

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

IN THE MATTER OF charges of academic dishonesty made on December 4, 2012.

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

B E T W E E N:

UNIVERSITY OF TORONTO

- AND -

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REASONS FOR SANCTION

Hearing Date: December 17, 2013

Members of the Panel:

Paul B. Schabas, Barrister and Solicitor, Chair

Professor Pascal van Lieshout, University of Toronto, Department of Speech-Language Pathology

Mr. Adam Found, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel for the University, Paliare Roland Barristers

Mr. Michael Alexander, Lawyer, for the Student

Mr. B ■■■ S ■■■, the Student

In Attendance

Ms. Lucy Gaspini, Manager, Academic Integrity and Affairs, University of Toronto Mississauga

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

Introduction

- 1) In Reasons for Decision dated August 8, 2013, the Tribunal found the student guilty of plagiarism. The Tribunal reconvened to hear submissions respecting penalty on December 17, 2013.
- 2) Neither party presented additional evidence, and the matter proceeded by way of submissions only.

The Positions of the Parties

- 3) Mr. Centa, for the University, drew our attention to our jurisdiction to impose a range of sanctions set out in Section C.ii.(b) of the Code of Behaviour on Academic Matters (the "Code"), and submitted in this case that the appropriate sanctions be as follows:
 1. Assign a final grade of zero in course GGR208;
 2. Suspend the student for 3 years from the date of the order; and
 3. Direct that a notation of these sanctions be recorded on the student's academic record and transcript for 4 years.
- 4) Mr. Centa noted that the penalty is within our discretion, that while there are helpful previous decisions involving similar cases, there is no binding appellate authority directing us as to a maximum or minimum sanction.
- 5) The student, now represented by counsel, Mr. Alexander, submitted that an appropriate penalty would be:
 1. Assign a zero for the paper submitted and worth 20% of the course grade;
 2. A 1 year suspension; and

3. A notation be recorded on the student's academic record and transcript until he graduates, which would be expected in 2 years.
- 6) Mr. Alexander also submitted that the student could do a year of community service work within the University, and that the student was prepared to do this as a way of demonstrating his remorse. However, other than saying (in response to a question from the Chair) that this would be "full-time", Mr. Alexander presented no proposed plan for such work to the Tribunal. In any event, as Mr. Centa pointed out, the Tribunal has no power to either impose or oversee such a "sanction". Whether the ability to impose community service work for academic offences should exist is not for this Tribunal to decide.
- 7) Accordingly, the issues framed by the parties for resolution by us were the appropriate length of suspension, the consequences for the student's grade, and the length of a notation on the student's records.

General Principles

- 8) The determination of an appropriate penalty for academic misconduct will vary from case to case, depending on a range of factors, and is within the discretion of the Tribunal. As the Discipline Appeal Board stated in *D.S. (Case No. 451; August 24, 2007)* at para. 45: "Tribunals must fashion the appropriate sanction based on the individual circumstances of each case. There is no matrix, formula, or chart, in which a Tribunal can determine that one particular act, must receive one particular sanction."

- 9) This Tribunal, therefore, recognizes that there is no formula, or benchmark starting point that it is bound to adopt and follow. In this regard, counsel for the University took us to a number of decisions that suggested a 2-year suspension is “in the middle” and akin to a starting point for a first offender, from which the penalty may be adjusted upwards or downwards based on the facts of the case. We were directed to some decisions that speak in terms a 2-year suspension as the appropriate “threshold” penalty (*M.H.H. [Case No. 521; January 12, 2009]*, para. 31; *A.K [Case No. 509; November 9, 2007]* para. 12; *S.B. [Case No. 488; November 14, 2007]* at para. 33) for plagiarism, and it was variously described in the submissions as a “presumption” or “minimum” penalty. However, Mr. Centa was also clear at the outset of his submissions that the extent of the penalty is entirely within the discretion of the Tribunal. Mr. Alexander agreed with this, emphasizing that we should not take 2 years as a starting point for our deliberations as to do so would improperly fetter our discretion.
- 10) The Tribunal agrees that it is not bound by any presumption that a 2 year suspension is a starting point from which to consider this matter. On the other hand, as the Discipline Appeal Board also stated in *D.S.*, at para. 46, “it is important that students are treated fairly and equitably when receiving a sanction, and that there is general consistency in the approach of Tribunals in imposing them.” This was particularly relevant in *D.S.*, where the appeal panel found that the sanction imposed was “materially inconsistent with the weight of other Tribunal and appeal decisions.” The appeal panel there observed, at para. 49, that “students

