

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

IN THE MATTER OF charges of academic dishonesty made on September 20, 2021

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*

BETWEEN:

UNIVERSITY OF TORONTO

-AND-

G [REDACTED] L [REDACTED]

REASONS FOR DECISION ON MOTION

Date: March 14, 2022, via Zoom and written submissions in May 2022

Chair:

Ms. Lisa Brownstone, Associate Chair

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP (as he then was*)

Hearing Secretary:

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

Not In Attendance:

Ms. G [REDACTED] L [REDACTED]

*The Honourable Justice Robert Centa was appointed as a Judge of the Superior Court of Justice of Ontario.

A. Introduction

- [1] The Provost asks that Ms. G [REDACTED] L [REDACTED]'s (the "Student") appeal be dismissed summarily and without a formal hearing because it is "frivolous, vexatious or without foundation" under section E.7(a) of the *Code of Behaviour on Academic Matters*.
- [2] For the reasons that follow, I conclude that I have jurisdiction to dismiss the appeal, and to do so following a written hearing. I further conclude that the appeal is frivolous, vexatious and without foundation and should be dismissed.

B. Background

- [3] The Student was enrolled in a calculus course in the Department of Mathematics, MAT135 (the "Course"), in the summer of 2020. The Course requirements included an assignment that was required to be completed independently, without external assistance, between June 1 and June 8, 2020.
- [4] The Student submitted an answer on one of the assignment questions that was virtually identical to an answer submitted by another student (Mr. C.). An investigation revealed that the answer provided by both students was very similar to an answer posted on a website called "Chegg.com", a website that, for a fee, permits students to provide questions that will be answered by an "expert".
- [5] As the investigation proceeded, Mr. C. acknowledged that he had worked with another student in securing the answer from Chegg.com but maintained that he did not remember the identify of that student.
- [6] The Student Academic Integrity ("SAI") office attempted to engage with the Student about this matter. Although she was provided three opportunities to meet with the Dean's designate to discuss the allegations, she did not attend any of those meetings, and engaged in very little communication with the SAI. Allegations were subsequently referred to the Tribunal for hearing.
- [7] The Tribunal convened on December 9, 2021. Although it found that the Student had received proper notice of the proceedings, it granted a short adjournment and directed Assistant Discipline Counsel to advise the Student that although an adjournment was granted, it would likely be the final chance to respond to the allegations, and if the Student failed to attend the next hearing without reasonable excuse, the matter would likely proceed. In addition, Assistant Discipline Counsel was directed to provide the Student with contact information for potential pro bono counsel, to ask the Student if there were any dates in 2022 when she was not available, and to advise the Student that, should she fail to provide a date, a hearing date would be selected without regard to her schedule.
- [8] After receiving the above information, the Student did engage briefly with Assistant Discipline Counsel. Soon, however, she failed to join a Zoom call initiated at a time she had said she was free, and then failed to respond to other messages.

- [9] Therefore, on January 4, 2022, a Notice of Electronic Hearing was issued to the Student for a hearing that would occur on January 11, 2022. The Tribunal reconvened on that date, the Student did not attend, and the hearing proceeded in her absence.
- [10] The Tribunal found that the Student was guilty of unauthorized assistance and plagiarism and imposed a sanction of a final grade of zero in the Course, a suspension from the University from the date of the Order until December 31, 2023, and a notation of the sanction on the Student's academic record and transcript for three (3) years from the date of the Order.
- [11] The next day, the Appeals, Discipline and Faculty Grievances Office (the "ADFG") sent the Student a hearing outcome letter and the Tribunal's Order. Several days later, the Student emailed Assistant Discipline Counsel about her case and on February 3, 2022, she filed a Notice of Appeal. She indicated that the grounds for her appeal were that she was not in attendance and was not represented at the hearing.
- [12] On February 22, 2022, the Tribunal released its Reasons for Decision. It found that the Student was fully aware of the timing, subject-matter and evidence to be tendered against her in the proceedings, and was also fully aware of the consequences of non-attendance at the hearing. It provided reasons for its finding that she had either copied her answer to question 5 of the assignment directly from Chegg.com or had copied her answer from Mr. C.'s answer. In either event, the Student had engaged in academic misconduct.
- [13] That same day, Assistant Discipline Counsel requested a timetable for the exchange of materials on her appeal. Once again, a period of non-responsiveness from the Student ensued.
- [14] I was assigned by the Senior Chair to hear this matter. I issued two Directions to ensure the appeal proceeded in a timely fashion: the first Direction on March 16, 2022, required the Student to provide materials in support of her appeal on or before April 22, 2022, failing which the Provost was permitted to serve and file written materials in support of a motion to dismiss her appeal on or before May 6, 2022. The Direction specifically also provided that should either the Student or the Provost wish to alter any of the dates in advance of any of the dates, I would be available for a further Proceedings Management Conference.
- [15] The Student made two attempts to email the ADFG Office: first on April 3, 2022, asking about the March 14, 2022 case conference; and then on April 21, 2022, asking what she needed to provide by the due date (the next day). The ADFG duly and promptly responded.
- [16] On the due date (April 22), the Student sent a brief email setting out her explanation of what had happened with respect to the underlying misconduct, which I shall refer to in more detail later in these reasons ("the explanatory email").

