

**UNIVERSITY OF TORONTO  
UNIVERSITY TRIBUNAL  
TRIAL DIVISION**

**IN THE MATTER OF** charges of academic dishonesty filed on August 4, 2010;

**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 amended S.O. 1978, c. 88

**BETWEEN:**

**THE UNIVERSITY OF TORONTO**

**- AND -**

**MR. S     B     P**

**REASONS FOR DECISION**

**Hearing Date:** September 14, 2010

**Members of the Panel:**

Mr. Andrew Pinto, Barrister and Solicitor, Chair

Dr. Roslyn Thomas-Long, Transitional Year Programme, Faculty Panel Member

Ms. Amy Gullage, Student Panel Member

**Appearances:**

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Barristers

Ms. Camille Labchuk, Law Student, Downtown Legal Services

Professor John Browne, Dean's Designate, Office of Student Academic Integrity

Mr. S     B     P     ; the Student

**In Attendance:**

Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

### **Preliminary**

- [1] The Trial Division of the University Tribunal was convened on September 14, 2010 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "Code") laid against the Student by letter dated August 4, 2010 from Professor Edith Hillan, Vice-Provost, Faculty and Academic Life.
- [2] The Student and the University entered into an Agreed Statement of Facts ("ASF"), a copy of which is attached to these Reasons as Appendix "A".

### **Hearing on the Facts**

- [3] The charges against the Student were as follows:
  - 1. On or about March 3, 2010, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in an essay you submitted for academic credit in EAS 333H1 – Modernism and Colonial Korea (the "Course"), contrary to section B.I.1(d) of the Code.
  - 2. On or about March 3, 2010, you knowingly submitted academic work containing a reference to a source which had been concocted, contrary to section B.I.1(f).
  - 3. On or about March 3, 2010, you knowingly obtained unauthorized assistance in connection with an essay you submitted for academic credit in the Course, contrary to section B.I.1(b) of the Code.
  - 4. In the alternative, on or about March 3, 2010, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the Code in order to obtain academic credit or other academic advantage of any kind in connection an essay you submitted for academic credit in the Course, contrary to section B.I.3(b) of the Code.

### ***Particulars***

- 5. At all material times, you were a registered student at the University of Toronto. In Winter 2010, you enrolled in the Course, which was taught by J. P.
- 6. Students in the Course were required to submit an essay on March 3, 2010, which was worth 30% of the final grade in the Course ("Assignment"). On or about March 3, you submitted the Essay titled

"The City in 1930's Korean Fiction: Disconnected Past, Uncertain Future" ("Essay") in completion of the Assignment, and to obtain academic credit in the Course.

7. You did not write the Essay yourself. You knowingly represented the work of another as your own work.
  8. You knowingly included in the Essay ideas and expressions that were not your own, but were the ideas and expressions of others, which you did not acknowledge in the Essay.
  9. You knowingly received unauthorized assistance from persons unknown when the Essay was written.
  10. The Essay contained text that was cited to references that did not support or even address the text included in the Essay.
  11. For the purposes of obtaining academic credit and/or other academic advantage, you knowingly committed plagiarism in the Essay.
- [4] Discipline counsel provided an overview of the ASF. The Student's representative confirmed the Student's agreement with and understanding of the ASF.
- [5] The Student entered a guilty plea to charges 1, 3 and 4. The University withdrew charge 2 and further agreed that if the Tribunal convicted the Student of either charge 1 or 3, the University would withdraw charge 4

#### **Decision of the Tribunal on Charges**

- [6] Following deliberation, based on the facts set out in the ASF and the documents contained in a Joint Book of Documents ("JBD"), the Tribunal accepted the Student's guilty plea on charges 1 and 3. Consequently, the University withdrew charges 2 and 4.
- [7] The matter then continued with a hearing into the appropriate sanction. The University advised the Tribunal that it was seeking the ultimate penalty, recommendation for expulsion from the University, pursuant to section C.II.(b)(1)(i) of the *Code*. The University called no evidence but relied upon the ASF.
- [8] The Student's representative, Ms. Labchuk, submitted that there were mitigating factors and that the appropriate sanction was suspension from the University for 3 to 4 years and recording of the sanction on the

Student's academic record for a 3 to 4 year period from the date of suspension.

- [9] The only witness was the Student himself.
- [10] In addition to the JBD, the parties presented the Tribunal with a Joint Book of Policies and Tribunal Decisions. Discipline counsel also provided a loose-leaf document entitled "Provost's summary of cases contained in Joint Book of Policies and Tribunal Decisions". The document contained a chart summarizing 12 Tribunal decisions in terms of details about the student's conviction, prior disciplinary record, participation in the hearing process, presentation of an Agreed Statement of Facts (ASF) and Joint Submission on Penalty (JSP), and ultimate sanction. The Student's representative also provided a loose-leaf document summarizing the details concerning 7 of the Tribunal decision referred to in the jointly submitted brief.