who are first time offenders committing one act of plagiarism, generally have received sanctions in a range of one to two (1-2) years.”

- 11) Accordingly, the Tribunal approaches the issue of an appropriate sanction without fettering its discretion based on any “starting point” or “minimum” penalty in such cases, and must fashion a sanction based on the individual circumstances of this case. We must also, however, consider the range of sanctions imposed in cases involving similar offences, in order to ensure that the student is being treated “fairly and equitably” in relation to other students, and the cases both counsel referred us to are helpful in this regard.
- 12) Fundamentally, then, our starting point must be a consideration of the relevant factors and principles to be applied in determining the appropriate sanction. The factors commonly referred to in these cases were initially set out in the case of *Mr. C.* (Case No. 1976/77-3; November 5, 1976) case by John Sopinka Q.C. (later a Justice of the Supreme Court of Canada) in the following passage, at page 12:

What then are the principles that this Tribunal should follow in dealing with an appeal from sentence? First, in my opinion, punishment is not intended to be retribution to get even, as it were, with the student for what he has done. It must serve a useful function. The classical components of enlightened punishment are reformation, deterrence and protection of the public. In applying these criteria, a tribunal should consider all of the following:

- 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;
 - f) the need to deter others from committing a similar offence.
- 13) In addition, and while we are in no way bound by them, we are informed by the *Provost's Guidelines on Sanctions, Offences and Suggested Penalties For Students* (Appendix "C" to the Code). Paying regard to *Mr. C.*, the *Provost's Guidelines*, and the case law reviewed with us by both counsel, we address below the factors we find particularly relevant in this case.

The Seriousness of the Offence

- 14) Plagiarism is a serious offence. It strikes at the heart of the integrity of academic work, and cannot be tolerated by an academic institution. Students know this. They are made aware of the Code when they enrol in the University, and must comply with it. As the Preamble to the Code states:

The concern of the Code of Behaviour on Academic Matters is with the responsibilities of all parties to the integrity of the teaching and learning relationship. Honesty and fairness must inform this relationship, whose basis remains one of mutual respect for the aims of education and for those ethical principles which must characterize the pursuit and transmission of knowledge in the University.

* * *

This Code is concerned, then, with the responsibilities of faculty members and students, not as they belong to administrative or professional or social groups, but as they co-operate in all phases of the teaching and learning relationship.

Such co-operation is threatened when teacher or student forsakes respect for the other- -and for others involved in learning- -in favour of self-interest, when truth becomes a hostage of expediency. On behalf of teacher and student and in fulfillment of its own principles and ideals, the University has a responsibility to ensure that academic achievement is not obscured or undermined by cheating or misrepresentation, that the evaluative process meets the highest standards of fairness and honesty, and that malevolent or even mischievous disruption is not allowed to threaten the educational process.

15) Further, Section B of the Code begins with the following statement:

The University and its members have a responsibility to ensure that a climate which might encourage, or conditions which might enable, cheating, misrepresentation or unfairness not be tolerated. To this end, all must

acknowledge that seeking credit or other advantages by fraud or misrepresentation, or seeking to disadvantage others by disruptive behaviour is unacceptable, as is any dishonesty or unfairness in dealing with the work or record of a student.

