

**THE UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL
TRIAL DIVISION**

IN THE MATTER OF charges of academic misconduct made on November 14, 2011,

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 –

A [REDACTED] K [REDACTED]

REASONS FOR DECISION

Hearing Dates: May 22, 2012, June 5, 2012, June 7, 2012, and June 18, 2012

Members of the Panel:

Mr. John A. Keefe, Lawyer, Barrister and Solicitor, Chair

Professor Gabriel D'Eleuterio, Faculty of Applied Science and Engineering, Faculty Panel Member

Ms. Vy Nguyen, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel for the University, Paliare Roland Barristers

Ms. Sierra Robart, Legal Case Worker for the Student, Downtown Legal Services

Mr. Ab Gehani, Manager of Client Services at the University's Help Desk

Dr. Sheryl Stevenson, Writing Specialist at the Scarborough and St. George campuses

Mr. Kevin Lo, Managing Director, Digital Forensics and Electronic Discoveries at Froese Forensics

In Attendance:

Ms. A [REDACTED] K [REDACTED], the Student

Professor Eleanor Irwin, Dean's Designate, Office of the Dean and Vice Principal

Ms. Betty-Ann Campbell, Law Clerk, Paliare Roland Barristers

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

Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

REASONS FOR DECISION

1. The Trial Division of the University Tribunal was initially convened on May 22, 2012, to consider charges under the *University of Toronto Code of Behaviour on Academic Matters*, 1995 (the “Code”) laid against Ms. A [REDACTED] K [REDACTED] (the “Student”) by letter dated November 14, 2011.
2. The hearing proceeded as a contested hearing. It continued on June 5, 7 and 18, 2012 in circumstances that will be described further in these Reasons.

THE CHARGES

3. The notice of hearing was dated May 2, 2012.
4. The charges against the Student are as follows.
 1. In or about April, 2011, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in an essay entitled “Key emerging issues in recent Canadian health care reforms” (the “Essay”) that you submitted for academic credit in HLTC03H3 – The Politics of Canadian Health Policy (the “Course”), contrary to section B.I.1(d) of the Code.
 2. In the alternative, 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 with the Essay you submitted for academic credit in the Course, contrary to section B.I.3.(b) of the Code.
5. The particulars of the charges are as follows:
 3. At all material times, you were a registered student at the University of Toronto. In Winter 2011, you enrolled in the Course, which was taught by Professor Bryant.
 4. Students in the Course were required to submit an essay on March 31, 2011 which was worth 20% of the final grade in the Course (“Course Requirement”).
 5. On or about March 31, 2011 and on April 2, 2011, you submitted the Essay in completion of the Course Requirement, and to obtain academic credit in the Course.

6. In your Essay you knowingly purchased all or a substantial part of the Essay, and/or you copied the work of another person, and in so doing you:

- a. represented the work of another as your own work; and
- b. included in the Essay ideas, and expressions of ideas, that were not your own, but were the ideas and expressions of others, which you did not acknowledge in the Essay.

7. For the purposes of obtaining academic credit and/or other academic advantage, you knowingly committed plagiarism in the Essay.

THE HEARING AND THE BACKGROUND FACTS

6. At the outset of the hearing, Counsel for the University submitted a Joint Book of Documents (Exhibit 1). The University called as its witnesses Professor Toba Bryant, Professor Irwin, the Dean's Designate, and Betty-Ann Campbell, a Law Clerk employed by Paliare Roland Rosenberg Rothstein LLP ("Paliare Roland"). Ms. Campbell also submitted an affidavit sworn May 18, 2012 with exhibits (Exhibit 2).

7. The facts as set out in the documents and the evidence presented at the hearing are summarized in the following paragraphs.

8. The Student, Ms. K [REDACTED], is a student at the University of Toronto, Scarborough campus. She had been attending the University of Toronto since 2007. At the time of the hearing, she had completed all of the course requirements to graduate, subject to the course in question.

