

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

IN THE MATTER of charges of academic dishonesty made on October 22, 2020

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

D [REDACTED] B [REDACTED]

Appellant

- and -

UNIVERSITY OF TORONTO

Respondent

REASONS FOR DECISION

Appeal Hearing Date: July 21, 2021, via Zoom

Members of the Discipline Appeals Board Panel:

Ms. Roslyn M. Tsao, Chair
Professor Allan Kaplan, Faculty Panel Member
Ms. Samantha Chang, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel for University, Paliare Roland Rosenberg Rothstein LLP
The Student

Hearing Secretary:

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

Delivered by Ms. Roslyn M. Tsao

PROCEDURAL BACKGROUND

1. The Discipline Appeals Board of the Tribunal heard the Student's appeal in this matter on July 21, 2021.
2. On October 22, 2020, the Student was charged with the following academic offence (in addition to an alternative charge under Section B.I.3(b) of the Code):
 - (a) On or about March 18, 2019, the Student knowingly represented as his own, an idea or expression of an idea and/or work of another in an essay titled "Waste Management: Comparing Mexico City, Mexico to Beijing City, China" ("Essay") that was submitted for academic credit in POL346Y6Y 2018(9) (the "Course"), contrary to section B.I.1(d) of the Code.*
3. On January 11, 2021, the Student, who did not appear at the hearing, was convicted of the above offence (and the alternative charge was withdrawn) and the Panel imposed the following penalty:
 - (a) a final grade of zero in the Course;
 - (b) a suspension from the University for two years (from January 11, 2021);
 - (c) a notation of the sanction on the Student's academic record for three years (from January 11, 2021); and
 - (d) a report of the decision and sanctions to be provided to the Provost for publication, with the name of the Student withheld.
4. The Panel's Order dated January 11, 2021 (the "Order"), with written reasons to follow, setting out the finding and penalty, was emailed to the Student on or after January 12, 2021.
5. On January 27, 2021, the Student delivered his Notice of Appeal (the "NOA").

6. The Panel's Reasons for Decision dated March 19, 2021 ("Reasons") were released on or shortly after that date.
7. The hearing date for the Student's Appeal was, thereafter, set for the hearing date of July 21, 2021.

THE STUDENT'S APPEAL

8. The Student delivered an NOA dated January 27, 2021 (following receipt of the Order) within the requisite time. The Student delivered Written Submissions for Appeal dated April 23, 2021 ("Written Submissions") (following receipt of the Reasons).
9. The Student's NOA and Written Submissions were brief¹ yet consistent with regard to the following submissions on appeal:
 - (a) That it was improper to proceed with the original hearing in the Student's absence;
 - (b) That the University is required to establish that the Student received notice of the hearing "beyond a reasonable doubt";
 - (c) That the sanction imposed on the Student, if the finding of guilt is upheld, is unreasonable; and
 - (d) That the appropriate remedy on appeal is to set aside the Panel's Order and order a new hearing.
10. For the reasons below, we dismiss the Student's appeal as to conviction and penalty and confirm that the Order for suspension commence on January 11, 2021 as the Student indicated that he withdrew from his courses in the Winter 2021 (January – April 2021) term and has not taken courses since that time.

¹ The Student advised that he had spoken about his appeal with Downtown Legal Services.

RELEVANT FACTS

11. The Student was enrolled in the Course, a third-year course, in the 2018 – 2019 academic year. Professor Sara Hughes² was an Assistant Professor at the time at the University and taught the Student in the Course.
12. The Student, as were all students in the Course, referred to the syllabus and other resources relating to academic honesty and strategies to avoid plagiarism.
13. The assignment in question was a research paper worth 25% of the final grade (the "Essay"). The Student submitted his Essay on March 21, 2019 through Turnitin.
14. The Essay gave rise to Turnitin results which raised some concern. Professor Hughes conducted a review of the Essay and concluded that the Student had "included verbatim and nearly verbatim text in his [Essay] without appropriate attribution."³
15. Professor Hughes met with the Student on April 1, 2019 about her concerns about the Essay and, following such meeting, "forwarded the case to the Chair of the Department of Political Science for further action."⁴
16. The matter was referred to the Tribunal and Charges dated October 22, 2020 ("Charges") were issued by the University against the Student.
17. The Charges were sent **by email** to the Student to his *utoronto* address ("ROSI email"), as set out in his University of Toronto Repository of Student Information ("ROSI").
18. On November 19, 2020, the Office of Appeals, Discipline and Faculty Grievances ("ADFG") **emailed** a Direction to Assistant Discipline Counsel and the Student advising that the Tribunal Chair proposed to hold the hearing electronically on January 11, 2021 at

² Professor Hughes' Affidavit of December 23, 2020 ("Professor Hughes Affidavit") was evidence before the Panel.

³ Paragraph 13 of Professor Hughes' Affidavit

⁴ Paragraph 14 of Professor Hughes' Affidavit

1:45 p.m and giving the Student the opportunity to comment on or before November 26, 2020. There was no response from the Student.

19. Accordingly, on November 26, 2020, the Tribunal Chair confirmed that the hearing was proceeding on the afore-mentioned date and setting out a deadline of January 4, 2021 for delivery of the University's materials and this was **emailed** to Student.
20. On December 7, 2020, the ADFG **emailed** the formal Notice of Electronic Hearing for January 11, 2021 at 1:45 pm to the Student.
21. Service by email to the Student's ROSI email of the foregoing Directions and Notices were confirmed at the hearing by way of filed Affidavits of Service with attached emails showing the Student's ROSI email and his ROSI record setting out his ROSI email.
22. In addition, the Affidavit of Andrew Wagg of December 4, 2020 was before the Tribunal. Andrew Wagg is an Incident Report Architect at Information Security, Information Technology Services at the University of Toronto. Mr. Wagg affirmed that the ROSI email account was accessed as recently as December 2, 2020.