- 16) Throughout their studies, students are reminded by professors and instructors of the importance of integrity and the prohibition on any form of academic cheating and, as was the case here, are even given guidance on how not to plagiarize (see our Reasons for Decision, para. 5).
- 17) The seriousness of the offence of plagiarism has, of course, been well-recognized, and the need for a significant sanction in order to condemn and deter it is necessary. It has been suggested that, due to the internet, plagiarism is increasingly prevalent, although at the same time it may be more easily detected. (See, e.g., *S.B.* at para 26.) Both elements certainly existed in this case – as we saw a student effectively cut and paste large portions of articles, including footnotes which gave it away, from the internet, and an instructor who was also able to use the internet to identify the misconduct.
- 18) The seriousness of the offence means that, absent mitigating factors, the sanction must reflect the harm caused and convey the seriousness of the misconduct to others. As the Discipline Appeal Board stated in *D.S.* at para 39: “Plagiarism strikes at the core of academic integrity, so important to a University. The sanction must also act as a general deterrent.” Similarly, in *K.W.K.L. (Case No. 544; September 1, 2009)*, at para 19, a panel of this Tribunal expressed concern that

the penalty for plagiarism must have a deterrent effect. And in *M.M. (Case No. 543; January 28, 2010)*, the Tribunal stated at para. 9:

All the cases, as well, give voice to the detriment to the University which is occasioned by the undermining of its credibility and academic mission through offences such as plagiarism, and the need for general deterrence which goes beyond, for example, a zero in the course for the person in question. The cases cite the need for a message to the University community that penalties imposed by tribunal in relation to such serious offences will not be a licence to commit such offences.

- 19) In this case, the plagiarism was significant. With the exception of the opening paragraph, virtually all of the student's paper was plagiarized, knowingly and deliberately. This is not a case of forgotten quotations, or negligent note-taking, but of deliberate academic misconduct. In this regard, it is similar to *X.P.Z. (Case No. 547; September 10, 2009)*, in which the plagiarized material "comprised virtually all of the submitted paper." (para. 18)

Mitigating and Aggravating Factors

- 20) Mr. Centa submitted that this is a case with no mitigating factors. There was no guilty plea or acknowledgement of wrongdoing, no apology and no expression of insight or explanation as to why the student had committed the offence. Indeed, the University's position is that there are significant aggravating factors present

that justify a harsher penalty than found in some of the other cases of first offenders. These aggravating factors, Mr. Centa submitted, include the fact that the plagiarism was deliberate (as we found at para. 35 of our Reasons), and the student's conduct at the hearing – his attempt to mislead and justify his actions in his own evidence, and the evidence of others, that he put before the Tribunal. This, Mr. Centa submits, sheds light on the student's character and aggravates his conduct. In addressing the character of the student specifically, there was little evidence of this at the hearing, and none at the penalty phase; however, the University submitted that the changing story at the hearing, and the evidence elicited from Ms. Gul that the student knew to be incorrect, demonstrates that the student is a person who is prepared to be dishonest.

- 21) Mr. Alexander, for the student, did not seek to excuse the conduct. Rather, in addition to taking issue with the starting point of a 2 year threshold suspension (which we have addressed above), he expressed concern that the *Mr. C.* factors, which he submitted appeared to be drawn from criminal law, did not address rehabilitation, which should be a factor. The willingness to do community service, it was submitted, demonstrated that the student is sorry, and wishes to atone. Mr. Alexander also submitted that there was a danger that putting too much emphasis on deterrence in plagiarism cases could lead to disproportionate penalties. He also argued that, as the student had the option of not taking the course for credit, it had a negligible effect on his GPA and therefore there was little academic advantage to plagiarizing. Mr. Alexander also urged us to consider the fact that the student is on the verge of graduating, and that a suspension at this late stage

of his studies, as well as obtaining a zero on the course (which again should not be presumptive penalty and Mr. Alexander suggested he only be assigned a zero for the assignment), could have a drastic impact on him, as he will fall behind his peers in their efforts to enter the workforce, and this will have significant economic consequences. We were advised, in this regard, that the student aspires to become an accountant.