#### **The Student's Evidence on Sanction**

- [11] The Student testified in respect of the penalty phase. He came to Canada from Korea in 2002 and was 24 years old at the time of the hearing. His father and mother were overseas. His younger brother was in Singapore. By the end of summer 2010, he had earned 18 course credits. Had he successfully completed the courses in which he was already enrolled, including EAS 333H1, the course in which the academic misconduct occurred, he would have been eligible to graduate with a Bachelor of Arts degree.
- [12] The Student indicated that he was President of a University students' association and organized about 20 events in the year of his presidency. He estimated that he devoted two to three days a week to this extra-curricular activity. He also alluded to having to help his brother and that his father's business overseas was in trouble. He admitted that by cheating he "made a bad choice." He didn't seek any student assistance or counseling believing that he could handle the pressure of his studies and extra-curricular commitments on his own.

#### **Cross-Examination of Student by Discipline Counsel**

- [13] Mr. Centa, on behalf of the University, cross-examined the Student. The Student acknowledged that he occupied executive positions prior to becoming President of his particular student organization and that he had a good idea of how much work was involved. He still found the work

considerable when he became President and conceded that he put his duties as President ahead of his academic responsibilities.

- [14] In 2009, the Student was enrolled in 3 full courses, not 5, which would have been a full course load. In August 2007, the Student withdrew late from a course and received a notation on his transcript that "in future, must realistically assess your ability to complete crs & wdr before deadline, if you are experiencing difficulties. Before resuming studies, advised to discuss health with health care professional. Must seek academic counseling with your registr."
- [15] In cross-examination the Student also stated that he suffered from severe depression, which he described as a family problem. He did not elaborate, however, on his alleged health challenges and presented no documentary evidence on this point.
- [16] The Student agreed that his actions constituted an elaborate and intricate attempt to cover up his cheating. He admitted that he was foolish and regretted not being honest.

#### **Submissions Concerning Sanction**

- [17] Discipline counsel and the Student's representative both made reference to several Tribunal decisions found in the Joint Book of Policies and Tribunal Decisions, including the seminal *Mr. C* decision (Trial: 1975/06-04; November 5, 1976, p.13). In that decision, Tribunal member John Sopinka (as he was then) laid down sentencing principles which have often been followed in the jurisprudence of the Tribunal and are referred to below.
- [18] In recommending expulsion, the strictest sanction, Discipline counsel reminded the Tribunal that plagiarism by purchasing and submitting essays constituted one of the most serious offences. The Provost's Guidelines, found at Appendix C to the *Code of Behaviour on Academic Conduct*, suggest that "for submitting purchased work, the sanction recommended shall be expulsion from the University. The minimum sanction shall be suspension from the University for a period of time and zero as the final grade where the offence occurred."
- [19] Discipline counsel noted the aggravating circumstances of the Student's conduct, namely:
  - The commercial aspect of the fraud. The purchase of a customized essay is almost impossible to detect.

- The offence here was not one that could have been committed negligently.
- The Student's misconduct was planned and deliberate, not a spontaneous or impetuous act.
- The Student had many opportunities to reconsider his actions and come clean when confronted by the University. Instead, he repeatedly attempted to mislead the University by submitting fabricated drafts, handwritten notes and other documents which, in counsel's submission, amounted to a concerted campaign of deception.

[20] Discipline counsel submitted that the only mitigating factor was the Student's guilty plea and cooperation with the University via the ASF. Counsel submitted that the Student's claim that he was under significant pressure from his extra-curricular activities had to be weighed against the fact that he had previous experience on the executive of his student club and that, at the time of his misconduct, he was taking only 3 full-time courses, not a full course load. Counsel argued that while students from abroad typically lack family support, all students have recourse to the University's student assistance services and academic petition system. The Student did not choose to access those resources.

[21] Discipline counsel brought to the Tribunal's attention that three other classmates of the Student in EAS 333H1 had also been involved in a discipline proceeding before a different panel of the Tribunal: *CHK* proceeding (Cases 597, 598 & 596; November 10, 2010). That panel convicted all three students of submitting essays purchased from the same facility as the Student in the present case. However, the panel's decision on sanction was not unanimous. The majority issued a 5-year suspension for each student, whereas the Chair issued a dissent recommending expulsion as the appropriate sanction for all three students. At the time of the present hearing, on September 14, 2010, the panel dealing with the three students had only issued its split decision on sanction with reasons to follow. Therefore, neither Mr. Centa nor Ms. Labchuk could comment on that panel's reasons which were subsequently released on November 16, 2010. In any event, we now have the benefit of those Reasons and make reference below to the majority and dissenting reasons.

[22] Discipline Counsel also notified the Tribunal that a different Tribunal, chaired by Mr. Michael Hines, had heard but not yet issued its decision and reasons in the case of another student in EAS33H1 (i.e. different than one of the three in the *CHK* proceeding) who was also charged with an essay purchase offence. However, as no decision or reasons have been released in that case, this Tribunal places no significance on that development.

- [23] In summarizing the present case, Discipline Counsel characterized the case as one involving one of the most serious academic offences, an aftermath of deception and little evidence of mitigating circumstances. In his submission, recommendation for expulsion was the appropriate penalty.
- [24] The Student's representative characterized the Student as a first time offender who had eventually cooperated with the University and pleaded guilty. Recommendation for expulsion was an excessive response in the present case and was inconsistent with the Tribunal's previous rulings. The Code's sanctioning objectives could equally be met via a lengthy suspension of 3 to 4 years.
- [25] The Student's representative acknowledged that the Student continued to mislead the University after the commission of his offence but submitted that the Student was very unlikely to reoffend. The representative candidly admitted that she was not relying on the Student's family being absent as a mitigating factor. The representative reviewed the cases identified in the Joint Book of Policies and Tribunal Decisions and submitted that a recommendation of expulsion occurred where a student with a prior discipline record committed a serious offence.

