

UNIVERSITY TRIBUNAL
The University of Toronto

IN THE MATTER of charges of academic dishonesty made on October 24, 2008,

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, as amended.

B E T W E E N:

UNIVERSITY OF TORONTO (the "University")

- and -

S.H.

Panel Members:

Ms. Roslyn M. Tsao, Chair
Professor Andrea Litvack, Faculty Panel Member
Mr. Sadek Ali, Student Panel Member

Appearances:

Mr. R. Centa, Assistant Discipline Counsel for University
Ms. Julia Wilkes, Law Student, for the Student (on June 30, 2009)
Mr. R. Singh, for the Student (on February 26, 2009)

In Attendance:

S.H., the Student
Ms. Lucy Gaspini, Academic Affairs Office, University of Toronto at Mississauga

Reasons for Decision

Delivered by Ms. Roslyn M. Tsao

1. BACKGROUND

- 1.1 The trial division of the University Tribunal was convened on February 26, 2009 to consider the charges against the Student as set out in a letter dated October 24, 2008 from Professor Edith Hillan. The Notice of Hearing for those charges was dated November 11, 2008.

1.2 The Student was charged with the following academic offences:

- (a) On or about April 8, 2007, the Student knowingly aided or assisted Ms. P. to commit the offence of plagiarism contrary to section B.I.1(d) of the *Code*;
- (b) On or about April 8, 2007, the Student knowingly aided or assisted Ms. P. to obtain unauthorized assistance contrary to section B.I.1(b) of the *Code*;
- (c) In the alternative, the Student knowingly aided or assisted Ms. P. to engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage, contrary to Section B.I.3(b) of the *Code*.
- (d) On or about November 19, 2007, the Student knowingly aided or assisted Mr. A. to commit the offence of plagiarism contrary to section B.I.1(d) of the *Code*;
- (e) On or about November 19, 2007, the Student knowingly aided or assisted Mr. A. to obtain unauthorized assistance contrary to section B.I.1(b) of the *Code*;
- (f) In the alternative, the Student knowingly aided or assisted Mr. A. to engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage, contrary to Section B.I.3(b) of the *Code*.

2. CHARGES AND FACTS

1.3 An Agreed Statement of Facts as signed by the parties on February 23, 2009 was admitted into evidence. Without repeating all of the agreed upon facts, the most pertinent are:

- (a) The Student was registered at the University of Toronto at Mississauga ("UTM") in the Fall of 2004.

Essay Purchased by Ms. P.

- (b) In the Fall of 2006, another student at UTM, Ms. P., hired the Student to write an essay for her to submit in one of her courses in exchange for \$120.00. The Student did provide an essay for Ms. P. to submit and was paid \$120.00. Furthermore, the Student admits that the essay consisted entirely of plagiarized material.

(c) Ms. P. was given a failing grade on the purchased essay and, as a result, failed the course. Ms. P., therefore, sought a refund from the Student. However, Ms. P. had difficulty in tracking down the Student, was only able to communicate with the Student's brother (also a UTM student) and ultimately got into an altercation with the Student's younger brother who had nothing to do with the purchase of the essay.

(d) As a result of this altercation on January 13, 2008, the Campus Police became involved and the Student's brother made a report to the Campus Police. In his signed Statement to the Campus Police, the Student's brother states:

To begin with, my brother, [S], gets paid to complete and do other people's assignments, such as essays. A person I know at UTM... has paid my brother \$120 for a school assignment to be completed by my brother. Since [] got a failed mark on the assignment, he approached me to somehow to pay off the \$120 in short instalments, as my brother is not willing to pay the full amount...

(e) Ms. P.'s statement to Campus Police states:

I had heard of [S] around campus a couple of times, but never really took it seriously until I was actually in a bind. At that moment I found out details of [S] from an acquaintance and decided to give him a call... I gave them all the books needed, along with a note that I had for the essay. After having received the essay about 3-4 days later, I handed it in.

(f) The Campus Police met with the Student following the incident and cautioned him that he was not required to give any Statement. The Student, nevertheless, provided a signed Statement on January 16, 2008, which confirmed that he agreed to write a paper for Ms. P. in exchange for money and that he was aware of the fact that the essay would be handed in for her course.

