

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on April 12, 2016;

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

B E T W E E N:

THE UNIVERSITY OF TORONTO

- and -

A [REDACTED] S [REDACTED]

Hearing Date: May 18, 2017

Members of the Panel:

Ms Lisa Brownstone, Barrister and Solicitor, Chair
Professor Elizabeth Peter, Faculty Panel Member
Professor Allan Kaplan, Faculty Panel Member
Ms Beth Martin, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Barristers
Emily Howe & Glynnis Howe, Students-at-Law, Paliare Roland Barristers
Ms Lucy Gaspini, Manager Academics Integrity, University of Toronto,
Mississauga
Alexandra DiBlasio, Academic Integrity Assistant, University of Toronto,
Mississauga
Mr. A [REDACTED] S [REDACTED], the Student
Mr. R [REDACTED] S [REDACTED], Student's Father and Representative

In Attendance:

Ms. Tracey Gameiro, Associate Director, Office of Appeals Discipline and Faculty
Grievances, ("ADFG")
Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances,
University of Toronto
Mr. Sean Lourim, IT Support, Office of the Governing Council

- [1] The Discipline Appeals Tribunal convened on May 18, 2017 to consider the Student's appeal.

Preliminary Issue

- [2] At the outset, the Panel considered a preliminary issue raised by counsel for the Provost. He sought an order excluding a paragraph of the Student's reply materials from any materials considered by the Tribunal on the bases that:
- (i) the paragraph contains details of without prejudice discussions between him and the Student's father, who was acting as the Student's representative; and
 - (ii) the paragraph is irrelevant to the appeal.
- [3] The paragraph purports to recount discussion between the Student's father and Provost's counsel. Having heard submissions from both parties, the Panel concluded that it was unclear whether the discussion was a without prejudice conversation, but in any event the contents were irrelevant to the appeal. Therefore, the Panel agreed with counsel for the Provost that the paragraph should be struck and not considered for purposes of the appeal.

Notice Issue

- [4] With respect to the appeal itself, the Panel indicated that it would first deal with the issue of whether there had been reasonable notice of the hearing to the student.
- [5] The matter has a rather unusual history. The Student's ROSI record indicates that he had been placed on academic probation in the winter of 2014. Subsequently, the Student was suspended for one year from about April, 2015 to April, 2016. The Student was then alleged to have engaged in academic misconduct in April, 2015 with respect to course CCT208 and in October, 2015 with respect to correspondence relating to his appeal of the CCT200 misconduct. These allegations led to the hearing which underlies this appeal.
- [6] The charges of academic dishonesty were filed on April 12, 2016, which appears to have been during, or perhaps days after, the course of the Student's academic suspension. On May, 25, 2016, the Provost served the Student with the Notice of Hearing. A revised Notice of Hearing was served on June 28, 2016. The Charges, the Notice of Hearing and the revised Notice of Hearing were all sent by email to the address the Student had provided to the University. In addition, the ADFG attempted to serve the Student with the Notice of Hearing by courier. However, when an attempt was made to deliver the mail, no one was there to receive the documents, and they were therefore returned to the ADFG. All parties agreed that no service was effected by courier.
- [7] The hearing occurred on July 12, 2016. The Student did not appear. The Provost, in support of its position that reasonable notice of the hearing had been provided to the Student, filed an email from the Acting Director of Information Security in the Information Technology Services Branch, University of Toronto, to counsel for the

Provost. That email indicated that the Student's email account to which notice had been sent was last accessed on June 29, 2016 at 1:25 a.m.

- [8] On the basis of the emails to the Student and the email from the Acting Director of Information Security, the July 12, 2016 Panel concluded that service had been proven and that it had jurisdiction to proceed. The Provost called its evidence, the Tribunal made findings against the Student, ordered that the Student be suspended for a period of up to five years, and recommended to the President that he recommend to Governing Council that the Student be expelled.
- [9] The above information was contained in the record that had been filed before the hearing Tribunal, and in the Tribunal's decision. Before the Appeals Tribunal, the Student was advised that if he wished us to consider further information in deciding the notice issue, he would have to provide evidence to the Panel. After some discussion, it was agreed that the Student would testify. In support of his contention that reasonable notice had not been provided, the Student gave oral evidence to the following effect:
- (i) He did not receive actual notice of the hearing;
 - (ii) He did not correspond with the University of Toronto about academic matters during the period of his academic suspension;
 - (iii) He did not access his University of Toronto email account on June 29, 2016; and
 - (iv) He was not permitted to enrol in summer school for the 2016 summer session and considered himself to be suspended until the end of the summer of 2016.
- [10] The Student purported to give evidence about whether his University of Toronto email account would show as being accessed in various circumstances. The Provost rightly objected to this evidence, and the Student conceded he had no expertise about the University's IT systems. The Panel advised the parties it would disregard that evidence in its entirety and has done so.
- [11] The Student claimed he learned of the proceeding when he attended at the University in late July, 2016 to register for the fall term.
- [12] The Provost challenged the Student's assertion that he did not correspond with the University during his academic suspension (2015-2016) and to this effect, relied upon the following:
- (i) an email of May 25, 2015 (within about the first month of the Student's suspension) showing that the Student had forwarded an email he received at his University of Toronto email account to his father;
 - (ii) correspondence from the Student to the University in October, 2015 regarding academic dishonesty allegations (there was no evidence of the method used for this communication; just that communication to the University had been made by the Student at this time); and

- (iii) the email from the Acting Director of Information Security to Mr. Centa, referred to above, which advised that the Student's email account had been accessed on June 29, 2016. By this date the Charges, the Notice of Hearing and the Revised Notice of Hearing had all been sent to the Student's University of Toronto email account.
- [13] The Provost pointed to the Information Security email as proof that the Student had received actual notice of the Hearing. However, the email indicated only that the Student's account had been accessed; it provided no information as to who accessed it and more importantly, no information about whether any specific emails had been accessed.
- [14] The Panel could not conclude that the Student received actual notice.
- [15] With respect to whether reasonable notice was provided, the Panel does not disagree that the University took the steps it was required to take under the Rules. However, in this case, the Panel was of the view that exceptional circumstances existed in which reasonable notice was not found to have been provided this way. In this unusual case, the Student was under suspension until at least April, 2016 and gave evidence that he was advised that he could not enrol in classes for the summer of 2016, meaning he was (in his mind) effectively suspended until the fall session of 2016. His evidence was that he was not checking his University of Toronto emails during this period of suspension. The only evidence of him personally checking the account for any particular emails in the account was from May, 2015, a few weeks into his suspension and more than ten months before the charges were sent to that email address.
- [16] In response to a question from the Panel, Mr. Centa led the Panel to the provision in the Governing Council's Association, Admission and Registration Policy indicating that a suspended Student is considered to have an "inactive association" with the University. However, there was no evidence that anyone advised the Student that its usual policies and guidelines would continue to apply to him while he was under suspension and unable to participate in any academic life of the University, or that he was expected to be active on his University email account during his suspension.
- [17] Given that this was an exceptional case insofar as the Student was under suspension, seemingly not checking his emails and not knowing that he was still expected to do so despite his suspension, and given that the Student took steps to appeal the decision very soon after he learned of it, the Panel exercised its discretion under s. 7(b) of the Code of Behaviour on Academic Matters to remit the matter for a new hearing at which the Student will be able to participate.

Dated this 28th day of June, 2017.



Lisa Brownstone, Chair on Behalf of the Panel