### **Tribunal's Analysis**

- [26] The panel carefully considered the submissions made by Discipline counsel and the Student's representative. We also considered the classic factors identified in the *Mr. C* decision:
- a) the character of the person charged;
  - b) the likelihood of a repetition of the offence;
  - c) the nature of the offence committed;
  - d) any extenuating circumstances surrounding the commission of the offence;
  - e) the detriment to the University occasioned by the offence; and
  - f) the need to deter others from committing a similar offence.
- [27] Depending on the identification and organization of facts in a given case, they can be discussed in more than one of the above categories. For instance in the present case, the Student's strong involvement in his student association can potentially be discussed as an element of the Student's leadership, as well as an extenuating circumstance given the pressures he allegedly faced balancing his presidential responsibilities and academic demands. We have organized our analysis around the following issues that cut across the facts and factors involved in this case:

1. Lack of prior disciplinary record
2. Student's character
3. Extra-curricular activities
4. Alleged health issue
5. Misconduct during the University's Investigation
6. Likelihood of repetition, nature of offence and detriment to the University
7. Reconciling sanctions in three other decisions

### 1. Lack of Prior Disciplinary History

- [28] We were presented with no evidence that the Student had a prior disciplinary history; therefore, we consider this to be the Student's first academic offence. The Tribunal recognizes that a first-time offender presents a greater prospect for rehabilitation since there is no evidence that attempts at rehabilitation have faltered or failed. Expulsion, on the other hand, offers no hope whatsoever for a Student to return to the University of Toronto environment.
- [29] In our view, none of the 12 cases presented by the parties in the Joint Book of Policies and Tribunals Decisions involved a one time offender being recommended for expulsion.
- [30] A careful reading of the V.L. case (Case 440; April 6, 2006), found at Tab 3 of the Joint Book of Policies and Tribunal Decisions, reveals that, while the student had not previously been disciplined by the Tribunal, she had, in the words of the Tribunal "reoffended in the face of having been 'caught' – or at least potentially 'caught' in her first offence." The facts in that case indicate that on May 3, 2004 the student met with the Associate Dean in connection with the university's concern that that she had purchased an essay. At the time, she did not admit to having purchased an essay for submission as a term paper in an Economics Micro Credit course in December 2003.
- [31] Subsequently, in June 2004, Ms. V.L. purchased 3 more essays for submission as a term paper and for use in a separate term test in another course. Ultimately, the Tribunal recommended expulsion for Ms. V.L. Although she had no prior disciplinary record *per se*, the evidence was that she had purchased 4 essays in total, including 3 essays the very next month after meeting with the Associate Dean about the first essay. Accordingly, the Ms. L decision is more properly viewed as a case involving serial or multiple offences.
- [32] The A.M. case (Case 464; November 6, 2009), found at Tab 6 of the Joint Book, was also identified as a case where a student with no prior

disciplinary record was recommended for expulsion. There the student did not attend the Tribunal hearing. However, she and discipline counsel provided an ASF as well as a Joint Submission on Penalty (JSP) recommending expulsion. Notably, the ASF indicated that the student submitted two purchased essays in October 2005 and March 2006 in a political science course. The panel accepted the JSP and issued very brief reasons.

- [33] In the *R.K.* case (Case 494; July 24, 2007), found at Tab 12 of the Joint Book, expulsion was recommended for a student who falsified a term test and submitted an anonymous letter. The letter, purportedly written by classmates of a different religious faith, absolved the student of responsibility for the falsification. The Tribunal characterized the student's offences as a "clear case of premeditated, calculating, deliberate and intentional acts, designed to obtain an advantage by the most pernicious means – namely the promotion of racial hatred." The Tribunal noted that R.K. had previously been expelled from Princeton University where she had been found to have authored an anonymous note and committed perjury.
- [34] Accordingly, upon closer examination, none of the 12 cases brought to the Tribunal's attention and featured in the parties Joint Book involved a recommendation of expulsion for a one-time offender. We do not suggest that a one-time offence can never result in a recommendation of expulsion; rather, that the nature of the one-time offence and the other circumstances would have to be very grave to warrant a recommendation for expulsion.

## **2. The Student's Character**

- [35] There was very little evidence presented on the Student's character. The Tribunal heard evidence that the Student rose through the ranks of the executive of his university student association to become president. In general, extra-curricular involvement in university and community affairs is to be commended. There is also logic in the suggestion that the presidency of a university club is a leadership position and, presumably to achieve that position, the student must have demonstrated some leadership qualities. However, in our view, the Tribunal should require some actual evidence of the student's good deeds and character in that position in order to assess the student's character as part of the sanctioning process. This evidence can come from the student himself or from other witnesses but it cannot simply be inferred by the student's mere title or standing within the student organization.