(g) As an aside, the Student advised that he was willing to provide Ms. P. with a refund of \$50 and had agreed to drop off the funds with the Campus Police Office the following week. However, the Student did not ever attend at the Campus Police Office to leave the \$50 refund, as he had previously agreed.

(h) The incident came to the attention of the Dean's office and Ms. P. was the subject of an academic offence meeting in August 18, 2008. Ms. P. admitted her guilt to having received unauthorized aid from the Student. Ms. P. received academic sanctions consisting of a zero grade in the course, a 12-month suspension and an 18-month notation on her transcript.

Essay Purchased by Mr. A.

- (i) In early November, 2007, another UTM student, Mr. A., asked the Student to write an essay for him at a cost of \$20 or \$25.
- (j) Mr. A. has sworn in his Affidavit of October 21, 2008 that he has known the Student since 2007 and recalls the Student telling him that he was a "good student and wrote essays for other students who paid him for the essays". Mr. A. has sworn that he had hired the Student to write an essay for him the Fall of 2007 for \$30 or \$40, which Mr. A. had submitted and received a high grade. It is noted that the Student denies these particular factual allegations of Mr. A. in the Agreed Statement of Facts.
- (k) The essay that Mr. A. retained the Student to write in early November, 2007 was provided on November 19, 2007 by the Student. The essay was handed in by Mr. A. The content of the essay attracted the attention of the professor. At the meeting with the professor, Mr. A. admitted that he had had unauthorized aid from the Student and was engaged in academic dishonesty. Mr. A. has been charged under the *Code* and these charges remain outstanding pending the disposition of this case¹.

Attempts to Address Allegations Against the Student Between February and August, 2008

- (l) As a result of the matters involving Ms. P. and Mr. A. coming to light, the Assistant Dean wrote to the Student on February 5, 2008 to advise him that she had received reports from the Campus Police and other sources which indicate that he provided "unauthorized assistance to other students" by writing essays for other students for a fee. This letter was clear as to the allegations against the Student. The Student was to contact Ms. Gaspini before February 19, 2008.
- (m) On or around February 19, 2008, the Student called Ms. Gaspini and indicated that he was ill and did not want to meet with the Dean's Designate for another three months. The Student also asked that Ms. Gaspini only contact him by email at a given email address.
- (n) On February 20, Ms Gaspini emailed the Student asking him to call her that day to discuss "a couple of concerns" and indicating that she thought "it would be in our best

¹ As advised by Mr. Centa.

interest to talk". There was no response from the Student. On February 21, Ms. Gaspini emailed the Student again and indicated that "It is important that we speak". The Student emailed back on February 22 and stated "I am not in school right now. When I am back in school I will talk to you. Thanks!". Ms. Gaspini replied within 15 minutes "I understand you are not in school right now but we still need to talk. Can you call me on Monday or Tuesday?"

- (o) From the Agreed Statement of Facts, there appears to be no further communication between Ms. Gaspini and the Student until April 17, 2008, when Ms. Gaspini reached the Student's mother by telephone and asked her to tell the Student that she was calling "with regard to an important matter" and left 2 contact numbers. Later that day, Ms. Gaspini emailed the Student to advise that she was aware that he would be on campus on Thursday, April 24 and that she would like to organize a meeting with the Dean's Designate with him that day.
- (p) On April 18, 2008, the Student called Ms Gaspini to advise that he would not be able to meet on April 24th due to full-time work obligations. The Student told Ms. Gaspini that he would get back to her with dates for the end of April or early May to meet. The Student did not, however, call or email Ms. Gaspini after April 18th.
- (q) On August 1, 2008, the Dean wrote to the Vice-Provost requesting that charges be laid against the Student.

3. Finding of Guilt

- 3.1 Based on the facts set out in the Agreed Statement of Facts and the documents contained in the Joint Book of Documents filed by the parties as Exhibit "3", and no other evidence being called by the Student, the Panel unanimously accepted the Student's Guilty Plea to charges (i), (ii), (iv) and (v). The University has withdrawn charges (iii) and (vi).