9. The course in question is HLTC03H3. - Politics of Canadian Health Policy. The Student enrolled in this course in the Winter/Spring 2011 term. Professor Toba Bryant was the professor. The course outline described the course requirements, which included a number of short term papers which were due on February 3, February 17, March 10, and March 24, 2011. At some point during the course, Professor Bryant, with the consensus of the students, decided to drop the final short paper and changed the due date of the third paper from March 10, 2011 to March 31, 2011.

10. The course outline described in some detail the University's requirements with respect to plagiarism. The students were told that the term papers were to be submitted to an Internet site called Turnitin.com at the same time as each assignment was due. The Turnitin.com site

electronically compares the papers submitted in the course to other materials published in one form or another on the Internet.

11. On March 31, 2011, just after the deadline for submitting the assignment, the Student submitted to Professor Bryant a paper titled "Key Emerging Issues in Recent Canadian Healthcare Reforms". The date on the paper is March 3, 2011, but it is undisputed that it was submitted on March 31, 2011. The paper contained three full pages of text plus a fourth page of references. The Student submitted the term paper at the same time to Turnitin.com.

12. Shortly after the paper was submitted, Professor Bryant received an originality report from Turnitin.com, indicating that there was a similarity index of 81%, meaning that 81% of the words contained in Ms. K■■■■'s paper matched a student paper submitted on April 1, 2011 by another student in another course at York University. The student paper submitted at York University was submitted in a course titled "Social Determinants of Health" taught by Professor Dennis Raphael. It was a ten page paper with two pages of references. By coincidence, Professor Bryant and Professor Raphael are spouses.

13. It is very clear from the Turnitin.com originality report and from an examination of the paper submitted by Ms. K■■■■ together with the student paper submitted to York University, that many of the words and expressions contained in Ms. K■■■■'s paper are virtually identical to the words and expressions contained in the York University paper. There are even identical typographical errors in both papers.

14. In addition to the body of the paper, the reference section of Ms. K■■■■'s paper is virtually identical to that contained in the York University paper, although Ms. K■■■■'s paper did not include a reference to the textbook written by Professor D. Raphael. Significantly, both references pages contain an incorrect and odd expression "top of form/bottom of form" in the middle of the reference page.

15. At page 3 of Ms. K■■■■'s paper, the spelling of "programme" and "modelled" used British spelling. The same words with the same spelling appear on page 9 of the York University paper.

16. In the paper submitted by Ms. K[REDACTED], the closing words are: "But at the risk of making an overly optimistic reference, the glass in Canada is half-full, not empty." Similar words appear in the York University paper: "It may be that the glass in Canada is half-full, not half-empty."

17. Various other parts of Ms. K[REDACTED]'s paper were examined by the Tribunal and on the face of the documents it appears that Ms. K[REDACTED]'s paper was lifted from the paper submitted to York University and was slightly modified before being submitted to Professor Bryant.

18. Shortly after the paper was examined by Professor Bryant following receipt of the Turnitin.com report, the Student was referred to the Dean's Designate, Professor Irwin.

MEETING WITH DEAN'S DESIGNATE

19. The first meeting with the Dean's Designate was on June 22, 2011. At this meeting the Student was confronted by Professor Irwin with the allegation that her essay was taken from the work of others. Janis Jones, from the Dean's office was present at the meeting taking notes.

20. Ms. K[REDACTED] denied the allegation and maintained that the essay was her work. She volunteered that she had sent her essay electronically to a person named Bryan, but she said he did not have time to edit the paper so her mother edited it for her. Ms. K[REDACTED] offered no good explanation for the similarities between her paper and the York University paper.

21. At the meeting on June 22, 2011, Ms. K[REDACTED] was invited to send to the Dean's Designate any material that she had used to prepare the paper that might corroborate her story. Following the meeting, Ms. K[REDACTED] sent Janice Jones an e-mail with a number of large reports and excerpts from books that Ms. K[REDACTED] said she had used in preparing her paper. She also sent what Ms. K[REDACTED] described as a draft of her paper and an outline that she said she used to prepare her paper.

22. She met again with the Dean's Designate on July 6, 2011. At that meeting she told the Dean's Designate that the name of the person she described as Bryan was Bryan Davis, Davies or Davison. She gave the Dean's Designate his phone number. They called the number together and it was answered by an answering machine stating "you have reached Bryan".