- [36] In this case, beyond the fact that the Student was on the executive of his association and became president, and helped organize several events in the year of his misconduct, we had nothing to guide us in terms of whether and to what extent he demonstrated good character through those activities. Accordingly, we do not find that persuasive good character evidence was presented to us regarding the Student.

### **3. Extra-curricular Activities**

- [37] The student's strong involvement in his student association was used instead to explain the pressure that he was under and why he may have chosen to submit a purchased essay. The Tribunal gave little weight to this argument in light of the Student taking 3 full-time courses, not a full course load. Moreover, the Student clearly admitted that he put his duties as President ahead of his academic responsibilities.
- [38] The reality is that in virtually every case before the Tribunal, a student who has been found guilty of academic misconduct argues that the pressures they faced, be they financial, familial, personal relationship, academic, health or other, should act as a mitigating factor in their sentencing. When it comes to extra-curricular activities, the Tribunal recommends that Students fully partake in the rich life of the university through participation in diverse clubs, associations and campus groups. However, students must also be reminded that these important and worthwhile activities are precisely that, *extra-curricular*. Students have the option of saying "no" or, alternatively, simply reducing or rescheduling their extra-curricular commitments so that they can focus on their studies. Happily, many students, often the best students academically, manage to do both very well, and certainly without committing an academic offence.
- [39] Accordingly, the Tribunal should carefully scrutinize claims that pressures from extra-curricular activities constitute extenuating circumstances sufficient for consideration in the sanctioning process. Short of a critical or crisis type event for the student association where the student had little choice but to be involved, it is difficult to envisage that pressure from extra-curricular activities can amount to extenuating circumstances material to the sanction decision.

### **4. The Student's Alleged Health Issue**

- [40] We do not consider the Student's solitary remark during cross-examination that he and/or his family members suffer from depression to provide a sufficient basis to consider mitigating health factors in the sanctioning decision. The student was represented. No documentary

evidence of health issues was presented. No reference to health issues was made during submissions. Moreover, a nexus between health challenges and the particular issues that were in existence at the material time must be established for the Tribunal to put any weight on the health challenge: see *A.K.* decision (Case 523; January 14, 2009) and *Sotiropoulos v. York University*, 2009 HRTO 2278.

## **5. Misconduct during the University's Investigation**

[41] While the absence of a prior disciplinary record militates against an expulsion recommendation, the Student's concerted attempts to mislead the University were a significant aggravating factor that the University relied upon in recommending expulsion.

[42] The evidence indicates the following chronology with respect to the Student's misconduct during the University's investigation:

March 3, 2010 – The Student submitted the purchased essay

April 1, 2010 – The Student's professor met with him to discuss her concerns about his paper. The Student was unable to satisfactorily answer the Professor's concerns but, at the end of the meeting, announced that he has already dropped the class. The Prof learned later that, only the previous weekend, the Student was still enrolled.

July 7, 2010 – The Student met with the Dean's Designate for Academic Integrity. He stated that he had written the entire essay. He repeated the assertion and advised that he had not purchased the Essay.

July 14, 2010 – In response to the University's request for proof of his original authorship of the Essay, the Student sent an email and 7 attachments to the Office of Student Academic Integrity (OSAI). In the email the student stated, "Here I am attaching all the files that may be helpful to prove that the essay is my work". His email also stated "Once again, I have never committed academic offence during my entire university live (*sic*)".

July 19, 2010 – The Student sent an email and 4 attachments to the OSAI. The Student stated that the attachments contained scanned photocopies of the sources that he had listed in his bibliography in the Essay. There was handwriting on the photocopies, and the Student claimed that he had made the handwritten notes when working on the Essay. He sent the material in order to convince the University that he had not committed an academic offence.

July 23, 2010 – The Student had a second meeting with Dean's Designate. Initially he claimed that he "built" the Essay, then changed his explanation but continued to deny he purchased the Essay.

September 14, 2010 – The Student finally admitted in the ASF that he purchased the Essay from a commercial essay facility and paid approximately \$200 for it. The Student also admitted "he fabricated all of the evidence he submitted to the OSAI on July 14 and 19, 2010, and that he did so in an attempt to mislead the University and to convince OSAI that he had written the Essay and had not committed an academic offence." The Student also admitted that he repeatedly lied to the Dean's designate on July 7 and 23, 2010.

- [43] The chronology reveals that, between April 1 and September 14, 2010, over a 5 month period, the Student repeatedly and brazenly misled the University. We agree with Discipline counsel's characterization of the Student's misconduct as a "campaign of concerted deception".
- [44] The issue for the Tribunal, however, is to place the student's deception in context and ask, does the Student's repeated attempts over a 5 month period to mislead the university tilt the sanction inevitably toward a recommendation for expulsion? We think not and provide our reasons following our discussion of the other issues.