4. Penalty Phase

Scheduling Background

- 4.1 The penalty phase was adjourned to March 30, 2009 following the guilty plea on February 26, 2009. This was to permit the Student to make a full response to the University's request for a recommendation for expulsion.

- 4.2 The Student wanted to tender expert evidence of a psychiatrist, Dr. Syed, for the penalty phase. The Panel also notes that the Student's counsel alluded to the possibility that the Student would make an apology in requesting the adjournment. University counsel advised that he would want disclosure of all documentation considered by Dr. Syed and of his notes of any meetings with the Student in advance of Dr. Syed giving evidence.
- 4.3 On March 30, 2009, the Student attended at the hearing but his counsel emailed that afternoon that the Student had "terminated" him as his counsel. It is presumed that this termination occurred on March 30th or only just before since there was no prior notice given by counsel or the Student of the change in representation.
- 4.4 The Student's father, Dr. H., acted as agent for the Student on March 30th and, accepted the University's offer of an adjournment so that the Student could obtain new counsel to give him advice as to the evidence of Dr. Syed and to address disclosure requests of the University counsel if Dr. Syed was being tendered. The Panel notes that Dr. H. wanted to tender a written "apology" from his son that evening but that the Panel advised him to leave it with new counsel to introduce at the resumption of the hearing. Again, University counsel advised that he would want disclosure of all documentation considered by Dr. Syed and of his notes of any meetings with the Student in advance of Dr. Syed giving evidence. This issue was to be discussed between counsel and, if it could not be resolved, then a motion in advance of the penalty hearing would be arranged.
- 4.5 The Chair, via telephone conferences, case-managed the ensuing scheduling of a hearing date for penalty and any other preliminary matters. During a conference call on April 15, 2009, the resumption date of June 30, 2009 was selected with the Student's interim counsel², Mr. Mirza, and was on a pre-emptory basis to the Student, with or without counsel. The Student was counselled by the Chair to seek the assistance of Downtown Legal Services in the event that he was unable to retain his interim counsel for the resumption date.
- 4.6 On June 18, 2009, Mr. Mirza emailed to advise that the Student's file was being immediately transferred to Downtown Legal Services and that the resumption date of June 30th would remain in place.

² Mr. F. Mirza, acted on behalf of the Student during some of the conference calls on an interim basis until he could be formally and fully retained.

Student's Evidence for Penalty Phase

- 4.7 On June 30, 2009 the hearing resumed for the Penalty phase.
- 4.8 The Student tendered Dr. H., the Student's father, as a witness for this phase³. Dr. H. is the Student's father. Dr. H. explained that he and his wife brought their family to Canada from Bangladesh in October, 1995. Dr. H. has a PhD degree from an American university and Mrs. H. has a Master's degree in Statistics. Unfortunately, neither Dr. or Mrs. H. has had much success in finding fruitful employment in Canada and have been surviving on life-savings.
- 4.9 Dr. H. indicated that the family's financial problems were not discussed with his 2 sons and that they were sheltered from the burden of their difficult financial circumstances except by the obvious inability of the children to have the type of luxuries that their fellow schoolmates may have had. Dr. H. also testified that the Student and his brother had received student loans which were currently outstanding. The Student, who has lived with his parents during university, has not paid nor contributed to the household expenses. The Student did some tutoring in 2007 and, according to Dr. H. kept his income for his own (social) expenses.
- 4.10 Dr. H. testified that it was very important to have his sons graduate from university so that they can find employment. He further confirmed that his sons are aware that graduating is important for the family.
- 4.11 Dr. H. further testified that he took his son to counselling on April 20, 2008 after learning of the Student's dishonest behaviour. A letter from the Imam/Resident Scholar of the Islamic Institute of Toronto dated June 26, 2009, ⁴ was tendered through Dr. H. and confirms that the student has been given "counseling" (*sic*) "on and off, since April 20, 08. The purpose of the sessions has been to instill in him a deep sense of morality and make him aware of the dire consequences of such cardinal sins as breach of trust, lying and cheating".
- 4.12 Finally, Dr. H. gave evidence that, the Student had started to take medication in February, 2009, and has become more responsible, attentive to his classes and is "more mature and more focused

³ Dr. H. testified under oath and submitted a written "letter" entitled "Our Perspective on [S]", the contents of which he adopted during his testimony.

