

Members of the Panel: Melanie L. Aitken, Co-Chair
Stéphane Mechoulan, Faculty Member, Department of Economics
Sujata Pokhrel, Student Member, Faculty of UTSC, Life Sciences

IN THE MATTER of the *University of Toronto Act, 1971, S.O. 1971, c.56, as amended;*

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

AND IN THE MATTER of disciplinary charges against J. D.

Christopher Burr, for J. D.

Robert Centa, Assistant Discipline Counsel for the University of Toronto

BACKGROUND

A hearing of the Trial Division of the University Tribunal was convened at 6:00 p.m. on Thursday, July 21, 2005, in the Council Chamber, Simcoe Hall, to consider the following four charges laid against J. D. under the *Code of Behaviour on Academic Matters, 1995* by Vice-President and Provost, Academic, Dr. Edith Hillan:

1. On or about February 9, 2004, you knowingly represented as your own, an idea or expression of an idea, and/or work of another in connection with a form of academic work, namely, “The Terminator vs. The Tomb Raider”, an essay that you submitted to fulfill the course requirements of VCC 306H5S, contrary to Section B.I.1 (d) of the *Code of Behavior on Academic Matters, 1995* (“*Code*”). Pursuant to section B of the *Code*, wherever an offence is described as depending on “knowing”, the offence shall likewise be deemed to have been committed if that person ought reasonably to have known.
2. In the alternative, on or about February 9, 2004, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind in an essay submitted to fulfill course requirements in VCC 306H5S, contrary to Section B.I.3 (b) of the *Code*.
3. On or about April 7, 2004, you knowingly represented as your own, an idea or expression of an idea, and/or work of another in connection with a form of academic work, namely, “The ‘Ideological’ Function of Television in its Representation of Black Americans”, an

essay that you submitted to fulfill the course requirements of VCC 304H5S, contrary to Section B.I.1 (d) of the *Code*.

4. In the alternative, on or about April 7, 2004, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind in an essay submitted to fulfill course requirements in VCC 304H5S, contrary to Section B.I.3 (b) of the *Code*.

This matter concerned allegations that Ms. D. had submitted two papers, in two separate courses, each of which contained numerous phrases and passages that had been plagiarized in whole or in part from materials available on the Internet, with no source attribution.

(a) Charges 1 and 2

In winter session 2004, Ms. D. was a student registered in VCC 306, entitled "General and Visual Representation", offered at the Mississauga Campus by Professor Marlis Schweitzer. VCC 306 was a half-year course. The first assignment in that course, identified as "Gender Stereotypes: Image Analysis", was worth 15% of the final grade. Professor Schweitzer testified that this assignment, as reflected in her handout to the class, was less a research paper and more of an analysis piece. As such, she did not require that outside sources be researched; however, students were specifically advised that, if they did use outside sources, such sources must be cited properly.

The evidence of Professor Schweitzer, supported by the documentary evidence (assembled on agreement of counsel), was that she provided to students in VCC 306 information about plagiarism and, in particular, directed her students to the University of Toronto's *Code of Behaviour on Academic Matters* in her course syllabus. Ms. D. acknowledged at the hearing that she understood what plagiarism was at the relevant time.

On February 10, 2004, Ms. D. submitted to Professor Schweitzer, by email, her paper for the assignment noted above, entitled "The Terminator vs. The Tomb Raider". Professor Schweitzer testified that, on reviewing the paper for the first time, she became concerned that Ms. D. had included in the paper certain phrases authored by others, without attribution. While Ms. D. had included a list of three sources at the end of her paper as "Works Cited", these did not relate to the phrases with respect to which Professor Schweitzer was concerned. In light of her concerns, Professor Schweitzer typed into an Internet search engine, *Google*, the first phrase that had caused her concern: "aspirational gender reassignment". The search engine identified an online article entitled "Lara Croft: The Post-Human Feminine Cyborg", by Adrian Gargett.

A subsequent search by Professor Schweitzer revealed that at least fifteen unacknowledged passages in Ms. D.'s paper could be found in Internet sources. In all such cases, there was not only no reference to the source, but the phrases and sentences in question, which were reproduced *verbatim*, or very near *verbatim*, were not marked with quotation marks or with any other indication that they were not being submitted as Ms. D.'s own work product.