## **6. Likelihood of Repetition, Nature of Offence and Detriment to the University**

- [45] The Tribunal wishes to deal briefly with some of the other sanctioning considerations identified in the *Mr. C* decision. We would assess the likelihood of the Student repeating the offence as uncertain. On the one hand, the Student did apologize for his conduct, and his behaviour at the hearing suggested that the full consequences of his actions were finally bearing down on him. He did appear honestly regretful. Yet, it cannot be forgotten that, for a five month period, the student continued to fabricate notes and documents, and blatantly misled the University in emails. Either way, we believe a lengthy time is needed before the Student should be able to exercise the right to reengage with the University.
- [46] With respect to the nature of the offence and the detriment to the University occasioned by the offence, we agree with the Tribunal in the *V.L.* decision that:

The offence committed was that of cheating – "misrepresenting the work of another as one's own". It was compounded by the fact that the misrepresentation came about as a commercial transaction:

V.L. did not simply copy someone else's work – she contracted with an organization to produce work that she would call her own, and she paid money for such work.

It is hard to imagine how any offence could be more detrimental to the University community and its essential integrity. The fact that the offence was committed demeans the pursuit of original thought; that it was facilitated by the engine of commerce debases the integrity of the *Code of Behaviour on Academic Matters* and the attempts to protect learning in a fair and honest environment.

- [47] We consider the Student's offence of submitting a purchased essay to be one of the most serious offences. The gravity of the offence is recognized in the Provost's Guidelines which recommend expulsion for such an offence. However, the same Guidelines also include suspension from the university for a period of time as a minimum sanction. Accordingly, either recommendation for expulsion or an appropriately long suspension is consistent with the serious nature of the offence.

## **7. Reconciling Sanctions in Three Other Decisions**

- [48] This Tribunal is not bound by precedent in terms of decisions made by other panels. However, the Tribunal strives to be consistent in its decision making. We consider it useful therefore to comment on three Tribunal decisions involving similar facts.
- [49] The *CHK* decision, mentioned above, is particularly relevant since the case involved 3 of the current Student's classmates in EAS 333H1 (Modernism and Colonial Korea), who also cheated by submitting essays purchased from the same commercial facility as the Student. All three students had committed two prior offences.
- [50] In its Reasons for Decision, the *CHK* panel was divided. The majority, consisting of the faculty and student panel member, recommended a 5 year suspension for each student with a grade of zero in the course. The panel Chair, Ms. Hannaford, dissented and recommended expulsion.
- [51] In reviewing the *CHK* panel's Reasons, we respectfully disagree with the majority's analysis which unduly emphasized the strong expressions of remorse by the three students at the hearing. We agree with Ms. Hannaford's characterization of the majority's reasons, where she stated:

The majority of the panel was disposed to impose a suspension rather than an expulsion for two main reasons – first, that the remorse expressed by the students was sufficient to consider a

penalty short of expulsion, and secondly, that the deterrence effect of a long suspension was functionally no different from that which would occur if expulsion was imposed. (para. 42)

- [52] This Tribunal was not tasked with rendering a decision in the *CHK* proceeding. However, based on the facts as presented in that panel's Reasons, we prefer the analysis of the dissenting Chair, Ms. Hannaford, who noted that each student had at least two prior offences and, as such, presented a likelihood of repeating an academic dishonesty offence. Ms. Hannaford would have recommended expulsion. This Tribunal would have also expected students who had conspired with each other, who had submitted purchased essays and, importantly, who had each committed two prior offences (one student arguably had a third prior offence) to have received a recommendation of expulsion.
- [53] The right calibration of sanction in the *CHK* proceeding is important to this Tribunal because, if the majority in *CHK* was correct, which we doubt, consistency would require that the Student in this proceeding receive something less than a 5 year suspension given that he has absolutely no prior disciplinary record. As stated, we respectfully disagree with the majority and proceed on the basis that each student in *CHK* ought to have been recommended for expulsion.
- [54] The *Ms. T.* decision (File:1997/98-02; November 12, 1997), found at Tab 10 of the Joint Book of Policies and Tribunal Decisions, is also noteworthy. In that decision, Ms. T pleaded guilty to submitting a purchased essay in an Economics course. She received a 2-year suspension from the university and a grade of zero in the course. There was no indication in the brief reasons that Ms. T attempted to mislead the university authorities during their investigation into her conduct.
- [55] In the case of *A.K.* (Case 523; January 14, 2009) a decision not relied upon by the parties, the student was found to have cheated in two distinct time periods: once in 2003 when she falsely claimed that she had not attended any post-secondary institutions; and then in 2007, when she paid an unscrupulous individual to send a fabricated transcript to the University of Toronto. The student also submitted other false documentation and misled the university once it began its investigation. In that decision, discipline counsel sought expulsion and the student's representative argued for a 5 year suspension. In deciding that the strictest sanction was warranted, the *A.K.* Tribunal made several observations that we find relevant to our present deliberations, particularly on the repeat nature of the offence, the commercial aspect of the fraud, and the nearness to completion of the degree.