23. Ms. K████ described Bryan to the Dean's Designate as someone she believed to be well-known to the University. She said that she had been having trouble with some of her essay writing and that she was looking for extra tutorial help on structuring the essay. She said that she sent the essay by email to Bryan but he did not do any work on it because he did not have time to help.

24. A few days after the July meeting, Ms. K████ delivered to Janis Jones two pages of handwritten notes that she said were the materials she used to prepare her paper. These handwritten notes were not examined in any detail by Professor Irwin, Janis Jones or Professor Bryant at the time to see if they supported Ms. K████'s story.

25. On September 26, 2011 Professor Irwin notified Ms. K████ that she was sending the file to the Vice Provost to consider laying a charge of academic misconduct.

26. Ms. K████ completed the remainder of the requirement in the course including the final examination.

METADATA IN THE TERM PAPER IS EXAMINED IN DETAIL BY MS. CAMPBELL

27. On November 14, 2011, the materials that had been forwarded by Ms. K████ by e-mail to Ms. Jones on June 22, 2011 were forwarded to Ms. Campbell at Paliare Roland, the law firm representing the University.

28. In Ms. K████'s e-mail of June 22, 2011 to Ms. Jones she stated that she was enclosing "the assignment and draft I created when doing the assignment".

29. Two of the documents that were attached to Ms. K████'s e-mail of June 22, 2011 were Word format documents. One had the heading "Hit c03 Assignment 2011.doc (**"electronic essay"**)". The second document, also in Word format, was titled "draft of my paper (health studies).doc" (**"electronic draft"**). The electronic essay appeared to be identical to the paper submitted to Professor Bryant, except some words were added to the text of the paper stating "third short paper – due March 29, 2011 (Week 9)" and listed specific questions that had been raised by Professor Bryant. The reference page contained the unusual notation "top of form/bottom of form", but it had been slightly changed in the Word document compared to the form in the paper submitted to Professor Bryant.

30. Ms. K [REDACTED] also sent what was titled an outline.

31. Ms. Campbell testified that, after receiving the Word documents, she examined the metadata properties of these documents. The metadata properties were contained as Exhibit "E" to the Affidavit of Ms. Campbell and at Tabs 18 and 19 of the Joint Book of Documents. In the electronic essay document, in the field titled "author", the metadata describes "Bryan" as the author of the document and the company as "ZAS".

32. Ms. Campbell testified that, based on her experience, the fact that the metadata properties of the Word document described the author as Bryan meant that the original of the paper was created on a computer that was owned or operated by Bryan and not by the Student. Ms. Campbell acknowledged that she is not an expert in computer forensics, but she did have experience examining metadata on Word documents.

33. Ms. Campbell also testified that a person named Bryan Davies was known to the University as a result of another discipline proceeding at the University involving another student who admitted purchasing an essay from a person named Bryan Davies. In that other case, the University had obtained the metadata properties for the essay submitted by the Student that showed "Bryan" in the author field and "ZAS" in the company field.

34. Ms. Campbell did other internet searches and found several references to Bryan Davies and his company described as ZAS. The phone number on the internet sites matched the phone number Ms. K [REDACTED] gave Professor Irwin for Bryan.

35. Bryan Davies is a disbarred Ontario lawyer who, it appears, actively promotes his services in writing essays for students.

36. The metadata on the Word documents further disclosed that the documents submitted to Janis Jones on June 22, 2011 were created on June 22, 2011 at 5:32 p.m., which is after the meeting with Professor Irwin, and that it was last saved by A [REDACTED].

37. Neither Professor Raphael nor the York University student were called as witnesses at the hearing. The only information provided to the Tribunal about the York University student was that the York University student received a failing mark because the paper was off topic.

38. Professor Irwin's evidence at the hearing was that Ms. K [REDACTED] asked her if she could contact the student from York University, but Professor Irwin told her that she did not think that was a good idea. Neither Professor Irwin nor anyone from the University made any further attempts to contact the York University student or Bryan Davies.

