

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO (APPEAL DIVISION)**

IN THE MATTER of charges of academic dishonesty filed on July 20, 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 am. S.O. 1978, c. 88

B E T W E E N:

E ■ S ■

Appellant

- AND -

UNIVERSITY OF TORONTO

Respondent

Hearing Date: May 30, 2017

Members of the Panel:

Ms. Lisa Brownstone, Barrister and Solicitor, Chair

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Barristers

Ms. Lauren Pearce, Counsel, Paliare Roland Barristers

Professor Eleanor Irwin, Dean's Designate, University of Toronto Scarborough

In Attendance:

Mr. Sean Lourim, IT Support, Office of the Governing Council

Ms. Tracey Gameiro, Associate Director, Office of Appeals Discipline and Faculty Grievances, ("ADFG")

Not in Attendance

Ms. E ■ S ■, the Student

1. On May 30, 2017, I presided over the Provost's motion to dismiss the Student's appeal under E.7(a) of the Code, which gives the Discipline Appeals Board the power to dismiss an

appeal summarily and without a formal hearing if it determines that the appeal is frivolous, vexatious or without foundation.

2. In the alternative, the Provost asks that the stay of the implementation of the Tribunal's decision as to sanction be lifted pending final resolution of the appeal under E.10 of the Code.

3. For the reasons that follow, the Provost's motion to dismiss the appeal is granted.

4. This matter has a long and complicated history, clearly and comprehensively set out in the Provost's materials. Some relevant portions of the case's history are set out below.

5. In July, 2015, the Provost filed four Charges of academic misconduct against the student. The hearing proceeded on January 27, 2016. Prior to the hearing, the Student was asked whether she wished to have an adjournment in order to retain counsel. The Student did not wish to adjourn the matter, and the hearing proceeded as scheduled. That hearing lasted for about ten (10) hours, and consisted of evidence being heard from the Student's professor; a dentist who had treated the Student; the Dean's Designate and the Student.

6. On February 3, 2016, the Tribunal released its findings with respect to the allegations, concluding that a number of the allegations had been proven and that the Student had engaged in misconduct. The sanction hearing was scheduled for March 30, 2016.

7. On March 2, 2016, the Student's first representative, a paralegal, advised that she had been retained. She was soon provided with information about how to obtain a transcript of the hearing.

8. On March 13, 2016, the Student lodged a Small Claims Court action against a reporting service she had engaged, which had apparently sought payment of a sum for the transcript being prepared on an expedited basis. The next day, March 14, 2016, there was a case

conference at which a second representative, a lawyer, advised that he had also been retained by the Student.

9. Three days later, on March 17, 2016, the Student moved to adjourn the sanction hearing and re-open the finding portion of the hearing, as well as to compel two of the Provost's three witnesses from the January 27, 2016 hearing to attend to be examined out of court under Rule 39.03 of the *Rules of Civil Procedure*.

10. Despite being advised that the Rule was not applicable, the Student served one of the witnesses with a Notice of Examination and when she did not attend, obtained a Certificate of Non-Attendance against her.

11. On March 23, 2016, there was a further case conference and the Chair directed that the sanction hearing would be adjourned at the Student's request, but required that it be heard no later than June 30, 2016, and the parties provide their availability for the sanction hearing.

12. During this time period, there was mention by the Student's representative of psychiatric assessments and appointments. No psychiatric assessment was produced. There is some evidence of the Student cancelling an appointment with a psychiatrist.

13. On April 4, 2016, the two representatives advised that they no longer acted for the Student and on April 29, 2016, a case conference was held at which the Student did not participate (either directly or by representative).

14. On May 3, 2016, the Student was advised that the Chair requested the Student to provide her availability for the sanction hearing. The availability was not provided and on May 9, 2016, the Chair reiterated that the availability was to be provided.

15. Following this correspondence, the Student provided her availability and on May 11, 2016, the sanction hearing was rescheduled for June 28, 2016. On May 16, 2016, the Student's

third representative, a lawyer, advised that he had been retained. The Provost's counsel was subsequently advised that he was no longer retained.

16. On June 28, 2016, the sanction hearing proceeded as scheduled. At that hearing, the Student's fourth representative advised that the Student sought leave to bring a motion for an order directing the University to provide her with a transcript of the hearing and adjourning the sanction hearing pending the motion. Leave to bring this motion was denied, as the sanction hearing had been made peremptory upon the Student, and she had previously been given numerous opportunities to obtain the transcript.