In our view, the Student's actions in this case merit a recommendation for expulsion and a permanent notation on her academic record. The Tribunal notes that the Student's misconduct occurred during two different time periods, 2003 and 2007. This significantly undermines the Student's argument that her financial, health and child-care challenges were relevant factors that should mitigate the most serious sanction. (at para. 34) The commercial aspect of the fraud is an aggravating factor that supports the most serious sanction since it relates to the unfortunate institutionalization or professionalization of the academic forgery business. Generally, the University cannot sanction these fraud artists directly but it can sanction the students who unwisely use their services. (at para. 40)

The Tribunal was concerned that the Student was near to the completion of her degree and questioned to what extent this should affect the appropriate sanction. We considered that the nearness of completion of a degree is a relevant but not determinative factor in respect of sanction. We find support for our decision based on the reasoning of the Tribunal in *The University of Toronto v. Student*, (Case No. 499; October 6, 2008), which held:

[73] The University argues that in the Mr. P. decision, the Tribunal said at paragraph 13 that while the student's circumstances - "he is very close to obtaining his degree from this University and that, should he be expelled, he may have difficulty in securing a place at another university" - were "perhaps unfortunate, we are not persuaded that this is a relevant factor for us to consider". We note, however, that in the next paragraph, the Tribunal did in fact consider and reject the argument that this detriment should result in mitigation of the expulsion penalty. In this sense, the Mr. P. decision again supports the proposition that consequences for the student - as for the University - are relevant but not determinative considerations in weighing the various factors in Mr. C.

The student in K. was only one credit away from meeting her graduation requirements when the Tribunal recommended her expulsion. Viewed in isolation, imposing a sanction leading to expulsion on a student who is one or two credits short of graduation may appear unduly harsh. However, these students have likely been part of the university community for a number of years and ought to have known better than most that serious misconduct may result in the ultimate sanction. We advocate an approach that would not view the nearness of completion of a degree in isolation, and one that neither penalizes nor rewards a student for this fact in terms of sanction. We suggest that the better approach is for the Tribunal to have greater information on the actual consequences of the proposed sanction. Is the student unlikely to ever graduate?

What kind of courses would the student still have to fulfill? Of course, as in the present case, the answers to these questions may not ultimately result in the Student receiving less than the ultimate sanction, primarily due to the serious nature of the offence involved. (para. 45)

- [56] In the present case, the Tribunal asked the parties how the Student's nearness to completion of his degree should affect the Tribunal's consideration of sanction. At the time of the hearing, the Student had completed 18 credits and, had he successfully completed the courses in which he was already enrolled, he would have been eligible to graduate with a Bachelor's degree. Discipline counsel emphasized that the distinguishing feature of this case was the fabrication and cover up. The Student's representative suggested that, even with a lengthy suspension, the student's professional life would be put on hold for a long time. Both sides agreed that it was a relevant consideration but were non-committal in how this factor should be weighed with respect to sanction.
- [57] Following the direction of the *A.K.* decision, based on the limited evidence we heard concerning the Student and based on reviewing his transcript, it appears that the Student would have graduated shortly but for this academic offence. It also appears that the Student did not have other additional courses to complete beyond those in which he had already enrolled. Accordingly, we find that the consequences of expulsion would be to deny the Student the ability to ever graduate from this university when he has virtually completed his undergraduate degree here.

### **Summary and Conclusion**

- [58] We are asked to choose between a recommendation of expulsion and a suspension for 3 to 4 years. We choose neither. Instead, we believe that the Tribunal's sanctioning objectives can best be achieved by a suspension of 5 years, which is the longest suspension possible. It cannot be said that such a sanction is not very serious and it appears the most just in light of the Student's circumstances, including the fact that the Student was very close to being eligible to graduate. We wish to emphasize, however, that the Student's proximity to graduation was a relatively minor factor in our reasoning.
- [59] While the commercial nature of the offence, the detriment caused to the university and the Student's concerted campaign of deception during the university's investigation all suggest that a recommendation of expulsion would be in order, it remains the case that the Student was a first-time offender. We do not consider his conduct to be as egregious as that of the students in the *Ms. L*, *A.M.*, *A.K.* and *CHK* decisions. Yet, he did not

just submit a purchased essay, as did the student in the *Ms. T* decision who received a 2-year suspension. He also actively misled the university during its investigation.

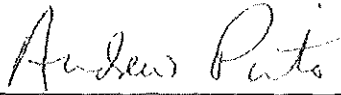
[60] The Tribunal heard only feeble evidence of the pressures that the Student was under due to his student association responsibilities; and his health and familial challenges were not particularized. Nor were these factors relied upon by his representative in her submissions. Accordingly, without particulars, we are unable to give any weight to these potentially mitigating factors.

[61] Ultimately, had the Student come clean at the earliest opportunity when confronted, and not mislead the University during its investigation, we may have been persuaded that a suspension of 3 to 4 years for a one-time essay purchase was appropriate. Instead, the Student's deception was a significant aggravating factor that warrants the imposition of the strongest suspension available.

[62] Accordingly, we order:

1. **THAT** Mr. P is found guilty of the academic offence of plagiarism, contrary to section B.I.1(d) of the *Code of Behaviour on Academic Matters*;
2. **THAT** Mr. P is guilty of the academic offence of receiving unauthorized assistance, contrary to section B.I.1(b) of the *Code of Behaviour on Academic Matters*;
3. **THAT** the following sanctions shall be imposed on Mr. P :
  - (a) he shall receive a final grade of zero in the course EAS 333H1;
  - (b) he be suspended from the University for five years from September 14, 2010, to September 13, 2015;
  - (c) a notation shall be recorded on his academic record and transcript for a period of seven (7) years, commencing September 14, 2010 to September 13, 2017, to the effect that the Student was suspended from the University for academic misconduct; and,
4. **THAT** this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed, with the name of the student withheld.