MS. K [REDACTED]'S EVIDENCE AT THE HEARING

39. Ms. K [REDACTED] testified at the hearing. Her evidence was that the words in the term paper were her own and that she did not copy her paper from the paper submitted to York University. She had no explanation for the fact that the same words appear in her paper and the paper submitted to York University. The only possible explanation she could offer was that her work must have been copied by the York University student, and not *vice versa*.

40. She also attempted to explain the metadata on the documents showing Bryan as the author. She testified that she had taken a computer training course in Excel from this person, Bryan, almost a year earlier at a community centre. She said he helped her load her computer with a Microsoft Word program and that he must have set up her computer using his identification which would be embedded in her computer.

THE HEARING CONTINUES ON JUNE 5, 2011

41. The hearing commenced on the evening of May 22, 2012. The Student testified in-chief. It became apparent during her testimony that there would not be sufficient time to complete the hearing that evening. A new date was selected (over the objection of the Student) to permit the University to cross-examine the Student and to call reply evidence, if any.

42. On June 5, 2011, the Tribunal reconvened for a full day of hearing. Ms. K [REDACTED]'s evidence continued. During the course of her testimony in chief and in cross-examination, and in response to questions from the Tribunal, the Student's testimony was that:

- (a) She authored the paper. The paper was the result of her work.
- (b) She had no real explanation for the identical typographical errors appearing in both papers.

- (c) She suggested that the York University student must have taken her paper and incorporated it into the longer paper submitted to York University.
- (d) The reference page expression “top of form/bottom of form,” was to indicate that the references that were above that line were more significant. She also said that she thought that this was the proper way to indicate a page break. She said she had based this formatting on a sample citation handout that she found at the University’s writing centre, where she had sought assistance for her writing style and for this essay in particular.
- (e) She had taken a computer Excel spreadsheet training course from Bryan Davies approximately a year earlier at a community centre that offers support to recent immigrants. During this training, Bryan Davies offered to assist the students in copying Microsoft Word from his computer. Ms. K [REDACTED] said that Bryan Davies installed Microsoft Word software on her computer and this could explain why the metadata showed Bryan as author.
- (f) She did not delete the email to Bryan Davies from her computer. She said it was automatically deleted which is the way the University’s computer system works.
- (g) She forwarded a draft of her paper to Bryan Davies for editing, but he told her he did not have time to edit the paper. He did not send the paper back to her and he did not have any role in the preparation of her paper.
- (h) She did not pay Bryan Davies to write her paper.

43. In Reply, the University called several witnesses to address various issues raised by Ms. K [REDACTED]. First, the University called a witness to rebut the evidence of Ms. K [REDACTED] that she had not deleted the e-mail to Bryan, but that instead it had been automatically deleted from her computer through the University’s computer system. The University called Mr. Ab Gehani, the Manager of Client Services at the University’s Help Desk. His evidence was that the University’s computer system does not have an automatic delete function.

44. The University also called Dr. Sheryl Stevenson. She is a writing specialist at the Scarborough and St. George campuses. Her evidence was to address the formatting issue of “top

of form/bottom of form". Her evidence was that she is not familiar with anything in the University's citation systems that would make reference to "top of form/bottom of form".

45. She did acknowledge that it is not uncommon for students to access different data bases supplied through the University's network of databases. It is open to the students to highlight citations and incorporate them into papers. In many cases the citations copied by students are not in accordance with the requirements of the University.

46. Professor Irwin was also called in reply to confirm the portions of her notes where Ms. K [REDACTED] indicated that she had deleted the e-mail to Bryan Davies.

THE STUDENT'S HANDWRITTEN NOTES – THE HEARING CONTINUES ON JUNE 7, 2012

47. Near the conclusion of the hearing on June 5, 2012 and during the closing argument, the Tribunal pointed out to both parties that Ms. K [REDACTED]'s handwritten notes that had been provided to Janis Jones may be of more significance to the Tribunal than either of the parties had suggested during the hearing. The notes appeared to contain references to some of the specific information and expressions of language that appeared in Ms. K [REDACTED]'s paper. For example, there are references in the notes to several of the authors referred to in the body of Ms. K [REDACTED]'s paper and in her reference page. The closing sentence of Ms. K [REDACTED]'s paper and the York University paper that contained the expression "half full/half empty" is scribbled in the margin of Ms. K [REDACTED]'s notes. Simply put, these notes seemed to corroborate, to some extent, Ms. K [REDACTED]'s story that the paper was the result of her work. And yet there had only been passing reference to the handwritten notes during Ms. K [REDACTED]'s direct examination or cross-examination.