At the hearing, counsel for the University had prepared a version of Ms. D.'s paper identifying, by various highlighting means, the passages the University claimed to be the work of others. Ms. D. acknowledged at the hearing that these phrases were indeed authored by others.

Professor Schweitzer testified that, after making the discoveries noted above, she contacted Ms. D. to schedule a meeting. Consistent with the *Code*, she did not give evidence about this first meeting between her and Ms. D.

There was no dispute that a second meeting was convened in the summer of 2004, on or about May 10, 2004, among Ms. D., Professor Schweitzer and the Dean's Designate, Professor Emeritus Roger Beck. The evidence of Professor Schweitzer, which was agreed to by Ms. D., was that, at that meeting, Ms. D. claimed that she had submitted the paper in error. However, the evidence of both Ms. D. and Professor Schweitzer was that Ms. D. did not at that meeting, or at any time before the evening of the hearing on July 21, 2005, provide or offer to provide to the University a copy of the version Ms. D. would ultimately claim to be the version she had intended to submit.

(b) Charges 3 and 4

Ms. D. was also registered in the winter session 2004 in course VCC 304, entitled "Visual Culture and the Construction of Identity", a half-year course offered at the Mississauga Campus and taught by Professor Sara-Jane Finlay. The version of Professor Finlay's syllabus for that course as offered in winter session 2004 was not available to the Panel; however, Professor Finlay provided a copy of a syllabus to the Tribunal (with no objection from Ms. D.) that was used in the next academic session, and which was substantially the same. According to Professor Finlay, a major research essay was required for VCC 304 in the winter 2004 session, worth 50% of the student's grade.

The evidence of Professor Finlay, supported by the syllabus referred to above, and not challenged by Ms. D., was that she distributed information to her students in VCC 304 with respect to the University of Toronto rules regarding plagiarism and the related academic regulations.

On or about April 7, 2004, Ms. D. submitted to Professor Finlay a paper entitled "The 'Ideological' Function of Television in its Representation of Black Americans" to meet her research paper requirement for Course VCC 304. Professor Finlay testified that, on reading Ms. D.'s paper, she became concerned that Ms. D. had included phrases and ideas belonging to others without proper, or any, acknowledgement. On performing an exercise similar to that conducted by Professor Schweitzer, Professor Finlay identified at least fourteen instances of such plagiarism. According to Professor Finlay, not only had Ms. D. failed to include source information, she had done nothing to indicate that the work had come from other sources, and failed to include quotation marks.

As with the paper submitted to Professor Schweitzer, University counsel had prepared a version of Ms. D.'s VCC 304 paper identifying, by various highlighting means, the passages in issue. Ms. D. acknowledged the accuracy of the passages cited as belonging to others, and took no issue with the materials submitted by the University as the actual sources for those passages.

After reading the paper in question and making the discoveries noted above, Professor Finlay testified that she contacted Ms. D. to schedule a meeting. Consistent with the *Code*, she did not give evidence about this first meeting, held in mid to late April 2004.

There was no dispute that a second meeting was convened thereafter among Ms. D., Professor Finlay and the Dean's Designate, Professor Beck. The evidence of Professor Finlay, not contradicted by Ms. D., was that, at that meeting, Ms. D. made no mention of her current claim that she submitted a draft of her paper in error, nor did she submit then, or at any other time before the hearing, a copy of the version she now claims to have been the one meant for submission.

(c) Ms. D.'s Evidence

Ms. D. does not dispute that she submitted the papers in question, nor does she dispute that the passages identified by Professors Schweitzer and Finlay were taken from the online sources identified by the University. She does, however, claim that, in both cases, she submitted a *draft* in error, and failed to submit the "final" version. Ms. D. testified that she has a particular method for drafting papers, which involves copying outside material into early drafts, saving those drafts as separate documents and, some time before submission, including appropriate attributions. According to Ms. D., in the case of the paper submitted to Professor Schweitzer, she attached the wrong document to her email submission on February 10, 2004. As to the paper Ms. D. submitted to Professor Finlay in early April 2004 (after her first meeting with Professor Schweitzer), Ms. D. claims that she downloaded her drafts onto a disc, printed what she thought was the final draft and, due to pressing time commitments, handed the paper in without reading it.