Dated at Toronto, this 8<sup>th</sup> day of March, 2011

A handwritten signature in cursive script that reads "Andrew Pinto". The signature is written in dark ink and is positioned above a horizontal line.

Andrew Pinto, Co-Chair

### **Agreed Statement of Facts**

1. This hearing arises out of charges of academic misconduct filed by the Provost of the University of Toronto (the "Provost") under the Code of Behaviour on Academic Matters ("Code"). For the purpose of this hearing, the Provost and S .B .P ("Mr. P ") have prepared this Agreed Statement of Facts ("ASF") and a joint book of documents ("JBD"). The Provost and Mr. P agree that:

- (a) each document contained in the JBD may be admitted into evidence at the Tribunal for all purposes, including for the truth of the document's contents, without further need to prove the document; and
- (b) if a document indicates that it was sent or received by someone, that is prima facie proof that the document was sent and received as indicated.

2. Mr. P admits that he received a notice of hearing for September 14, 2010. He acknowledges that he received reasonable notice of the hearing. The notice of hearing is included in the JBD at Tab 1.

3. Mr. P is represented by a law student from Downtown Legal Services.

### **Charges and Guilty Plea**

4. Mr. P admits that he received a copy of the charges filed by the Provost. The charges are included in the JBD at Tab 2.

5. Mr. P waives the reading of the charges filed against him, and hereby pleads guilty to charges #1, #3, and #4.

6. The Provost agrees to withdraw Charge #2 and further agrees that if the Tribunal convicts Mr. P on either charge #1 or #3, the Provost will withdraw charge #4.

7. At all material times, Mr. P was a registered student at the University of Toronto. A copy of Mr. P's academic record is included in the JBD at Tab 3.

### **The Course**

8. In Winter 2009, Mr. P enrolled in EAS 333H1 – Modernism and Colonial Korea, which was taught by Prof. Janet Poole ("Course"). A copy of the syllabus for the Course is included in the JBD at Tab 4 ("Syllabus"). Mr. P admits that he received a copy of the Syllabus.

9. The Syllabus stated, in part, as follows:

I consider plagiarism to be a serious breach of trust between instructor and student and will refer all cases to the appropriate authority according to UofT's Code of Behaviour on Academic Matters. This code defines academic offences as follows:

It is an or in any other way offence if a student knowingly;

- forges alters or falsifies any document or evidence required by the University, or utters, circulates or makes use of any such forged, altered or falsified document, whether the record be in print or electronic form;
- uses or possesses an unauthorized aid or aids or obtain unauthorized assistance in any academic examination or term test or in connection with any other form of academic work;
- personates another person, or has another person personate, at any academic examination or term test in connection with any other form of academic work, i.e., to commit plagiarism;

- represents as one's own any idea or expression of an idea or work of another in any academic work, i.e., to commit plagiarism;
- submits, without the knowledge and approval of the instructor to whom it is submitted, any academic work for which credit has previously been obtained or is being sought in another course or program of study in the University or elsewhere;
- submits any academic work containing a purported statement of fact or reference to a source which has been concocted.  
(<http://www.utoronto.ca/academicintegrity/academicoffenses.html>)

If you are not clear what plagiarism is or are worried that you may unwittingly plagiarise, please see the following link and/or some and talk to me:  
<http://www.writing.utoronto.ca/advice/using-sources/how-not-to-plagiarize>.

10. Mr. P received a mark of 6 of 15 on the first quiz and did not write the second quiz due to illness.

### **The Essay**

11. The academic requirements for the Course included two 8 – 10 page papers each worth 30% of the final grade in the Course. The first paper was due on March 3, 2010, after Prof. Poole extended the original deadline of February 24, 2010.

12. On March 3, 2010, Mr. P submitted an essay in partial completion of the Course requirements. Mr. P submitted a paper titled "The City in 1930's Korean Fiction: Disconnected Past, Uncertain Future" ("Essay"). A copy of the Essay is included in the JBD at Tab 5.

13. Prof. Poole reviewed the Essay and concluded that Mr. P did not write the Essay. Prof. Poole met with Mr. P to discuss the Essay, but this

discussion did not satisfy her that Mr. P had not committed an academic offence.

14. On June 9, 2010, Prof. Poole referred the matter to her Departmental Chair, who in turn forwarded the matter to the Office of Student Academic Integrity in the Faculty of Arts & Science ("OSAI"). A copy of Prof. Poole's letter to Prof. Shen is included in the JBD at Tab 6.

#### July 7 - the First Meeting with the Dean's Designate

15. Mr. P met with Prof. John Browne, Dean's Designate for Academic Integrity on July 7, 2010.

16. During this meeting, Mr. P stated that he had written the entire Essay after doing some research on the topic. He said that he had searched websites for useful sources and located several useful books at Roberts Library.

17. He stated that while a friend had spent 5 minutes proof-reading the Essay for him, he had written it entirely by himself. Mr. P explained that the complex language he had used in the Essay had come from use of a Korean – English dictionary.