48. The Panel invited the parties to consider whether they wished to reopen the evidence to specifically address the content of the notes in more detail.

49. After some discussion, the parties agreed to re-open the evidence to address the notes. This required scheduling a further hearing date. We reconvened on June 7, 2012 in the evening.

50. On June 7, 2012, Ms. K [REDACTED] testified about her notes. She said that the notes were prepared by her in preparation for the paper. Her evidence concerning her notes was inconsistent and disjointed. She was confused about when she prepared the notes and she was very vague about the details contained in the notes.

51. The University called Professor Bryant again as a witness on June 7, 2012. She acknowledged that she had not read the notes when the allegations originally arose. She also acknowledged that the notes appeared to support the Student's position that she used them in some way to prepare the paper, so the paper was the result of the Student's work.

52. The Tribunal provided the parties with a further opportunity to make submissions concerning the notes.

53. Ms. Harmer asked the Tribunal to draw an adverse inference from the fact that the Student had not put forward the significance of the notes earlier. She suggested that the notes may have been fabricated by the Student and created after the June 22, 2012 meeting with Professor Irwin.

54. Ms. Harmer acknowledged that, if the Panel found that the notes were not fabricated, they would support the Student's position that the paper was the result of her own work. Ms. Harmer acknowledged in closing that it would be impossible to tell with objective certainty what exactly happened and whether Mrs. K█████'s notes corroborate her version of events. Ms. Harmer did acknowledge that the notes do reflect some parallel with the paper and she conceded that they assisted the Student's case. Ms. Harmer indicated that it is up to the Panel to weigh all the evidence and to indicate which facts are accepted and which are rejected.

THE TRIBUNAL REQUESTS FURTHER EVIDENCE CONCERNING THE METADATA PROPERTIES ON THE DOCUMENTS SUBMITTED TO THE UNIVERSITY

55. At the conclusion of the evidence and argument on June 7, 2012, the Tribunal was faced with a dilemma. After considering all the evidence and the arguments relating to the notes, the Tribunal concluded that the notes were not fabricated by the Student. The handwritten notes seemed to support the Student's evidence that she had real input into the content of the paper, but the Student's evidence concerning the notes and the preparation of the paper was disjointed and inconsistent. More importantly, there was no plausible explanation for the existence of "Bryan" on the metadata of the Word documents and her explanations for how it could have found its way onto the metadata were not plausible. The Tribunal advised the parties that it needed further expert assistance or technical advice as to how the reference to "Bryan" could have possibly found its way onto the metadata properties of Ms. K█████'s Word document.

56. In the course of the submissions of the parties to address this request, University Counsel asked for access to the Student's computer, which she said would be the best way to address this issue. After some deliberation, the parties advised the Tribunal that they had come to an agreement which would permit an expert to be retained by the University to examine her computer and to attend at a further resumed hearing to assist the Panel with respect to any questions the Tribunal may have concerning the evidence found on the Student's computer. The Student told the Tribunal that the computer was now owned by her mother, but that her Mother (who was in attendance throughout the hearing) would consent to having the computer examined by the expert, provided the examination was limited in scope to the issues raised in the hearing. The Tribunal made an interim order to the effect that the examination of the computer by the expert was to be limited to an examination of the computer and, specifically, to the exchanges between the Student and Bryan Davies concerning the subject matter of the Hearing. The Tribunal set Monday, June 18th for the resumption of the hearing.

