so. TMU reiterated the original decision without considering his arguments. He submits this deprived him of the opportunity to have his case properly adjudicated and that a *de novo* hearing is required where an initial decision-maker's neutrality is questioned.<sup>10</sup> He further submits that where there is a risk of bias or unfair treatment in the original decision, a full new hearing is necessary and that this should have occurred at the Faculty and SAC Appeals.<sup>11</sup>

[55] I do not accept these submissions of Mr. Bell.

---

<sup>10</sup> *Cardinal v. Director of Kent Institution*, [1985] 2 SCR 643.

<sup>11</sup> *Ford v. University of Ottawa*, 2022 ONSC 6828.

[56] Throughout the process undertaken by Mr. Bell, he was provided with the opportunity to provide evidence, was given the opportunity of a hearing, and the process was transparent. This Court does recognize that from Mr. Bell's perspective, the issues are significant and have clear consequences.

[57] However, for this Court, on a judicial review, there must be evidence that supports a finding that the underlying values of procedural fairness have been breached. Specifically, that Mr. Bell was not given the opportunity to present his 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>12</sup>

[58] On the evidence presented on this judicial review, I find that at each step of the process undertaken by Mr. Bell, he was provided with procedural fairness.

[59] At the assessment of the course component under policy 162, the Associate Dean communicated with Mr. Bell consistently, provided him the opportunity to present his case, advised him that he failed to comply with the policy in contacting the instructor of the course, and was further advised that if he wished to appeal the grade of the course, he had to comply with policy 168. The right to appeal was extended to permit Mr. Bell the opportunity to do so. He was provided with procedural fairness. Mr. Bell was provided with a fair, impartial, and open process in light of the terms of the policy.

[60] Dealing with the process of appealing his grade in the course, Mr. Bell was provided with procedural fairness and at both the faculty appeal and SAC.

[61] In both incidences, Mr. Bell was given the opportunity to appeal, submit his appeal material, and was given further opportunity to submit further material when he was notified that the material submitted were deficient.

[62] Again, the process provided to Mr. Bell was fair, impartial, and open given the terms of policy 168.

[63] Consequently, I find Mr. Bell was provided with procedural fairness on the routes he chose. I dismiss this ground of judicial review.

### **Conclusion and Disposition**

[64] I would dismiss Mr. Bell's application.

---

<sup>12</sup> *Baker*, at para. 28.

**Costs**

[65] Mr. Bell sought costs \$10,000. TMU's request for costs, \$7500, is reasonable and within Mr Bell's reasonable expectations, in light of his own request for costs, and I would therefore order Mr Bell to pay TMU's costs fixed at \$7,500, inclusive, payable within 30 days.

I agree:

---

Sutherland J.

---

D.L. Corbett J.

---

Faieta J.

**Released:** November 5, 2025