- 22) Dealing with the student's submissions first, we agree that rehabilitation is important. However, it is recognized by the fact that, for a first offence for plagiarism a student is not usually given a "life sentence" of expulsion, but a second chance. A suspension simply removes the student from the university community which he or she has betrayed for a period of time, and then allows the student, who hopefully has reflected on the misconduct and appreciates the need to comply with the rules of academic integrity and honesty, to return and properly complete his or her studies. While the offer of community service within the University, made by counsel for the student, may be seen as an expression of remorse and desire to make amends, it is not a sanction, or direction, we can make. Further, the expression of remorse was made through counsel in an effort to mitigate a deserved punishment. We found it of little consequence in weighing mitigating and aggravating factors.
- 23) As to the attempt to minimize the seriousness of the offence because of the minor impact on the student's GPA, we also found this to be without merit. Plagiarism is a serious offence regardless of the impact on the particular student – it affects everyone in the course, and the University at large. We agree that we are not

bound to impose a zero in the course, and do not fetter our discretion in considering an academic penalty.

- 24) Regarding Mr. Alexander's submission that the student will fall behind his peers if he receives a lengthy suspension, he took us to literature on the economic consequences of graduating in recessionary times, and that one's first job may be the most important in getting ahead. We found this argument unhelpful. When students graduate may be an accident of birth, or of other choices people make, such as taking a "gap year" or two, or returning to post-secondary education after many years in the workforce. This can be both an advantage and a disadvantage. No one can predict the future and when we will have good or bad economic times. For all we know, if the student here is suspended for a period of time his opportunities for a first job *following graduation* may be better than if he graduates now. There is no basis to say, therefore, that a delay in graduating – during which the student may seek other employment and obtain valuable experiences - is scarring the student's chances for a first job in his chosen profession following graduation. While a low grade on a transcript may require some explanation, and may have some impact on the student's GPA, it is of more limited consequence, and reflects the fact that the student did commit an act of misconduct that is deserving of condemnation.
- 25) Turning to the University's submissions, we agree that there are no real mitigating factors here, and that the student's conduct – both in the scope of the plagiarism and his attempt to deny it at the hearing - has aggravated the matter and requires condemnation by the University.

26) At the end of the day, we agree with both parties that a suspension is warranted here. The conduct is serious and similar cases have resulted in suspensions. A suspension here is necessary to properly reflect the seriousness of the offence and serve as a deterrent to others who may be tempted to plagiarize. Counsel differ over whether to impose a suspension of one year or three years. Of course, under the Code, it is open to this Tribunal to impose a suspension of any length up to five years, and we are not bound, or fettered, by prior cases. However, we agree that the penalty should be consistent with the principles that have guided other panels, and so we draw guidance from other cases. It is clear that many students who are convicted of a first offence of plagiarism receive a suspension of two years. However, there are some who receive lighter penalties where there are mitigating factors (e.g., *L.O. [Case 557; November 3, 2009]*, *K.(L).X. [Case 597; May 31, 2010]* – where the students were suspended for 18 months due to the relatively minor acts), and some who receive longer suspensions when aggravating factors are present (e.g., *S. K. [Case 595; October 12, 2010]* and *M.W.E.L. [Case 551; January 7, 2010]* – 3 years where the acts were deliberate and there appears to have been some attempts to mislead or evade responsibility, either before the Panel or in dealing with the Faculty).

Decision

27) In our view, having regard to all the circumstances of this offence, including its deliberate and serious nature and the conduct of the student in attempting to deny the plagiarism, and having regard to the need to treat students “fairly and

equitably” and to achieve a degree of consistency in imposing sanctions, we find that the student should be suspended for a period of three years from the date of this order.

- 28) We also find that assigning a grade of zero in the course is appropriate. In our view, anything less would not properly reflect the seriousness of the student’s misconduct and be unfair to others who have properly completed the course. Zeros in courses are imposed in less serious cases (e.g., L.O. and K.(L).X.), in our view properly.
- 29) