



University
of Windsor

**DECISION OF THE ADJUDICATOR
STUDENT NON-ACADEMIC MISCONDUCT**

BETWEEN

**[REDACTED]
APPELLANT**

AND

**RYAN FLANNAGAN
ASSOCIATE VICE-PRESIDENT STUDENT EXPERIENCE
RESPONDENT**

NOVEMBER 2018

Adjudicator: Dr. Cheryl Collier, Associate Vice-President Academic (Acting)

Appellant: self-represented

Respondent: self-represented

DECISION

Facts:

[REDACTED] requested an appeal of a decision by the Associate Vice-President, Student Experience made on August 30, 2018 and the decision's finding of Sexual Assault against [REDACTED] on the morning of [REDACTED]. The original complaint was brought forward by [REDACTED], a student at the university and a friend of [REDACTED] under the *Student Non-Academic Misconduct Policy* and in particular, Section 2.1 (b) of the Sexual Misconduct Policy. In his appeal filing dated September 17, 2018, [REDACTED] requested the appeal on all three grounds under the formal *Procedures for Addressing Student Non-Academic Misconduct, Form for Student, Request for Appeal of Decision of Associate Vice-President, Student Experience*. That:

- There was serious procedural error in the processing of the complaint, which was prejudicial to the appellant
- There is new evidence, not available at the time of the earlier decision, which casts doubt on the correctness of the decision
- The Associate Vice-President, Student Experience's decision is clearly unreasonable or unsupportable on the evidence.

The Adjudicator weighed the written request against the three potential grounds for appeal and decided to consider the appeal based on ground 1 (on potential prejudicial procedural error) and on ground 3 (on the potentiality of

unreasonableness or unsupportability of the original decision), but rejected the appeal request on ground 2 (the potentiality of new evidence impacting the original decision) as this ground was not substantiated in the written request for appeal. In that written request, [REDACTED] does not cite any potential new evidence or address the issue of new evidence at all. He only states, "I ask the university to further investigate the complainant and witnesses." As such, the appeal request was granted solely on grounds 1 and 3 on September 26, 2018 and proceeded by written submission.

In communication from the Adjudicator to the appellant on September 26, 2018, a request was made "for additional information in support of his original appeal by written submission." No additional written submissions were received from the appellant at any time during this appeal process despite a reminder email being sent on October 1, 2018 to the appellant requesting "additional information or new evidence" by October 5, 2018.

In addition to the written request for appeal from the appellant, the Adjudicator reviewed the full case file on this incident including the original decision from the Associate Vice-President, Student Experience dated August 30, 2018; the Investigative Report: Summary of Findings from the Investigator and a chronology of the case dated July 24, 2018; the Procedures for Addressing Student Non-Academic Misconduct Form for Member of the University Community Report of Non-Academic Misconduct for Submission to the Associate, Vice-President, Student Experience dated May 29, 2018; the Campus Police Incident Report created on [REDACTED] and printed June 11, 2018; the Written Statement describing the incident from the appellant dated July 3, 2018; additional email and text message evidence as well as Windsor Police Services documents surrounding the separate criminal case; as well as written appeal response submissions from the Associate Vice-President, Student Experience and from the alleged victim in the case both dated September 17, 2018.

Submissions:

Appeal based on Ground 1 that "There was serious procedural error in the processing of the complaint, which was prejudicial to the appellant."

In his written appeal submission, [REDACTED] states that there was "severe bias in the investigation by members of the student experience office and the universities [sic] policies to handle non-academic misconduct, specifically sexual assault". Yet the appeal submission does not detail what is meant by "severe bias", nor does it identify any specific examples of said "severe bias" save for the following statement – "The university must investigate these biases such as assisting those accused, specifically having legal counsel on site and/or receiving information on how to obtain legal counsel before meeting with investigators due to the gravity of the issues."