At the hearing, Ms. D. provided what she claims were the "final" versions of the two papers, in the form she claims she had meant to submit them originally. These versions appear to be similar to the papers in issue, but with added quotation marks and source information. There was, however, no information on the documents to demonstrate when they were created, nor did Ms. D. lead any evidence to corroborate that these versions existed at the respective submission dates.

Under cross-examination, Ms. D. acknowledged that she had not brought copies of these "final" versions to her respective meetings with the Dean's Designate. In that regard, Ms. D. claimed that she was not familiar with the University disciplinary process. In fact, however, Ms. D. had been through this process on an earlier occasion. On June 5, 2002, Ms. D. pleaded guilty to a plagiarism allegation by the University. The arrangements to that end were arrived at during a Dean's Designate meeting with the Associate Dean (Humanities) on July 5, 2002.

REASONS FOR DECISION

The University has the burden to prove the charges against Ms. D.

It was clear to the Panel that students enrolled in VCC 306 and VCC 304 in winter term 2004 were provided with information defining and warning against plagiarism. While there was no

direct evidence that Ms. D. received a copy of the documents circulated by Professors Schweitzer and Finlay, Ms. D. acknowledged her familiarity with the principle of plagiarism at the relevant time and we find further that, on the evidence before us, it is reasonable to infer that information defining and warning against plagiarism was made directly available to Ms. D.

As Ms. D. admits that she submitted the papers in question (although she claims by mistake) and admits that the impugned passages were indeed included by her in those papers without attribution, the only question for the Panel is whether Ms. D.'s version of events—that drafts were submitted in error—is credible. Having considered all of the evidence, including that specifically referred to below, the Panel does not accept Ms. D.'s testimony on this point as credible.

As to Ms. D.'s method for researching and preparing papers, and the existence at the relevant time of what she identified at the hearing as "final" versions, we had no evidence other than her word in support. Specifically, Ms. D. did not provide any evidence as to the computer properties of the "final" (or other) versions, nor did she make her computer available for analysis to the University. More significantly, the first occasion on which these "final" versions were submitted to anyone at the University was the evening of the hearing, some sixteen months after the first of the two papers in issue was submitted and the concerns about plagiarism first brought to her attention. Indeed, in the case of the second paper submitted to Professor Finlay in April 2004, the evidence is that Ms. D. never raised with Professor Finlay that she had submitted the wrong draft, nor did she ever offer to show her or the Dean's Designate the version she meant to have submitted.

Specifically, as to Ms. D.'s method of preparing papers, we find her explanation implausible, particularly in light of the evidence showing what she did with the material she "cut and pasted" into the papers. By way of example, there are passages in the paper submitted to Professor Schweitzer that are completely the work of others, *but for* an introductory phrase apparently authored by Ms. D. Similarly, on occasion, Ms. D. appears to have changed just one or two words in what is otherwise the work of another. Had Ms. D. simply cut and pasted, deferring to a later time to include quotation marks and attribution, leaving aside the impracticality of such an approach, one would not see one or two words within the passage altered.

As to Ms. D.'s specific claim of having submitted the papers in error, we likewise do not accept her evidence. Not only is there no corroborative evidence to support that a final version existed at the time, the evidence suggests otherwise. Specifically, she never raised the error or existence of a later draft at all with Professor Finlay and, in the case of Professor Schweitzer, never offered to provide "the final version" to explain her supposed error. Moreover, it strains credulity that Ms. D. having, in her own version of events, submitted an earlier version in error in February 2004, she would submit a paper to Professor Finlay, just two months later, without reading it first.

Accordingly, the Panel disbelieves Ms. D.'s version of events and, in particular, that she submitted the papers she did by mistake. Ms. D.'s conduct, as referred to above, was inconsistent with her version of events. Moreover, her overall version of events is implausible. In the Panel's opinion, Ms. D.'s story simply did not ring true.

At this juncture, we must refer to the evidence before us as to Ms. D.'s prior guilty plea to a plagiarism charge in June 2002. We emphasize that our decision in this matter does not depend on that evidence. However, we do note that, while the evidence of Ms. D.'s prior guilty plea would be inadmissible as to whether she was more or less likely to have committed the offences with which she is now charged, it is admissible as to her credibility. As indicated above, the Panel considers that it had enough with which to evaluate Ms. D.'s credibility without this evidence, but certainly her claim to being unfamiliar with the disciplinary process--when such could not be said to be the case--is supportive of our findings on other grounds.

Finally, a word about the "final" versions submitted by Ms. D. The Panel was seriously concerned that Ms. D. fabricated the evidence she submitted to the Tribunal. The lack of any prior notice of the existence of these documents, together with the lack of any evidence to support their origin, strongly suggest that Ms. D. prepared these versions some time after her original submissions to Professors Schweitzer and Finlay, respectively, and that they were prepared by her with a view to responding to the charges. However, in the Panel's view it was not necessary to make a specific finding in this regard to arrive at our decision.

On the basis of the evidence, the Panel was satisfied that Ms. D. knowingly represented as her own the ideas and/or expressions of ideas and/or work of others in the papers she submitted in Courses VCC 306 and 304, respectively: "The Terminator vs. The Tomb Raider" and "The 'Ideological' Function of Television in its Representation of Black Americans".

The Panel was therefore satisfied that the Charges were proved on clear and convincing evidence.

REASONS FOR SANCTION

The University submitted that Ms. D. should be suspended for five years; have a notation on her record for a period of five years; receive a grade of zero in Courses VCC 306 and VCC 304; and that this matter should be reported to the Provost for publication in the University publications with the name of the student withheld.

Ms. D., through her agent Mr. Burr, submitted that a suspension and notation of only two years were appropriate, together with a grade of zero in both courses. In light of what Mr. Burr described as Ms. D.'s public image (work on Rogers Cable 10 and in the Polish Canadian community), she asked that publication be denied.

We, as a Panel, considered the submissions of both counsel for the University and Mr. Burr, as agent for Ms. D. In doing so, we had reference to the observations of The Honourable John Sopinka who, as a member of the University Tribunal, contributed to the decision *In The Matter of the University of Toronto Code of Behaviour and an Appeal by Mr. C.* (1976/7-03). In particular, we sought guidance from the criteria he listed on page 13 of that decision, to the extent appropriate in our view.

There were three particular features to this case that, in our collective view, called for a serious penalty.

First, this was not Ms. D.'s first offence. She had pled guilty to a plagiarism offence two years earlier. Consistent with the University's vision that rehabilitation is possible and should be promoted, Ms. D. was given another chance; however, Ms. D. squandered that opportunity, committing two further acts of plagiarism.

Second, Ms. D. appears to regret only having been caught. While we, as a Panel, went to some length to offer Ms. D. an opportunity to express her regret, Ms. D. did not acknowledge her guilt by a plea or otherwise, and appears to us not to feel remorse or, indeed, to appreciate the wrongfulness or seriousness of her acts. This perspective is consistent with her having repeated the offence after her first conviction. We fear that the likelihood of Ms. D. committing further dishonest academic acts should she remain a student at the University or be permitted to return before at least having a significant opportunity to reflect on the matter, is considerable.

Third, given the nature of the offence—one demonstrating the ease with which academic dishonesty using the Internet can be effected—and the fact Ms. D. was a senior student at the time (who had been offered a second chance)—we are concerned about general deterrence. In our opinion, the need for a strong message that such behaviour will not be tolerated is keen.

In light of these criteria in particular, and the absence of any mitigating factors, the Panel imposed the following penalty:

- (i) a grade of zero in VCC 306 and VCC 304;
- (ii) suspension from the University for a period of three (3) years from July 21, 2005;
- (iii) a record of this sanction on the student's academic record and transcript for four (4) years from July 21, 2005; and
- (iv) that this case be reported to the Provost to publish notice of the decision of the Tribunal and the sanctions imposed in the University newspapers, with the name of the student withheld.

The Panel felt that a suspension of two years was inadequate to address the factors noted above. At the same time, the Panel recognized that, reviewing the decisions brought to their attention by the parties, five years was arguably too long, and seemed to be reserved for even more serious offences such as, by way of example, the submission of work purchased from others.

As to the notation for the longer period of four years, we felt that, while Ms. D. should have an opportunity to return to the University in three years, we were concerned to do something to improve the chances that Ms. D. would come to appreciate, with time, the gravity of her conduct.

As to publication, in light of our concern for deterrence, we felt this was appropriate and, indeed, important. Given the anonymity requirement, we saw no real risk in any event to the disclosure of Ms. D.'s identity.