

J. G.

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Appellant

AND

THE FACULTY OF APPLIED SCIENCE AND ENGINEERING

Respondent

Participants on the Case Conference telephone call:

- Ms. Emily Orchard (Chair), Assistant Dean, University of Toronto, Faculty of Law
- Mr. Robert Centa, Counsel for the Respondent , Paliare Roland, Barristers
- Ms. Dharsha Jegatheeswaran, Articling Student, Paliare Roland, Barristers
- Mr. Selwyn Pieters, Counsel for the Student
- Mr. Christopher Lang, Director, Office of the Appeals, Discipline and Faculty Grievances
- Ms. Tracey Gameiro, Associate Director, Office of the Appeals, Discipline and Faculty Grievances

ORDER

This is a decision on a case conference convened on March 10, 2016, at the request of the Respondent’s counsel. Counsel to both parties agreed that it is within the Chair’s discretion to determine whether the decision of the Academic Appeal Board (the “AAB”) dated September 28, 2015 is void as a result of the Respondent’s admission of a reasonable apprehension of bias.

In his submissions, counsel for the Respondent referred the parties to the decision of the Supreme Court of Canada in *Newfoundland Telephone Co. v. Newfoundland (Public Utilities Board.)* [1992] 1 S.C.R. 623. In that case, the Court held that:

“everyone appearing before administrative boards is entitled to be treated fairly ... It is impossible to have a fair hearing or to have procedural fairness if a reasonable apprehension of bias has been established. If there has been a denial of a right to a fair hearing it cannot be cured by the tribunal’s subsequent decision. A decision of a tribunal which denied the parties a fair hearing cannot be simply voidable and rendered valid as a result of the subsequent decision of the tribunal. Procedural fairness is an essential aspect of any hearing before a tribunal. The damage created by apprehension of bias cannot be remedied. The hearing, and any subsequent order resulting from it, is void.”

It is not necessary for me to determine whether there was in fact a reasonable apprehension of bias in order to direct that this matter be reheard by the AAB. Indeed, to do so would, I believe, be

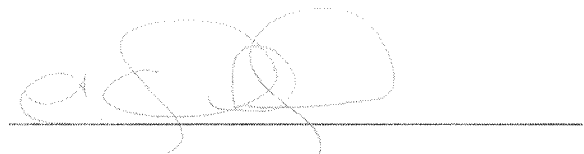
inappropriate. The Respondent has conceded that a reasonable apprehension of bias exists and the Appellant submits that she was denied the right to a fair hearing as a result of an alleged conflict of interest or reasonable apprehension of bias. The case law supports the Appellant's position in this regard. Given the parties consensus about the existence of a reasonable apprehension of bias and the Supreme Court's decision in *Newfoundland*, it is my determination that this matter must be sent back to the AAB for a fresh appeal before a newly constituted panel. This Committee, as has been well established in the decisions rendered thereby, is a review body and does not have the jurisdiction to hear this matter on its merits or to conduct a trial *de novo*. The case law clearly provides that there can be no procedural fairness where a reasonable apprehension of bias exists. As such, I find that the September 28th decision of the AAB is void, there is no decision for this Committee to review and the function of this Committee is rendered moot.

For all of the foregoing reasons, I direct that the Appellant's petition be remitted to the AAB for a new appeal, which is to be expedited and scheduled so as to ensure that the appeal does not conflict with any of the Appellant's exams. If the Appellant is not satisfied with the outcome of the fresh appeal, she has the right to appeal to this Committee and the appeal will be heard before the end of May, 2016.

The Appellant's counsel asked that the Appellant be awarded the costs of her appeal. This Committee does not have jurisdiction to award costs.

The Appellant's counsel also asked that his client's academic status be converted to "clear" at this time. I do not grant this relief. The impact of a fresh appeal on the student's academic record has yet to be determined. This Committee has found that the decision of the AAB is void and that a fresh appeal must be heard. This Committee cannot grant relief sought on an appeal, which I have found to be moot. Furthermore, I do not believe that it is within my discretion to grant substantive relief without the benefit of a full hearing conducted before a full panel.

All of which is ordered on March 10, 2016.

A handwritten signature in black ink, appearing to read 'Emily Orchard', is written over a horizontal line.

Ms. Emily Orchard, Chair