- [17] On April 26, 2022, the ADFG Office asked the parties to provide their availability for another Proceedings Management Conference. Again, the Student did not respond. I then issued a second Direction on April 29, 2022, indicating that since the Student had not submitted complete appeal materials, had not requested a change to the timetable outlined in the March 16, 2022 Direction, and had not responded to the ADFG's attempt to set another Proceedings Management Conference, the Provost could move for dismissal of the appeal. The Provost did so move, in accordance with the March 16, 2022 Direction, for an "in writing" Dismissal Order. The Student, of course, was given an opportunity to respond to that in writing motion.
- [18] No response was received from the Student. During the summer, while the Motion for Dismissal was under reserve, the Student sent a few emails to counsel and the ADFG. Again, those emails were unresponsive to the issues at hand. Other than the explanatory email referred to above, the Student's emails were unresponsive to the requirements and issues and form no part of this decision.

C. The Issues

- [19] The first issue on this motion is whether the Tribunal, as a single member, has jurisdiction to entertain the Provost's Motion to Dismiss. If the Tribunal has jurisdiction, the second issue is whether the Student's appeal should be dismissed on grounds that, as asserted, it is frivolous, vexatious or without foundation.
- [20] In terms of jurisdiction, I have the benefit of an unusually similar case recently decided by Associate Chair Mitchell (*University of Toronto and R.S. (Case No. 1100, February 8, 2022) (Appeal Motion) ("R.S.")*).
- [21] In *R.S.*, the Discipline Appeals Board of the Tribunal considered the two issues this motion raises at issue in this motion. The first issue is whether a single member of the Board has jurisdiction to hear and decide the motion; the second, if jurisdiction is found, was the student's appeal frivolous, vexatious or without foundation?

I) The Single Member's Jurisdiction

- [22] I agree with the conclusion in *R.S.* that the Tribunal has jurisdiction to hear this appeal, sitting as a single member. Specifically, the *Statutory Powers Procedure Act*, R.S.O. 1992, c. S.22 ("SPPA") applies to appeals to the Discipline Appeals Board from decisions of the Tribunal's Trial Division, and section 4.2.1(1) of the SPPA, permits a single member of the Discipline Appeals Board to decide a motion.
- [23] Historically, university discipline tribunals were arguably not the sort of tribunals to which the SPPA would directly apply; the relationship between student and University as it relates to academic matters has been characterized as contractual, as opposed to statutory. However, the courts have long distinguished between procedural and substantive matters in this regard and have been willing to intervene on procedural matters. (See, for example, *Re Polten and Governing*

Council of University of Toronto (1976), 8 O.R. (2d) 749 (Divisional Court); 1975 CanLII 709). In the case before me, the specific provisions adopted by the University lead me to conclude that the SPPA applies.

- [24] The University has codified the relationship between the student and the University, when it comes to academic matters, in the *Code of Behaviour on Academic Matters* issued by the University's Governing Council (the "Code"), section C.II(a).7 of the Code provides:

The procedures of the Tribunal shall conform to the requirements of the Statutory Powers Procedure Act... as amended from time to time.

- [25] Section C.II.(a). 11 of the Code provides: The Divisions of the Tribunal are:

- (a) Trial; and
- (b) Appeal.

- [26] Thus, the University itself has determined that SPPA procedures are to apply to these hearings and appeals. I do not view the fact that the University chose to use the language "conform" rather than "apply" to be a material distinction – the University has expressly elected to import the SPPA into its Code. I am confident that the language distinction between "conform" and "apply" would not aid the University should it attempt **not** to comply with the SPPA. Thus although the Provost, in written argument, relied on *R.S.* for the proposition that the Tribunal "behaves as though the SPPA applies", I read that decision, and section C.II.(a).7, as going farther than that - the University has chosen to have the procedures established in the SPPA apply and has so advised the student by the inclusion of section C.II.(a)7.