18. In response to two direct questions from Prof. Browne, Mr. P stated that he had written the Essay and that he had not purchased the Essay.

19. Mr. P offered to provide a copy of a draft of the Essay to Prof. Browne.

#### Additional Material Provided by Mr. P

20. On July 14, 2010, Mr. P sent an e-mail and seven attachments to Dr. Kristi Gourlay of OSAI. A copy of this e-mail, and its attachments, are included in the JBD at Tab 7. His e-mail message read, in part, as follows:

Here I am attaching all the files that may be helpful to prove that the essay is my work. ...

I will appreciate for your deep consideration about my case, and I will be looking forward to hearing a good news from you.

Once again, I have never committed academic offence during my entire university live. Also, I am aiming to finish my university study as I complete the summer courses.

Please, consider carefully about my case once again.

21. Mr. P stated that he had attached the following files to his message:
- (a) two files containing notes that he made while he was reading source material in preparation for completion of his essay;
  - (b) a file containing a draft of the Essay;
  - (c) a file, which he titled "Helpful Evidence," which he stated revealed the document properties in his work that would assist OSAI to understand that the Essay was Mr. P's own work;
  - (d) a file containing Mr. P's handwritten note summarizing his overall ideas and his understanding of the readings; and
  - (e) a file containing some screenshots from a Korean-English that he had used when writing the Essay.

22. Mr. P sent this message and the attachments in the hope of convincing OSAI and Prof. Browne that he had written the Essay by himself and that he had not committed an academic offence.

23. On July 19, 2010, Mr. P sent an e-mail and four attachments to Dr. Gourlay. A copy of this e-mail, and its attachments, are included in the JBD at Tab 8. Mr. P stated that the attachments contained scanned images of the photocopies of the sources that he had listed in the bibliography in the Essay.

There was handwriting on the photocopies, and Mr. P claimed that he had made the handwritten notes when working on the Essay.

24. Mr. P sent the second e-mail and attachments to try to answer OSAI's questions about the Essay and to convince OSAI and Prof. Browne that he had written the Essay by himself and that he had not committed an academic offence.

25. On July 21, Dr. Gourlay sent an e-mail message to Mr. P. A copy of this message is included in the JBD at Tab 9. Dr. Gourlay wrote:

Thank you for dropping off the photocopies of your source documents and providing additional information regarding the allegation against you.

Professor Browne has reviewed these materials and information, and remains concerned that the essay you submitted for credit in EAS 333H is not entirely your own work. He has thus decided that he will be forwarding your case to the Vice-Provost for review with a recommendation that charges be laid against you, and your case be heard by the University's Tribunal.

26. After he received this message, Mr. P requested another meeting with Prof. Browne.

#### **July 23 – second meeting with the Dean's Designate**

27. On July 23, 2010, Mr. P met again with Prof. Browne. At the beginning of the meeting, Mr. P stated that the essay was not entirely his own work and that he had someone edit the essay for him. Mr. P maintained that he "built" the essay, but that he had his roommate's guest (a 32-year old American with five years of experience in grammar and writing essays) edit the paper for him. Mr. P stated that he had bought his editor dinner to thank him for his assistance.

28. Later in the meeting, Mr. P changed his story and stated that, while he had written the introduction and conclusion of the essay, his roommate's friend had written the middle part of the essay from the point form notes that Mr. P. had made from the sources he had consulted.

29. Mr. P continued to deny that he had purchased the Essay.

### **Admissions**

30. Mr. P now admits that he purchased the essay he submitted from The Essay Place. Mr. P admits that he paid approximately \$200.00 for the Essay.

31. The website for "The Essay Place" ([www.theessayplace.com](http://www.theessayplace.com)) lists its business address as 593 Yonge Street, Suite 216, Toronto, Ontario. The Essay Place writes custom essays for students for prices starting at \$28.00 per page. According to its website, The Essay Place's "writers all have MA's, or PHD's in their field of expertise, and are looking to pass on their knowledge to our clients." A series of screenshots from the website for the Essay Place are included in the JBD at Tab 10.

32. Mr. P admits, with respect to the Essay that he:

- (a) did no meaningful academic work;
- (b) knowingly submitted it in essentially the same form as he received it from The Essay Place.
- (c) knowingly represented the ideas of another person, the expression of the ideas of another person, and the work of another person as his own;
- (d) knowingly committed plagiarism contrary to section B.I.1(d) of the Code;

- (e) knowingly obtained unauthorized assistance in the completion of the Essay contrary to s. B.I.1 (b) of the Code; and
- (f) knew that he was engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit, contrary to section B.I.3(b) of the Code.

33. Mr. P admits that he fabricated all of the evidence he submitted to Dr. Gourlay on July 14 and 19, 2010, and that he did so in an attempt to mislead the University and to convince OSAI that he had written the Essay and had not committed an academic offence.

34. Mr. P admits that he repeatedly lied to Prof. Browne on July 7 and 23, 2010, during the meetings with the Deans' Designate.

35. Mr. P acknowledges that:

- (a) the Provost of the University of Toronto has made no representations or promises as to what sanction the Provost will seek in this case; and
- (b) he is signing this ASF freely and voluntarily, knowing of the potential consequences he faces, and does so with the advice of counsel.