

UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL
TRIAL DIVISION

IN THE MATTER of charges of academic dishonesty made on July 21, 2009;

AND IN THE MATTER of the *University of Toronto Act*, 1971, S.O. 1971,
c. 56 as amended S.O. 1978, c. 88;

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

BETWEEN:

UNIVERSITY OF TORONTO

-and-

D [REDACTED] W [REDACTED]

Members of the panel:

- Mr. John A. Keefe, Chair
- Professor Graeme Hirst, Faculty Member
- Ms. Elena Kuzmin, Student Panel Member

Appearances:

- Mr. Robert A. Centa, Assistant Discipline Counsel for the University of Toronto,
Paliare Roland Barristers

In Attendance:

- Ms. Lucy Gaspini, Academic Affairs Officer, University of Toronto, Mississauga
- Mr. D [REDACTED] W [REDACTED], the Student, not in attendance

REASONS FOR DECISION

1. The University Tribunal was convened on Wednesday, September 16, 2009 to hear charges under the *Code of Behaviour on Academic Matters*, 1995 (the "Code") laid against D■■■ W■■■ (the "Student"). The Student was informed by letter dated July 21, 2009 from Professor Edith Hillan, Vice-Provost, Faculty & Academic Life, that he had been charged with academic offences and was provided with particulars of those charges.
2. Notice of Hearing was sent to the Student on September 4, 2009.
3. The Student was not present at the hearing.
4. At the outset of the hearing, the Tribunal was advised that the matter would proceed based on an Agreed Statement of Facts dated September 9, 2009.
5. Paragraph 3 of the Agreed Statement of Facts states as follows:

...Mr. W■■■ acknowledges that he has received reasonable notice for this hearing. Mr. W■■■ does not wish to attend the hearing before the Tribunal and requests that the hearing proceeds in his absence.
6. The Tribunal determined that it was appropriate to proceed in the absence of the Student in these circumstances.
7. The Tribunal noted that Mr. W■■■ was not represented at the hearing by counsel and that he executed the Agreed Statement of Facts without legal representation.
8. Paragraph 13 of the Agreed Statement of Facts provides as follows.

Mr. W████ acknowledges that the Provost of the University of Toronto has advised him to obtain independent legal advice before signing this ASF. He acknowledges that he has either done so, or deliberately has waived his right to do so.

9. The Agreed Statement of Facts was executed on behalf of University by Robert A. Centa, Assistant Discipline Counsel of the University of Toronto. He assured the Tribunal that, on more than one occasion, Mr. W████ was advised to seek legal advice before proceeding with the Agreed Statement of Facts and that he declined to do so. Mr. Centa also assured the Tribunal that the Agreement was executed with Mr. W████'s full knowledge and consent and without any undue pressure.

The Charge

10. The Charge upon which the Student agreed to plead guilty (hereinafter referred to as "Charge") is the following.
 1. On or about March 9, 2009, you knowingly represented as your own an idea or expression of an idea, and/or work of another in an essay you submitted in POL 200, contrary to section B.I.1(d) of the *Code*.

