

**THE DISCIPLINE APPEALS BOARD
THE UNIVERSITY OF TORONTO**

IN THE MATTER of charges of academic dishonesty filed on July 15, 2020,

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters, 2019* (the "Code"),

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:

S [REDACTED] Y [REDACTED]

Appellant

- and -

UNIVERSITY OF TORONTO

Respondent

REASONS FOR DECISION

Appeal Hearing Date: November 22, 2023, via Zoom

Members of the Discipline Appeals Board Panel:

Roslyn M. Tsao, Chair
Professor Ramona Alaggia, Faculty Panel Member
Emily Hawes, Student Panel Member

Appearances:

Lily Harmer, Assistant Discipline Counsel for the University, Paliare Roland Rosenberg Rothstein LLP

Janet Song, Co-Counsel for the University, Paliare Roland Rosenberg Rothstein LLP

S [REDACTED] Y [REDACTED]

Hearing Secretary:

Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty Grievances

Delivered by Ms. Roslyn M. Tsao

PROCEDURAL BACKGROUND

1. The Discipline Appeals Board of the University Tribunal ("DAB") heard S [REDACTED] Y [REDACTED]s ("the Student") appeal in this matter on November 22, 2023, via the Zoom video platform.
2. On July 15, 2020, the Student was charged with academic offences arising from their submission of an assignment (the "Assignment") in HLTB16H3: Introduction to Public Health (the "Course") on November 13, 2019.
3. The Student was charged with the following offences in conjunction with the Assignment (a) plagiarism – *Code B.I.1(d)*; (b) obtaining unauthorized assistance – *Code B.I.1(b)*; and (c) having engaged in academic dishonesty – *Code B.I.3(b)*.
4. On August 16, 2022, the Student attended before the Trial Division, self-represented, and was found guilty of the offence of obtaining unauthorized assistance contrary to *Code B.I.1(b)* pursuant to an Agreed Statement of Facts ("ASF") based on the following admissions by the Student:
 - (a) The Student received unauthorized assistance for her Assignment through the purchase of a version of the Assignment;
 - (b) Another student in the same course, S.G., had also purchased the same assignment at the same time;
 - (c) Turnitin.com review found both the Student's and S.G.'s assignments to be sufficiently similar to alert the professor to further investigate for academic dishonesty;
 - (d) The Student admitted at her meeting with the Dean's Designate, on June 4, 2020, to having purchased the Assignment. The Student explained that she was struggling with her mental health leading up to the due date for the assignment;

- (e) The Student admitted that she made numerous word substitutions and re-ordering of text in the Assignment to attempt to avoid detection; and
 - (f) On November 24, 2021, S.G. pleaded guilty to use an unauthorized aid.
5. The Student also signed a Joint Submission on Penalty ("JSP") before her hearing and received the following sanctions pursuant to the JSP:
- (a) a final grade of zero in the Course;
 - (b) a suspension from the University for four years (from August 31, 2022);
 - (c) a notation of the sanction on the Student's academic record for five years (from August 16, 2022); and
 - (d) a report of the decision and sanctions to be provided to the Provost for publication, with the name of the Student withheld.
6. We were provided with the Tribunal decision for S.G. who received the same sanction as above for the Student with a start date for his suspension being November 24, 2021.
7. On September 9, 2022, the Student gave notice of her desire to appeal the sanction by submitted a document entitled "Appeal Statement".

THE STUDENT'S APPEAL

8. The Student delivered her Appeal Statement within the requisite time. The Student also delivered a "Factum" in advance of the appeal hearing. The Factum contained similar statements as set out in the Appeal Statement.
9. The Student sought to admit "fresh evidence" regarding her circumstances leading up to the offence and since, including her mental health and personal struggles.
10. The Student's written and oral submissions at the hearing in support of her request to reduce the length of the suspension can be summarized as follows:

- (a) Upon being asked by the Panel, the Student confirmed that she was only appealing penalty and, in particular, sought to reduce the suspension.
- (b) The Student felt that she has been on her own the "whole time" since the charges and unable to have representation or assistance;
- (c) The Student had limited financial means and has had to work during school;
- (d) By way of fresh evidence (which was only proffered in the Student's Factum (unsworn):
 - (i) that the Student was diagnosed with ADHD, anxiety and depression in her second year;
 - (ii) she was not eating, and she had health and financial problems in her second year;
 - (iii) she lost an uncle from cancer;
 - (iv) she was working 6 days a week;
 - (v) she neglected her own needs for her family's;
 - (vi) [at some point], she "dealt with another obstacle and having a better support system ... was able to get back into a positive headspace and slowly showed that in [her] grades";
 - (vii) being suspended for four years while she is supposed to be in her fourth year will greatly hold her back in the progression of her future and her family's life since they are dependent on her graduating; and
 - (viii) she would like a second chance to prove herself.
- (e) The Student acknowledged that she committed an offence but has sought and obtained counselling and wants to work hard and succeed, with school being her top priority at this time;

- (f) The Student acknowledged that the last year of being suspended has been beneficial to her and that she wants to show that she has changed as a person and has learned from her mistakes.
 - (g) The Student has been on academic suspension (low GPA) for Winter 2020 (not Summer 2020), Fall 2020 and Winter 2021 terms. With the disciplinary suspension from Fall 2022 to present, the Student feels that she has been out of school for enough time.
11. For the reasons below, we dismiss the Student's application to admit fresh evidence and her appeal as to penalty. We confirm that the Order below for a four year suspension from August 31, 2022 remains in effect.