⁴ The letter is hearsay as the author did not testify to introduce the letter. However, the University has not opposed its introduction as evidence. Accordingly, the Panel has considered the letter but factored its hearsay nature in giving it weight as evidence.

on academics". Dr. H. states "We as a family remain committed to do the right thing and teaching our children to be responsible and accountable for their mistakes. [S] is not an exception in this matter."

- 4.13 The Student did not testify nor provide any written statement during the penalty phase.
- 4.14 The Student, through counsel, tendered copies of 2 receipts dated February 6, 2009 for prescriptions for Divalproex and Risperidone. The Student did not tender evidence from his prescribing physician nor was any evidence tendered to confirm whether the Student was taking such medication regularly, or at all. No receipts for any other dates were tendered. Accordingly, the Panel gives no weight to the receipts nor any submission regarding any medical conditions allegedly suffered by the Student.
- 4.15 The Student also tendered a letter from All World Tutoring Services dated March 30, 2009 confirming that he tutored from January to October, 2007⁵ and a letter from the Eden Community Food Bank dated June 25, 2009 confirming that he completed 10 community service hours⁶.

5. Decision and Reasons for Penalty

- 5.1 The University has requested the following penalty:
 - (a) a 5 year suspension to commence at the end of the hearing; and
 - (b) a recommendation to the President of Governing Council that the Student be expelled.
- 5.2 The Student has requested a 5 year suspension to commence at the end of the hearing.
- 5.3 The Panel was directed by both parties to the decision in file 1976/77-3, *In the Matter of the University of Toronto Code of Behaviour and an Appeal by Mr. C* (hereinafter "*In the Matter of Mr. C*") and in particular, to the following factors to consider in imposing penalty:
 - (a) the character of the person charged;

⁵ The letter is hearsay as the author did not testify to introduce the letter. However, the University has not opposed its introduction as evidence. Accordingly, the Panel has considered the letter but factored its hearsay nature in giving it weight as evidence.

⁶ There was no reference as to when the hours were completed and, as such, it is not clear whether the Student only recently completed this hours.

- (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;
- (f) the need to deter others from committing a similar offence.

Character of the Student/Extenuating Circumstances Surrounding the Commission of the Offence /Likelihood of a Repetition of the Offence

5.4 There was minimal evidence tendered by the Student about his good **character**. Moreover, the Panel notes that the following omissions on the Student's part give rise to an adverse finding about the character of the Student:

- (a) The Student did not actively respond to nor reply to the requests of the University to meet with the Dean's Designate which were initiated in February, 2008. This is despite the Student and his family being aware of the allegations of dishonesty and the Student purportedly beginning moral counselling with the Islamic Institute of Toronto on February 20, 2008. The Student put off Ms. Gaspini's requests to meet and did not follow through on his promise to get in contact with her on April 18, 2008, such that the request for formal charges had to be made on August 1st, some 6 months later. This lack of co-operation until facing formal charges is notable.
- (b) The Panel accepts that the plea of guilty is an acknowledgment of guilt and that the Student has cooperated in the presentation of an Agreed Statement of Facts. However, the Student has not apologized nor conveyed any remorse for his actions. However, despite the indications by the Student's first counsel and then, his father, that an apology might be given by the Student, there was no *viva voce* nor written apology tendered by the Student. Dr. H. did not, and fairly so, purport to convey an apology from his son (rather, Dr. H. conveyed his regret about his son's behaviour). The Panel recognizes that the Student is not obligated to testify during any hearing of charges, but the Panel is not convinced that it may not draw an adverse inference if, during the penalty phase, the Student does not testify but instead tries to introduce mitigating character evidence through another witness or documentary evidence, as was done here.