In his submission to the Adjudicator, the Associate Vice-President, Student Experience identifies four occasions where the Appellant was advised of, and in some cases encouraged to obtain, advice and/or support from legal counsel and/or from "someone you trust", including on June 27, June 29, July 3, and July 9, 2018. In the case file, the Adjudicator found evidence of all of these four occasions in support of the AVP, Student Experience's submission. The Adjudicator also notes that on June 29th, the Investigator provided the Appellant with a printed copy of contact information for Campus Legal Aid (CLA) services. At this meeting, the Appellant informed the Investigator that legal counsel was not relevant for a non-criminal case. Additionally, on July 3, the Appellant states that he did try to contact CLA "a couple of times" by phone, but "no one answered the phone".

In his written appeal submission, [REDACTED] additionally states that, "[a] deadline date must be given to the accused to allow the accused time to obtain assistance before meeting with investigators." Section 5.1.1 of the *Procedures in the Cases of Non-Academic Misconduct* which are included as Appendix A in the university's Sexual Misconduct Policy, states:

"The Student shall, in advance of the meeting, be informed of the purpose of the meeting, be provided with a copy of the complaint, and be informed that s/he has the right to have an Advisor present at this meeting."

The Appellant was informed of his "right to an Advisor" on June 27 by email from the Investigator prior to the in-person meeting with the Investigator on June 29, 2018 as per Section 5.1.1.

Additionally, the Adjudicator reviewed the procedures taken during the investigation against the entirety of the *Procedures in the Cases of Non-Academic Misconduct* and concluded that all procedures were followed.

Appeal based on Ground 3 that "the Associate Vice-President, Student Experience's decision is clearly unreasonable or unsupportable on the evidence."

In regard to "unsupportability", [REDACTED] writes in his written appeal submission that, "the written decision does not detail the evidence used to support specific findings and they are clearly unreasonable." The written appeal submission from [REDACTED] does not detail which specific findings are lacking the necessary "detail" in "evidence".

In the Associate Vice-President, Student Experience's Written Decision Letter dated August 30, 2018, the AVP, Student Experience clearly details evidence to support his decision on page 3 under the heading "Key Factors for Consideration". These include evidence in regard to the credibility of both the complainant in the original case and the respondent.

The Adjudicator further corroborated the evidence in the original case file informing the evidence stated in the Decision Letter and notes the three statements from the two witnesses and the complainant are all remarkably similar and mutually supportive in recounting the events of the morning of [REDACTED]. These are additionally supported by text message and email evidence submissions.

The Appellant was interviewed by the Investigator on June 29, 2018 and provided a competing narrative of the events of the morning of [REDACTED] which the Investigator found to be "non-linear" and so she requested that [REDACTED] write up a written statement to clarify the verbal interview statement. Instead of clarification, deeper discrepancies between the two statements were revealed. The Investigator notes after receiving the written response on July 3, 2018, that while some discrepancies between written and verbal statements "could be seen as understandable since [REDACTED] was able to think through what happened more carefully, and was able to remember the events more clearly. However, some of the discrepancies are extraordinary, and in my opinion, impacts the credibility of the [REDACTED] version of the facts."

These included evidence also present in the Decision Letter dated August 30, 2018 that raises questions regarding [REDACTED] credibility concerning discrepancies and remaining questions regarding whether or not [REDACTED] was intoxicated or sober on [REDACTED]; whether or not a conversation took place in his bedroom; whether or not there was consent to any sexual activity.

Additionally, the Adjudicator found that [REDACTED] written statement explaining why he needed to remove a blanket from the couch while the alleged victim was sleeping on it, was illogical. This interaction was key to precipitating the movement of the alleged victim to [REDACTED] bedroom where the alleged assault took place.

[REDACTED] written narratives regarding discussion of the temperature of the room, the location and impact of the air-conditioning, the need and then concern regarding moving the alleged victim from sleep, as well as the events surrounding the conversation in the roommate's room down the hall immediately after the alleged assault occurred, were all non-linear, illogical, and lacked certain clarity not provided in either the written or verbal statements. As

per the Decision Letter, this evidence raised serious questions as to the credibility of [REDACTED], particularly compared to the corroborated credibility of the three witness statements mentioned previously.

