

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on September 14, 2015,

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters*, 1995,

AND IN THE MATTER OF the *University of Toronto Act*, 1971, S.O. 1971, c. 56 as amended S.O. 1978, c. 88

BETWEEN:

UNIVERSITY OF TORONTO

- and -

W ■ L ■

REASONS FOR DECISION

Hearing Date: November 25, 2015

Members of the Panel:

Ms. Roslyn Tsao, Barrister and Solicitor, Chair

Professor Gabriele D'Eleuterio, Faculty Panel Member

Ms. Raylesha Parker, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland, Barristers

Ms. Lucy Gaspini, Manager, Academic Affairs, University of Toronto, Mississauga

Professor Ken Derry, Department of Historical Studies, University of Toronto,
Mississauga

In Attendance:

Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances, University
of Toronto

Not In Attendance:

Ms. W ■ L ■, Student

This hearing came before the Panel on November 25, 2015 at 1:45pm pursuant to the Revised Notice of Hearing ("NOH") dated November 6, 2015. At the outset, University counsel advised that he did not believe that the Student would be attending. We waited 5 minutes and proceeded to receive evidence and hear submissions regarding service of the charges dated September 14, 2015 ("Charges") and NOH.

The charges stem from an essay submitted in the Winter 2013 term. The Student appears to have been suspended after that term for three years as a result of her academic performance (and not for misconduct).

Although the Charges and NOH were duly served by email to the Student's ROSI email address, a courier to the Student's ROSI address was sent back with a notation "Moved to China". Service of the Charges and NOH by email was performed on September 15, 2015 and November 6, 2015, respectively.

The University sought leave to proceed with the Hearing in the Student's absence on the basis that service had been effected with the requisite warning to the Student in the NOH that the hearing could proceed in her absence.

Professor Derry gave evidence that the Student was first emailed about his concerns regarding the essay in May, 2014, a year after the completion of the course and the Student's 3 year suspension. The reason for the delay was due to the death of Professor Derry's mother shortly after the end of the Winter 2013 term, resulting in his inability to address the matter at the time. Professor Derry was also not able to pursue the matter during the 2013-2014 academic year because of his teaching responsibilities, exacerbated by circumstances related to his mother's death.

The Student did not respond to Professor Derry's emails and, as such, the matter was necessarily referred to the Dean's Office for disposition sometime after November 2014.

In our view, the delay in alerting the Student of the matter until May 2014, a year after the Student had been suspended raises concerns about whether service to the ROSI email address

was effective. Although Rule 9 of the *Rules of Practice and Procedure* have greatly assisted to reduce the former, and sometime Herculean, efforts of University Counsel to demonstrate effective service, Rule 9 does not, in my view, determine conclusively that service is effected by the methods set out in subsection (b) *by courier to a ROSI address* or (c) *by email to a ROSI email*. In most cases, such service will be acknowledged as sufficient by the Panel but the principles of fundamental justice still entail the notion of effective service.

In the case, the Student who was suspended for a year by the time the email was sent to her by the professor, might reasonably not have been checking her email account and, as such, the Panel is not comfortable proceeding in the Student's absence based on the service by email, in this case. University counsel is, in no way, faulted for proceeding this way and in accordance with the service mechanisms set out in Rule 9.

That said, upon further request by the University, the hearing was adjourned *sine die* for the University to consider other service, perhaps on an international address that is in the Student's file.

Gratuitously, I indicated that I had some concern about efforts and resources being spent on this matter given the likelihood that the Student has moved to China, even if only for the duration of her suspension. It would seem that if the Student attempts to return to the University at the conclusion of her suspension (after April, 2016), she can then be served with the charges and the matter can be addressed at that time, perhaps even at the faculty level. If the Student never seeks to re-enrol with the University, one questions the utility, noting particularly that notice to the Student was a year after the incident, of pursuing prosecution at this time.

Dated: December 16, 2015



Roslyn M. Tsao, Chair