LEGAL ANALYSIS – GROUNDS OF APPEAL

ISSUE: That it was improper to proceed with the original hearing in the Student's absence

SUB-ISSUE: That the University is required to establish that the Student received notice of the hearing "beyond a reasonable doubt"

23. The Student did not appear at the January 11th hearing and the Panel considered the following in determining that the Student had reasonable notice of the Charges and Hearing particulars:
 - (a) Rule 9(c) of the Tribunal's *Rules of Practice and Procedure* permits service of any document by way of email addressed to the student's ROSI email;
 - (b) The University's *Policy on Official Correspondence with Students* provides that students are responsible for maintaining a current email account on

ROSI and that students are expected to monitor and retrieve their emails on a "frequent and consistent basis"⁵; and

(c) The Affidavits of Service, coupled with Mr. Wagg's Affidavit, provided evidence of service by email to the Student's ROSI email.

24. We do not find that the Panel made any error in concluding that the University had discharged its onus to demonstrate that the Student had reasonable notice of the Hearing and that the Panel could, therefore, proceed in the Student's absence.
25. We would go further and note that the Student was enrolled in courses at the University in the Fall 2020 Term and into the Winter 2021 Term, when the various communications from the ADFG Office were being emailed to him.
26. The Student does not indicate in his unsworn NOA or Written Submissions that he did not open the emails in question nor that he was not aware of the actual Hearing date. In his Written Submissions, the Student admits that he "should have checked my University of Toronto email more frequently..." and then claims, nevertheless, that the onus is on the University to prove beyond a reasonable doubt that "I accessed or read any of the emails that were sent to my UofT email account regarding the hearing".
27. We reject the Student's argument on appeal that the University had an onus to demonstrate that the Student had actual notice of the emails sent to him. As the Panel correctly noted, the onus is on the University to demonstrate that the Student had reasonable notice on a civil standard of proof, being on a balance of probabilities.
28. It is telling that the Student opened his January 11, 2021 email with the Tribunal's Order on guilt and penalty on or about January 11, 2021 **and** was able to file his Appeal well within the deadline on January 27, 2021.

⁵ University of Toronto *Policy on Official Correspondence with Students*, September 1, 2006

29. During the appeal hearing, the Student initially indicated that he did not see any of the University's appeal material (i.e., Appeal Book, Factum, Book of Authorities also sent by email to the Student) delivered in advance of the appeal hearing. Later during the hearing, it became evident that the Student must have reviewed the University's fresh evidence (being a more recent Affidavit of Mr. Wagg) which had also been emailed to him within the same period. In particular, the Student referred to seeing a list of dates in the material, which listing was only found in the more recent affidavit.
30. These latter two observations cause us to question whether the Student is perhaps being less than forthright about his selective acknowledgment of emails from the University to date.
31. In any event, the Student provided no evidence, by way of sworn Affidavit, or otherwise that refuted the evidence before us, on appeal, that related to the notice issue or otherwise.
32. The University sought to introduce fresh evidence in the form of an Affidavit of Mr. Wagg detailing the logins into the Student's ROSI email account, though did not actively pursue this relief. We would not have allowed the fresh evidence largely because the Student introduced no new evidence which might have warranted such fresh evidence in response. In other words, we did not require fresh evidence to arrive at our conclusions about reasonable notice as the record below suffices.
33. Once satisfied that reasonable notice has been given to the Student, the Panel had jurisdiction to proceed in the absence of the Student. We find no error with that finding.
34. Although the Student refers to "unfairness" because he was not present at the hearing, this is not the test for procedural fairness. The fairness standard relates to having reasonable notice of the adjudication and, thereby, having the opportunity to attend and be heard.

ISSUE: That the sanction imposed on the Student, if the finding of guilt is upheld, is unreasonable

35. We have reviewed the Reasons regarding sanction and the authorities provided to the Panel. We find that the sanction ordered was appropriately consistent with penalties

imposed in similar cases, even in the case of first offences. Consistency and predictability are valid goals in encouraging general deterrence.

36. The Student was a third-year student at the time of the offence and can be presumed to have been well aware of the nature and components of plagiarism.
37. Although we are not prohibited from permitting an appellant student from seeking to introduce fresh evidence with regard to sanction, we do not feel this to be a situation of "special circumstances" to grant such opportunity to adduce fresh evidence where the Student had reasonable notice of the hearing and failed to attend.⁶
38. The Student advised that he had withdrawn from his courses in the Winter 2021 Term upon receiving the Order even though the filing of his appeal stayed the operation of the Order pending this decision.
39. As the Student has been effectively acting as if suspended from the University since the January 11, 2021 Order, we feel it appropriate to affirm the Order, including the commencement date of the suspension from January 11, 2021. The University requested that the two-year suspension be reinstated from the date of our decision. We feel that this would unduly extend the Panel's penalty given that the Student withdrew from his courses upon notice of the Order.

ISSUE: That the appropriate remedy on appeal is to set aside the Panel's Order and order a new hearing

40. Given our findings above, we dismiss the Student's request for a new hearing.

CONCLUSION

41. For the foregoing reasons, the appeal is dismissed and the Order of January 11, 2021 is affirmed in its entirety.

⁶ *University of Toronto v. M.M.* (Case 543, April 14, 2011(Appeal)) at Paragraphs 61-64.

Dated at Toronto, this 18th day of August, 2021.

A handwritten signature in blue ink, appearing to read 'R. M. Tsao', is written over a faint, light-colored rectangular stamp or watermark.

Roslyn M. Tsao

On behalf of the Discipline Appeals Board Panel