57. During the week preceding June 18, 2012, the Tribunal received a request of the parties for directions from the Panel. The Tribunal convened a conference call. University counsel indicated that she had identified and retained an expert who was ready to perform the examination on the Student's computer within the timeframe set by the Tribunal. The Panel was advised that the Student's mother had changed her mind and was no longer prepared to turn over the computer to the University's expert. The Tribunal concluded that it could not force the Student's mother to turn over the computer for examination, but nonetheless it would like to have the expert examine the Word documents sent by the Student to Ms. Campbell and attend the hearing to address any questions the Tribunal may have concerning the metadata properties on the Word documents.

58. The University retained Kevin Lo as the expert to assist the Tribunal. He is the Managing Director, Digital Forensics and Electronic Discoveries with Froese Forensics. He reviewed the electronic properties of the two Word documents that had been submitted by the Student on June 22, 2012. He did not examine the Student's computer. He acknowledged that an examination of the computer itself would be of more assistance than an examination of the Word documents. However, he was able to describe to the Tribunal the way in which metadata on a document is created. Based on his evidence, it was very clear to the Tribunal that the only

way the metadata on the Word document could show “Bryan” as the author and “ZAS” as the company would be if the document was created on Bryan’s computer. Even if Bryan had loaded the Microsoft product on Ms. K[REDACTED]’s computer, the metadata on the documents created on Ms. K[REDACTED]’s computer would not show “Bryan” as the author. In simple terms, the Word documents had to have been created on Bryan’s computer, not on Ms. K[REDACTED]’s computer.

CONCLUSION ON THE EVIDENCE

59. The Tribunal was faced with considerable evidence, some of which was confusing and contradictory. We considered all the evidence and weighed it all in its totality and we have drawn inferences based on common sense from the evidence. We have seen the witnesses and assessed the credibility and weight of their evidence.

60. Based on a careful examination of all the evidence, including the testimony of Ms. K[REDACTED] and examination of her notes and the evidence relating to the metadata on the Word documents submitted by her, the Tribunal concludes that there is a clear and convincing evidence that the paper submitted by Ms. K[REDACTED] was prepared, at least in part, by Bryan Davies and submitted by Ms. K[REDACTED] as her work only.

61. The Tribunal concludes that Ms. K[REDACTED] prepared the notes during the lectures and the tutorials and put some thought into the content of the essay. The notes were prepared by Ms. K[REDACTED] and they show that she had real input into the ideas and content of the essay. The Tribunal concludes that she took her notes and gave them to Bryan Davies who took the words and ideas from her notes and put them into the essay form that was submitted by Ms. K[REDACTED] to the University as her own work. Bryan Davies helped Ms. K[REDACTED] to express her ideas into words. However, she represented the paper as her own work which is a violation of the plagiarism provisions contained in Section B(I)(1)(d) of the Code.

62. The Tribunal is not convinced based on all the evidence that Ms. K[REDACTED] purchased the paper from Bryan Davies.

63. Accordingly, the Tribunal concludes that the Student is guilty on count one. Based on this finding, the University withdrew count two.

PENALTY

64. University Counsel submitted that the appropriate penalty, in the circumstances, based on our finding was as follows:

- (a) a mark of zero in the course;
- (b) a two-year suspension commencing immediately;
- (c) notation on the Student's record for period of three years or until her graduation from the University, whichever is earlier;
- (d) that the case be reported to the Provost for publication of a notice of the decision of the Tribunal and a sanction imposed with the name of the student withheld.

65. Counsel for the Student indicated that she was in general agreement with the proposed penalty, but submitted that the date for the commencement of the suspension should be the date of the offence (March 31, 2011), or, alternatively, the date the Notice of Hearing (November 14, 2011).

66. Based on a number of University Tribunal decisions, including decisions of the Appeal Tribunal, the Tribunal concludes that it is not appropriate to back date the commencement of the suspension unless it is in close proximity to the date of the hearing. In this case, the hearing commenced on May 22, 2012. Although the hearing was concluded on June 18, 2012, we believe that it is reasonable in the circumstances that the commencement of the suspension be close in proximity to May 22, 2012. The Tribunal noted that this is close to the commencement date for the summer term. Accordingly, the Tribunal concluded that it is appropriate for the suspension to commence on a date that would permit the Student to enrol in the summer term of 2014. This does not offend the basic principles against backdating the commencement of suspensions while allowing the Student to resume her academic career two years from the beginning of the hearing which was May 22, 2012. Accordingly, we have backdated the commencement of the suspension to May 1, 2012. Similarly, the notation on her transcript will expire on May 1, 2015 or until her graduation, whichever is earlier.