- 5.5 The letter from the Imam does not provide any opinion or observations as to whether the Student has acknowledged his guilt or remorse to the Imam or whether the Imam was aware of the purpose for which he was providing his letter. The letter regarding the Student's recent community service does not convincingly support the Student's submission that has made attempts to improve himself.
- 5.6 With respect to **extenuating circumstances**, the Panel notes that there is no evidence of any extenuating circumstances. In particular, the Student's father testified that he sheltered the children from the knowledge of the family's financial problems. In any case, many students face difficult financial circumstances without resorting to academic dishonesty. As noted above, there was no medical evidence regarding any extenuating circumstances at the time of the offence nor any subsequent diagnosis.
- 5.7 With respect to the **likelihood of repetition**, the Panel notes that the Student was apparently raised by Dr. H and his wife in an ethically-minded fashion and that Dr. H. is sincere about their intention to keep the Student on track if he is given the opportunity to complete his education. However, the Student is an adult and committed the offence while living with his parents and, apparently, with the knowledge of his brother. Accordingly, the Panel is not convinced that there is no risk of re-offending given the lack of apology/remorse, that no extenuating circumstances were proffered (see above) and that the Student has delayed at all stages of this process.

Nature of the Offence/Detriment to the University

- 5.8 The nature of the offence in this case is unique --- the Student has admitted to the sale of essays to other students, for financial gain, and with the knowledge that the essays would be submitted for academic credit in that other student's name. Neither counsel for the University nor agent for the Student was able to find any previous decision of this Tribunal involving the "seller" and it is acknowledged that it is rare that the Tribunal would have jurisdiction to sanction the "sellers" as they are very often commercial enterprises which do not involve current or former University of Toronto students. It is also very difficult to detect the purchase of academic work since it is generally "original" work not authored by the student submitting same for credit (although in this case, the Student's essay for Ms. P's was admittedly plagiarized from other sources).
- 5.9 The University has urged the Panel to impose a more significant sanction on the Student, given his role as the "seller" in the 2 transactions before the Panel. The University's rationale is that the

seller is engaged in a "corrupt enterprise" for financial gain and should garner more serious punishment. It is also argued that the level of intent of the seller is deliberate and cannot be spontaneous as the researching and writing of an essay requires sustained intent on the part of the seller. The Panel does not agree, as a general proposition, that the seller is a more significant a player in the sale/purchase of academic work. The purchaser who has contracted and made payment for the work and has likewise displayed sustained intent, especially given that the purchaser can choose not to submit the work at any time after purchasing it. However, where there is evidence that the seller has engaged in an ongoing enterprise, as in this case, this should be an aggravating factor in assessing penalty.

- 5.10 Somewhat conversely, the Student has asked the Panel to recognize that the seller and purchaser differ insofar as the buyer is the "initiator" and the seller is, thereby, less culpable and cites the decision of the Tribunal in *V.A. and A.H.*⁷. The Panel does not agree with this submission as a blanket proposition. The seller, in this case, was known to be engaged in this type of transaction and was not approached for the first time by Ms. P or Mr. A --- he had, what might be termed, an outstanding "reputation for selling" that other students could approach him to act upon.
- 5.11 The detriment to the University fabric of purchasing or, in this case, selling work which will be submitted under dishonest and unethical circumstances is manifestly obvious. This is addressed in the Tribunal decision in *V.L.* (Case No. 440) at paragraph 21:

Moreover, the "enterprise" of purchasing work for submission to the University is emblematic of the highest and greatest danger to the University community that the Code attempts to prevent, namely the circumstance when respect for learning is forsaken 'in favour of self interest, when trust becomes a hostage of expediency.' In this regard, a failure to recognize the severity of this threat would in effect be punitive to those students and teachers who strive through their honest hard work to maintain those values.

- 5.12 Finally, Appendix "C" of the *Code – Provost's Guidelines on Sanctions, Offences and Suggested Penalties For Students* recommends that:

5. 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.

⁷ File 2001-02-08

Although, the Student did not submit purchased work, for the reasons above, the Panel is of the view that the recommended sanction for the purchaser confirms the seriousness of the offence, regardless of whether it is the purchaser or the seller being charged. Obviously, the latter part of the minimum sanction would seemingly only be applicable to the seller if he/she was enrolled in the same course as the buyer.

- 5.13 The Panel further finds, as a fact, that the Student was engaged in the practice of selling academic work to other students prior to these present 2 instances. The statement of the Student's brother to the Campus Police⁸ confirms that the Student was engaged previously in this kind of activity. Ms. P knew of the Student's reputation for this kind of activity. Mr. A swears that he purchased an essay from the Student before. Although the charges before the Tribunal relate to only 2 transactions, the Panel finds that there is evidence of previous offences having been committed.
- 5.14 In short, the Panel considered that both penalty positions advocated by the University and by the Student to be within the appropriate range.

Deterrence

- 5.15 Although sellers fall under the jurisdiction of this Tribunal much less often than buyers, when a seller is a student, or former student, they will be subject to the *Code* to the fullest extent possible.
- 5.16 There is no basis to reduce penalty because the general deterrence effect will be minimal given the nature of the perpetrators. General deterrence considerations may be relevant to impose an increased penalty or may be neutral but it can not be argued that since there may be little effect on general public deterrence that the penalty may be reduced.
- 5.17 There is justification for specific deterrence in this case. The Student, without the guidance of his parents at this juncture may well re-offend. He has not displayed any remorse or insight into his offence.
- 5.18 A harsh sanction is required to meet the concerns of both general and specific deterrence.
- 5.19 The Student's agent has distinguished the more serious cases where expulsion was imposed and demonstrated that suspension is the more appropriate penalty based upon other cases before the

⁸ See Agreed Statement of Facts, paragraph 29.

Tribunal relating to "purchasers" (sometimes repeat offenders) and other plagiarism-type situations. In a recent a decision of May 15, 2009⁹ relating to a purchaser of an essay, discipline counsel acknowledges in a joint submission on penalty that, although Appendix "C" of the *Code* recommends that expulsion is sought for purchased papers, "the principle of consistency must inform the Tribunal when it imposes sanctions" and that "while some cases similar to this one did result in expulsion, the majority did not."

6. **Penalty**

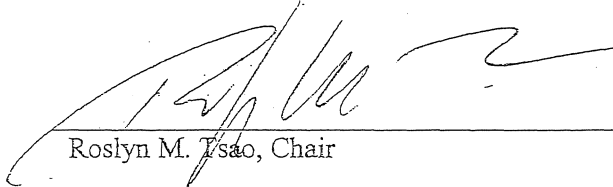
- 6.1 The Panel views the within offences as very serious and considers this case to be approaching the level warranting expulsion. The Panel also views the lack of co-operation by the Student to address the charges as early as possible to be significant in this matter. Furthermore, the adjournment of the hearing date on February 26, 2009 after the plea of guilty to allow the Student to provide medical evidence for penalty considerations was granted in good faith. The further adjournment on March 30, 2009 and the ultimate setting of a hearing date of June 30, 2009 was arranged based on the availability of the Student's prospective new counsel. In the end, neither medical evidence nor prospective counsel attended on June 30th.
- 6.2 During the period from February 26 until June 30, 2009, the Student was able to complete courses and obtain credits that he would not have been able to do had the suspension been imposed at the February 26th hearing date.
- 6.3 The Panel finds that the University was not responsible for any of the delay in addressing penalty in this matter after February 26th.
- 6.4 Accordingly, the Panel imposes the following penalty:
- (a) That the Student be suspended from attendance at the University of Toronto for a period of five (5) years, commencing February 26, 2009 (accordingly, any course work after that date should not be credited to the Student);
 - (b) That a notation be placed on the Student's transcript for a period of seven (7) years from the date of the final hearing on June 30, 2009 to the effect that the Student was suspended from the University for academic misconduct; and

⁹ *University of Toronto and Yoon*, May 15, 2009, see paragraph 18

- (c) That a report of the decision be made to the Provost for publication in the University's newspaper with the Student's name withheld.

6.5 The Panel wishes to thank both Mr. Centa and Ms. Wilkes for their thorough and able arguments.

Dated at Toronto, this 11th day of August, 2009



Roslyn M. Tsao, Chair