- [27] Section 4.2.1(1) of the SPPA provides:

The chair of a tribunal may decide that a proceeding be heard by a panel of one person and assign the person to hear the proceeding unless there is a statutory requirement in another Act that the proceeding be heard by a panel of more than one person.

- [28] I agree with the observation in *R.S.* (para. 51) that there is no statutory provision to the contrary. Given that there is no conflicting statutory requirement in any Act, I conclude that section 4.2.1(1) of the SPPA applies and I may hear this motion.

II) Is the Appeal frivolous, vexatious and without foundation?

- [29] Section E.7(a) of the Code gives the Discipline Appeals Board the power "to dismiss an appeal summarily and without formal hearing if it determines that the appeal is frivolous, vexatious or without foundation." I agree with the reasons and conclusions in *R.S.* that a written hearing complies with this provision – it is a way

(although not the only way) in which to determine a matter summarily and without formal hearing.

- [30] An appeal can be classified as frivolous or vexatious if the student takes no steps to move the appeal forward and fails to engage with the process or comply with Directions. While a motivation to appeal may have existed initially, and may still exist in some intangible sense, the failure to engage in the process or to be responsive to the Tribunal's, ADFG's and counsel's attempts to move the matter forward can render the appeal frivolous or vexatious.
- [31] Whether the appeal is without foundation is concerned with the merits of the appeal. While it can be difficult to opine on the merits of an appeal in the absence of the full participation of the student, there will be circumstances, such as the one that exists here, where such a determination can be made.
- [32] In this case, I agree that the appeal is both vexatious and without foundation.
- [33] The Student has engaged in a pattern of non-responsiveness and failure to engage with the process, including the following:
- (a) the Student was afforded three opportunities to meet with the SAI office and did not do so;
 - (b) She had ample notice of the hearing and repeatedly chose not to engage when required to do so;
 - (c) The Tribunal provided the Student with one adjournment of its own accord, when she did not appear on the first hearing date;
 - (d) The Tribunal that heard the matter made careful and reasonable conclusions that adequate notice had been provided to the Student;
 - (e) The Student has not offered any explanation nor has ever suggested that she did not receive notice of the hearing dates. Choosing not to be at the hearing does not create a ground of appeal when proper notice has been given, as was found to have been done here.
 - (f) The Student has taken no steps to advance her appeal. She did not participate in the Proceedings Management Conference, did not seek a change to the schedule even though this was specifically offered to her, nor does she appear to have made any meaningful contact with pro bono counsel or Downtown Legal Services as suggested.
- [34] While her subjective desire to appeal may exist, that is insufficient to overcome the frivolous and vexatious nature of her conduct in failing to pursue the appeal. Failure to take any steps to advance one's appeal does, in my view, render the appeal frivolous and vexatious.

- [35] Further, I find that the appeal is without foundation. As the Provost notes in its submissions, even taking the matter at its highest and assuming the Student could convince an appellate panel that this is an exceptional circumstance warranting the introduction of fresh evidence on her appeal (and there is certainly no indication whatsoever that this is so), the Student's own statements to the ADFG sent in the explanatory email referred to above indicated that she improperly used external aids in the assignment. Her statement to the ADFG, made in order to advance her appeal, was that she did not use Chegg.com but rather received assistance from her brother. The instructors in the course had specifically advised the students that "assignments must be done independently"; and that "[t]he solutions you submit for your assignments must be the result of your work only and no one else's." Therefore, even were she permitted to put forward her version of her events, she has acknowledged that she violated the assignment's requirements to do the work independently. I agree with the Tribunal's conclusion that the misconduct was proven without the Provost having to definitively prove the method of misconduct (whether the Student copied the answer directly from Chegg.com or from Mr. C. - or even from her brother) as long as the elements of the offence were made out, which they were here. (See also *University of Toronto and Ms. B.* – Case No. 2003/04-1, April 7, 2004).
- [36] Further, Mr. C.'s evidence regarding Chegg.com, that he had collaborated with another student whose identity he could not recall, is very strong and was accepted by the Tribunal. When combined with the evidence that Mr. C.'s answer and the Student's answer were virtually identical, the appeal demonstrates itself to be without foundation.
- [37] Therefore, I grant the Provost's motion and dismiss the Student's appeal summarily and without formal hearing as frivolous, vexatious or without foundation in accordance with section E.7(a) of the Code.

Dated on this 29th day of August, 2022

Original signed by:

Ms. Lisa Brownstone
Associate Chair