LEGAL ANALYSIS – GROUNDS OF APPEAL

ISSUE 1: Introduction of Fresh Evidence

12. The Student, appeared at the appeal unrepresented as in the hearing below. However, the Student had sufficient time and opportunity to obtain legal assistance from Downtown Legal Services to assist with legal strategy.
13. Although the Student did not bring a formal motion to introduce further or fresh evidence, it is implicit in her Factum and Appeal Statement that she wished to put further/fresh facts before this Panel.
14. We have authority in *exceptional* circumstances to allow the introduction of further evidence on appeal at our discretion. However, such evidence is required to be unavailable at the time of or was not adduced at the original hearing.
15. The nature of the fresh evidence concerns the Student's factual circumstances leading up to the offence relating to her mental health and other struggles. Firstly, the statements by the Student in her Factum and Appeal Statement are unsworn, vague and without detail as to dates and service providers. They are not substantiated by any medical evidence or other corroborating proof. Secondly, this evidence was available at the time of the original hearing as it related to the Student, herself. Finally, the information cannot be

tested on cross-examination by the University as it would have been at the original hearing.

16. In addition, the Student joined in the ASF and JSP which refer to the Student's advancing of details about her personal circumstances [see paragraph 18 of the Decision] and that matter was canvassed by the Tribunal at the time.
17. The Panel, therefore, declines to exercise its discretion to admit the fresh statements in the Student's Appeal Submission and Factum for the purposes of the appeal on penalty.

ISSUE 2: Resiling from a Joint Submission on Penalty

18. In this case, the Student's appeal of penalty is, in fact, a request by the Student to resile or set aside the JSP.
19. Although the Discipline Appeals Board has the jurisdiction to vary sanction, we decline to exercise our discretion based on reasons below.
20. The Student has demonstrated no basis to permit her to resile from the JSP. The Student has not claimed that she signed the JSP under any duress or without understanding the consequences. In particular, this Panel asked the Student to comment on paragraph 18 of the Tribunal's Reasons:

18. The Student made submissions on penalty outlining her personal circumstances. The Student initially made a plea for further leniency from the Panel and was reminded that although she was free to resile from the joint position on penalty doing so would entitle the Provost to revisit their position on penalty which could result in a request for and possible imposition of a higher penalty. The Student clarified that she wished to maintain the joint position on penalty. The Panel finds that the Student's request for a more lenient penalty was simply the expression of a student in a difficult situation and not a genuine attempt to resile from the joint submissions.

21. In response, the Student stated that she could not afford a lawyer but wanted to reach her "end goal and not be suspended", confirming again that the Student not only understood the consequences of the JSP but that she also wanted to ensure that the possibility of

expulsion was not in play. It is noted that the Student also expressly acknowledged in paragraph 4 of the JSP that she was advised of her right to obtain the legal counsel.

22. More importantly, we agree with counsel for the University that joint submissions on penalty ought to be afforded significant deference at the Tribunal level for a number of policy reasons: cooperation, consistency and certainty. JSPs and ASFs benefit the administration of the Tribunal by encouraging cooperation by students which saves resources and provides for a certainty of outcomes for the University where students are prepared to admit their guilt.
23. The Student's JSP was also consistent with the penalty granted to S.G. pursuant to his JSP for the same offence, supporting its reasonableness.
24. As at the Tribunal level with JSPs, the DAB ought to afford significant deference to the Tribunal to approve the arrangements between the University and students to fashion the terms of their JSP provided that the JSP is entered into voluntarily and with an understanding of the consequences.
25. This situation differs from an appeal on penalty where there has been no JSP, in which case, considerations of whether the sanction meets the test of reasonableness or would bring the administration of justice into disrepute are engaged on appeal.
26. As an aside, the University submitted that should the Student be permitted to resile from a JSP on appeal and, thereby, seek to vary the penalty, the DAB would be required to remit the determination of penalty back to the Tribunal without the benefit of any JSP. As we have found that there is no basis to set aside the JSP, we are not required to decide this point.

CONCLUSION

27. For the foregoing reasons, the appeal is dismissed and the Order of August 16, 2022 is affirmed in its entirety.

Dated at Toronto, this 11th day of December, 2023.

Original signed by: _____

Roslyn M. Tsao

On behalf of the Discipline Appeals Board Panel