[REDACTED] written appeal submission also mentions "recent trends in the media and movements involving sexual assault have a great impact on how decisions regarding sexual assaults are made." This statement is not supported with evidence or fact nor is any attempt made to link "recent trends" to the facts of the case being adjudicated.

In regard to the "unreasonableness" of the decision in this case, [REDACTED] in his written appeal submission states that "the decision to suspend me and not allow me to claim the diploma until January 2, 2020 and withhold the degree until February 28, 2020, will have a serious impact on my ability to financially support my family and myself." This statement is not supported with evidence or fact.

The Adjudicator also notes that the final decision in this case to exclude the Appellant from campus until August 31, 2021 and to suspend him until January 2, 2020, including a stipulation that his degree not be awarded until February 28, 2020, is different (and arguably less stringent) from the Investigator's suggested sanction of exclusion and suspension both for three years (to August 31, 2021).

Adjudicator's Decision:

On the appeal request per Ground 1, that procedural error was a factor in this case, the Adjudicator finds no merit of this in the appeal request or in the case file. No evidence of bias was provided by the Appellant in the written request for appeal nor found by the Adjudicator inside of the case file. Moreover, the Adjudicator finds that ample instruction, advisement, and encouragement for the Appellant to consult with an Advisor (legal aid or otherwise) was provided prior to the initial meeting with the Investigator as per Section 5.1.1 of the *Procedures in the Cases of Non-Academic Misconduct*. The "deadline" is stated in that policy - that the advisement should be "in advance of the meeting". [REDACTED] noted his refusal to seek this advisement in the meeting of June 29 and thus acknowledges his opportunity to do so (per procedure being followed) along with his decision to forgo this option. He also acknowledges a reversal of a consideration of seeking legal advisement in his meeting July 3, yet does not indicate concern for not obtaining this advisement at that time nor does he make any request for delay in the investigation per obtaining this advisement. This is reaffirmed in his failure to raise the advisement issue in the final contact with the investigator on July 9, even though the Investigator specifically asks in that email contact "if you [REDACTED] want to have an additional meeting in the presence of your legal counsel. Please let me know by July 16, 2018."

On the appeal request per Ground 3, that the decision is unreasonable or unsupportable on the evidence. The Adjudicator finds no merit in the unsupportability of the evidence either in the written Decision Letter from the AVP, Student Experience to the Appellant or in the facts of the case as documented in the case file itself. The decision in a case of Sexual Misconduct is based on the balance of probabilities, natural justice, and judgements of credibility of involved parties based on submitted evidence. In this case, statements, both verbal and written, by the Appellant were found to be lacking in credibility based on the evidence. The Adjudicator concurs with this finding. Conversely, the statements by the three witnesses in this case were found to be highly credible based on the evidence. Thus, the decision of Sexual Assault is found to be fully supported by the evidence in this case.

In regard to the reasonableness of the sanction applied in this case, the Adjudicator finds no evidence of unreasonableness. The final decision to delay the graduation of the Appellant and to exclude him from campus is one of the more stringent sanctions available under the Sexual Misconduct Policy. However, Sexual Assault is a particularly egregious form of non-academic misconduct as stated in the Sexual Misconduct Policy, as it "violates our institutional values and will not be tolerated." Thus, the Adjudicator concludes that the sanction is completely appropriate in respect to the severity of the misconduct in this case.

In summary, the Adjudicator rejects the appeal brought forward by the Appellant in this case.

Signed: this 23rd day of November 2018

A handwritten signature in black ink, appearing to be 'CC' with a flourish.

Dr. Cheryl Collier
Adjudicator,
Associate Vice-President Academic (Acting)
Associate Professor of Political Science