17. On August 5, 2016, the Decision and Reasons were issued for both portions of the hearing (liability and sanction). On August 19, 2016, at the Student's request, the Provost's counsel advised that she did not oppose the Student's request for an extension of time to file her Notice of Appeal from August 26, 2016 to September 23, 2016.

18. A Notice of Appeal was delivered on September 22, 2016 and the first case conference (in which the Student's fourth representative participated) was held with me on November 11, 2016. In order to move the matter forward, I issued a Direction on November 15, 2016 directing, among other things, that the Student order the transcripts required for the appeal, that she serve and file her Appeal Factum by January 12, 2017 and that the appeal be heard by March 31, 2017. In Order to assist the Student, the Provost's counsel agreed to prepare the Appeal Book and the ADFG would provide notarized copies of the transcript. These matters were also included in the Direction.

19. On December 13, 2016, the ADFG advised that the Student had not ordered all of the transcripts as required by the November 15, 2016 Direction and in late December, 2016, the Provost's counsel was advised by a witness in the proceeding that the Student had commenced

a civil action against her and filed a complaint to her regulator (The Royal College of Dental Surgeons of Ontario).

20. On January 9, 2017, the Student requested a further extension of time to perfect her appeal; we therefore held a further case conference on January 11, 2017. On January 13, 2017, I issued a further Direction requiring that the Student deliver the outstanding transcripts, that she reimburse the ADFG for the copying and notarizing expenses, that she serve and file her Appeal Factum by January 31, 2017, and that she advise whether she was previously taught by a specific professor whom the ADFG was canvassing to hear the appeal. I also extended the time for hearing of the appeal to April 30, 2017.

21. Four days later, on January 17, 2017, the Student advised that due to a family emergency she would not be complying with the timeline set out in the January 13, 2017 Direction. Therefore, on January 19, 2017, I issued a further Direction, directing the Student to comply with the obligations set out in the Directions of November 15, 2016 and January 13, 2017.

22. The next day, on January 20, 2017, the fourth representative advised that she no longer acted for the Student. On January 24, 2017, I issued a further Direction directing the Student to comply with the obligations set out in the January 19, 2017 Direction.

23. On February 17, 2017, a further case conference was held in which the Student did not participate. I directed that the Student or her counsel, if retained, participate in a case conference on March 10, 2017, and that she provide information as to her efforts to retain counsel.

24. On March 7, 2017, in response to a request from me to change the March 10, 2017 case conference date, the Student indicated that she could not participate in a case conference before April 28, 2017, as she was "involved with an urgent family matter". I issued a further

Direction granting her request to adjourn the case conference until April 28, 2017, and directing her or her counsel, if retained, to participate in the case conference on that date, as well as to provide information as to her efforts to retain counsel.

25. On April 21, 2017, the Student indicated she was unable to participate in any case conference or "attend legal action".

26. On April 28, 2017, the case conference proceeded without the Student's participation and I issued a Direction setting a schedule for the Provost's motion to dismiss the Student's appeal.

27. On May 10, 2017, the Student provided the ADFG with a letter from her psychologist, but did not respond to two requests from the ADFG that they be permitted to forward the psychologist's letter to the Provost and to me.

28. On May 30, 2017, the motion to dismiss the Student's appeal was heard. The Student did not participate.


29. As can be seen from the above, while the Student had a stated intention to proceed with her appeal, her actions belie that intention. She has shown repeated disregard for the process, and looking at the entire history of the matter as the case law requires me to do, I conclude that she has conducted the proceedings in a vexatious manner.

30. The history outlined above indicates that the scheduling difficulties began at the sanction stage of this proceeding, and continued up to and including the motion to dismiss her appeal. The Student repeatedly did not comply with Directions, did not respond to communications, commenced proceedings against a reporting service and a witness, and engaged in a pattern of non-compliance and delay. The Student has shown blatant disregard for the process, the Directions, and the efforts of the Provost's counsel and the ADFG. She has been granted many

indulgences, yet has taken almost no steps to move the matter forward in a timely way. No reasonable explanation has been provided for the delay, and no proposed timetable has ever been adhered to.

31. I further note that the grounds of appeal rest significantly (although not solely) on credibility findings, matters that were carefully considered and explained by the Tribunal and that are most difficult to disturb on appeal.

32. I therefore dismiss the appeal in accordance with s. E.7(a) of the Code of Behaviour on Academic Matters.



Lisa Brownstone
Chair
June 29th, 2017