The Background Facts

11. The Agreed Statement of Facts describes the background facts as follows:
 1. For the purposes of this hearing under the *Code of Behaviour on Academic Matters* ("Code"), the University of Toronto (the "University") and D████ W████ ('Mr. W████') have prepared this Agreed Statement of Facts ("ASF") and a joint book of documents ("JBD"). The University and Mr. W████ agree that:
 - a. each document contained in the JBD may be admitted into evidence before 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. This hearing arises out of charges of academic misconduct filed by the Provost under the *Code*. A copy of the Charges, which were filed on July 21, 2009, is included in the JBD at Tab 1. Mr. W■■■ acknowledges that he received a copy of the Charges.
3. The Notice of Hearing into the Charges is included in the JBD at Tab 2. Mr. W■■■ acknowledges that he has received reasonable notice of this hearing. Mr. W■■■ does not wish to attend the hearing before the Tribunal and requests that the hearing proceed in his absence.
4. In Fall/Winter 2008-2009, Mr. W■■■ registered as a student at the University of Toronto. At all material times, Mr. W■■■ remained enrolled at the University. A copy of Mr. W■■■'s academic record dated September 2, 2009, is included in the JBD at Tab 3.
5. In Summer 2008, Mr. W■■■ enrolled in POL 200 - Introduction to Political Theory, which was taught by Professor Len Ferry ("Course"). A copy of the syllabus for the Course is included in the JBD at Tab 4. Mr. W■■■ admits that he received a copy of the syllabus for the Course.
6. One of the Course assignments was to complete a research essay, which was worth 25% of the final grade in the Course. A copy of the assignment is included in the JBD at Tab 5.
7. For his research essay, on March 9, 2009, Mr. W■■■ submitted an essay titled "To obey or not to obey that is the question" ("Essay") in partial completion of the course requirements. A copy of the Essay is included in the JBD at Tab 6.
8. Mr. W■■■ submitted the Essay through Turnitin.com. The Turnitin Originality Report for the Essay is included in the JBD at Tab 7. The Originality Report indicated an overall similarity index of 31%, which is high, and could indicate that the Essay contained verbatim extracts from other sources found in the database.
9. Mr. W■■■ admits that he knowingly, which includes ought to have known:
 - a. included verbatim and nearly verbatim excerpts from an article titled "Civil Disobedience" from the on-line Stanford Encyclopedia of Philosophy, a copy of which is found in the JBD at Tab 8: and
 - b. included verbatim and nearly verbatim excerpts from an article titled "Locke's Political Philosophy" from the on-line Stanford Encyclopedia of Philosophy, a copy of which is found in the JBD at Tab 9: and
 - c. failed to attribute those excerpts appropriately using quotation marks.
10. Mr. W■■■ admits that, in the Essay, he represented the work and expressions of another as his own.

11. Mr. W█████ admits that he committed the academic offence of plagiarism as set out in charge #1 of the Charges, which are included in the JBD at Tab 2.
 12. The Provost agrees to withdraw charges 2 and 3 of the Charges.
 13. Mr. W█████ acknowledges that the Provost of the University of Toronto has advised him to obtain independent legal advice before signing this ASF. He acknowledges that he has either done so, or deliberately waived his right to do so.
12. It is important to understand some of the facts in order to understand the basis of the Tribunal's conclusion. It is very clear that the Student's essay contained the exact words from an article published on the Internet from the Stanford Encyclopedia of Philosophy entitled *Locke's Political Philosophy*. There was no attempt quote the source of the words. In some cases, the Students did edit the words from the other publication and he did include reference to the publication in his endnotes titled Works Cited.
 13. Unlike many other cases of plagiarism brought before the Tribunal, in this case there was not a wholesale importing of all or a portion of the on-line publication into the work submitted by the student. Some sentences were imported from the other publication without proper citation or attribution, but there was also some independent work and independent thought put into the Student's work. In this respect, although there is a breach of the *Code*, this particular offence is not at the higher end of the spectrum.
 14. Based on the Agreed Statement of Facts and the documents in the Joint Book of Documents, the Tribunal concluded that it was prepared to make a finding of guilt to count 1 of the Charges. Discipline Counsel then withdrew counts two and three of the Charges.

Joint Submissions on Penalty

15. After the Tribunal concluded that it was prepared to make the finding of guilt on count 1 of the Charges, the Tribunal was presented with an Agreed Statement of Facts and Joint Submission on Penalty ("Joint Submission of Penalty"). This was also executed on September 9, 2009 by Mr. W■■■■ and University Discipline Counsel.
16. Paragraph 7 of the Joint Submission on Penalty provides as follows:
 7. Mr. W■■■■ acknowledges that the Provost of the University of Toronto has advised him to obtain independent legal advice before signing this Joint Submission on Penalty. Mr. W■■■■ has either done so or has deliberately waived his right to do so.
17. The Joint Submissions on Penalty provides as follows:
 2. Mr. W■■■■ has previously admitted to committing two other academic offences for which he received sanctions at the Divisional Level.
 3. On October 4, 2004, Mr. W■■■■ admitted that he had committed plagiarism in a paper that he had submitted for credit in POL 200.
 4. He received a mark of zero for the plagiarized paper as a sanction under the *Code*.
 5. On June 6, 2005, Mr. W■■■■ admitted that he had committed plagiarism in an assignment that he submitted for credit in PHL 300. He received the following sanction:
 - a. a final grade of zero in the course;
 - b. a suspension from the University of Toronto from September 1, 2005 to December 1, 2005; and
 - c. an annotation of Mark of zero on the course due to academic misconduct for one year from June 1, 2005 to May 31, 2005.

Guidelines on Penalty

18. The Factors to be considered when determining penalty are well established:

- (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 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.¹
19. The Tribunal, in determining the appropriate penalty, should consider various factors in order to find a fit sentence for this offender, for this offence in this community. In doing so, fairness, balance and proportion must be blended in.
20. There should be some measure of uniformity or proportionality so that there should be similar sentences imposed for offences committed in similar circumstances. The sentencing should preserve and ensure fairness by avoiding disproportionate sentences among similar sentencing processes so that there are not wide swings or inconsistencies between like offences and like offenders, recognizing that there is never a like offence or like offender.
21. There should be a range of sentences for offences such as plagiarism with sentences within that range moving up or down within that range depending on aggravating or mitigating circumstances.

¹ In the Matter of the University of Toronto Code of Behaviour and an Appeal by Mr. C., November 1976 pg 12.

Conclusion on Penalty

22. The Student was not in attendance at the hearing. No witnesses were called to present character evidence. There was no evidence before the Tribunal concerning the Student's personal or family background, his current activities or his academic intentions.
23. This makes it somewhat difficult for the Tribunal to weigh all the relevant factors because the factors relating to the offender are not available to the Tribunal.
24. The Tribunal examined the prior offences of the Student. In October 2004, the Student plagiarised a paper in the same course POL 200 and received the mark of zero on the paper. In June 2005, the Student committed plagiarism in an assignment. In that case he received a grade of zero in the course and was suspended for a period from September 5, 2005 to December 1, 2005. Clearly, the Student was aware of the seriousness of the offence of plagiarism having been disciplined on two prior occasions and he suspended for the second offence. Although the circumstances of this particular offence are on the lower threshold of seriousness, nonetheless, it is still involves the commission of the offence of plagiarism and it is his third offence.
25. The Tribunal was presented with the decisions of the Tribunal on other matters. One such decision was a Tribunal decision in the matter of *The University of Toronto and S.M.* This was a case involving a Joint Submission of Penalty and the principles to be applied in accepting or rejecting a Joint Submission of Penalty. In that decision, the Tribunal stated as follows:

A panel is not obliged to accept the Joint Submission on Penalty. Having said that, we accept the principle set out in the decision of the Ontario Court of Appeal in *R.v. Michael Tsicos*² dated October 6, 2006 that, generally speaking, a joint submission on penalty should be accepted unless it would be contrary to the public interest or bring the administration of justice into disrepute to give effect to the joint submission.

26. Based on this principle, even if the Tribunal concludes that the agreed upon penalty may not be what it would impose in the circumstances, the Joint Submission on Penalty should be accepted unless to do so would be contrary to the public interest or bring the administration of justice into disrepute.

27. The academic offence of plagiarism is a serious breach of the University's standards of ethical behaviour. The offence of plagiarism undermines the relationship of trust between the University and its students. Given the access to the Internet and sources of information, plagiarism has become a serious problem in the University environment. Principles of general deterrence must be considered in determining the appropriate penalty. As stated in *The University of Toronto and Mr. S.B.* (November 14, 2007):

It hardly needs to be said that the credibility and academic mission of the University, and the degrees which it awards to its students, can be greatly harmed by the commission of offences such as plagiarism and concoction."

28. In support of the submission that the proposed penalty was within the appropriate range, University Discipline Counsel referred the Tribunal to a number of cases. One such case was *The University of Toronto and Mr. M.H.H.* In that case, the student was charged

² *Her Majesty the Queen v. Michael Craig Tsicos*, CAO, Oct. 11, 2006, Docket: C45531

with two counts of plagiarism, one committed on March 15, 2007 and one committed June 19, 2007. The Student had not been disciplined before. The student did not appear at the Tribunal hearing. After examining a number of other cases, the Tribunal concluded that the consistent minimum penalty for a first time offence of plagiarism would be a two year suspension. The Tribunal concluded that a three year suspension was warranted having regard to the fact that the student was found guilty on two counts of plagiarism.

29. University Discipline Counsel also referred the Tribunal to the case *The University of Toronto and Mr. S.B.* In this case, the Tribunal considered the appropriate penalty for plagiarism for a third time offender. In that case, University Discipline Counsel was seeking a three year suspension. The student appeared at the hearing, pleaded not guilty, but was found guilty. There were extenuating personal circumstances presented by the student and there had been considerable delay in prosecuting the offence. The Tribunal concluded as follows:

[33] In our view, the case law of this Tribunal supports the University's position in this case. On a purely numerical count, previous cases of "first time offenders" in cases of plagiarism and/or concoction have been met with suspensions of two years (K., June 2006; A., September, 2004; B., April, 2004 and February, 2006); three years (referred to as at the "most severe end" in L., October 8, 2004); and four years (S.). Previous cases of "repeat offenders" in such cases have resulted in suspensions of four months (W., March 25, 1998); sixteen months (K., May 2003); three years (M.M., August 2005; and D., July, 2005); five years (L., above); and expulsion (B., February, 2007).

[34] This summary, of course, captures only a few of the factors in Mr. Sopinka's list, most notably the nature of the offence and the degree and likelihood of repetition. A more detailed review of the decisions reveals other important evidence, such as remorse,

cooperation with the University, circumstances of the offence, results flowing from different penalties, etc. Another factor seems to be a greater recognition, as time has passed, of the need for significant specific and general deterrence. In our view, we have reached a point where a serious breach of trust such as plagiarism and/or concoction should evoke a response of at least a two-year suspension for a first offence and a three year or longer suspension on a subsequent finding.

[35] Here, a three year suspension for a third offence, having regard to the range of other circumstances that we discussed above, strikes a balance of punishment, compassion, rehabilitation and deterrence.

30. Based on this decision and the *The University of Toronto and M.H.H.*, University Discipline Counsel submits that a three and a half years suspension is appropriate in this case. We note that although the suspension proposed in the Joint Submission on Penalty is for three and a half years, it is effectively a suspension for four academic years.
31. Although the Tribunal considered the proposed penalty to be on the high side, the Tribunal concluded that it should accept the Joint Submission on Penalty. The Tribunal concluded that the penalty was within the range of appropriate penalties for this offence in these circumstances. The Tribunal concluded that accepting the Joint Submission on Penalty would not be contrary to the public interest or bring the administration justice into disrepute.

Order

32. Accordingly the Tribunal has determined that the penalty in the circumstances is as follows:
 - (a) Impose a final grade of zero in the course POL 200 – Introduction to Political Theory;

- (b) Suspend Mr. W [REDACTED] from the University of Toronto from September 16, 2009 until March 16, 2013;
- (c) Impose a notation until September 16, 2013 on his academic record and transcript stating that he has been found to have committed academic offences; and
- (d) Report this case to the Provost who may publish a notice of the decision of the University Tribunal and the sanctions imposed with the Student's name withheld.

Dated November 26, 2009

V5761197


John Keefe, The Chair