GENERAL PRINCIPLES OF SENTENCING

67. The decision in the matter of Mr. C (File: 1976/77; November 5, 1976) is the leading decision of the University Tribunal with respect to the general principles of sentencing. It is often referred to in University Tribunal cases. It sets out the following sentencing criteria:

- (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.

68. The Tribunal also believes that there should be some measure of uniformity or proportionality in the sentencing process so that similar sentences are imposed for offences committed in similar circumstances. There should not be rigid rules or formulas applied in the sentencing process.

69. Applying these principles to the current case, the Tribunal notes, in particular, that it did not make a finding that the Student purchased the essay. Had we done so, based on other University Tribunal cases involving the purchasing of essays, the penalty would have been far more severe.

70. University Counsel referred the Tribunal to several University Tribunal cases involving first offenders found guilty of plagiarism. It is quite common for a first offender to receive a penalty of a two-year suspension. A two-year suspension is a serious sanction and it sends a strong message that is consistent with the principles of general deterrence.

71. In this case, the Tribunal noted that the Student completed all of her courses necessary to graduate, with this proceeding being the only impediment to her graduation. The Tribunal concluded that, in the circumstances, there is little likelihood of repetition of the offence.

72. There are no particular extenuating circumstances. The only extenuating circumstance is the Student's own naiveté which allowed her to fall into the hands of Bryan Davies, who has a history of preying on students and offering them assistance when they are faced with pressure to complete their course requirements. The Student did not attempt to hide the fact of Bryan Davies' involvement. In fact, she believed that the University would recognize that he was a person known to the University as someone who assists students in editing and other essay-writing skills. While the Tribunal did not accept all of Ms. K■■■■'s testimony, it did accept the fact that her notes showed that she had real involvement and input into the content of the paper.

73. We believe that the penalty recommended by the University strikes the appropriate balance between protecting the integrity of the University, while, at the same time, avoiding a penalty that unduly punishes the Student, by making it impossible for her to graduate within a reasonable time.

74. The Tribunal notes that plagiarism is a serious breach of the University's Code of Behaviour. Because of dramatic changes in technology and the ability of the students to access materials on the Internet, the University must send a clear message that obtaining inappropriate assistance in the preparation of course work and representing the work as their own is contrary to the University's basic principles of honesty and integrity. Sanctions imposed by the University Tribunal must reflect the seriousness of the offence and provide general deterrence while recognizing that the sentencing process must also preserve and ensure fairness by avoiding disproportionate sentences and inconsistencies in like offences and like offenders. We believe that the sanction recommended by University Counsel meets these principles and provides an appropriate balance.

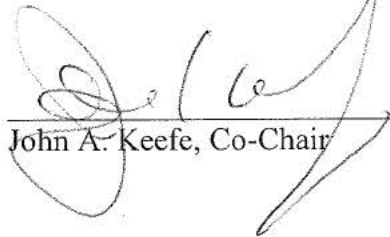
CONCLUSION

75. Accordingly, we make the following order:

- (i) that Ms. K■■■■ is found guilty on one count of plagiarism, contrary to Section B(I)(1)(d) of the Code of Behaviour on Academic Matters;
- (ii) that Ms. K■■■■ receives a final grade of zero in HLTC03H3;

- (iii) that Ms. K [REDACTED] be suspended from the University for the period of two years commencing on May 1, 2012;
- (iv) that the sanction be recorded on Ms. K [REDACTED]'s academic record for the period of three years until May 1, 2015 or her graduation from the University, whichever is earlier;
- (v) that this case be reported to the Provost for publication of a notice of decision of the Tribunal and the sanctions imposed, with the name of the student withheld.

Dated at Toronto, this 30th day, October 2012



John A. Keefe, Co-Chair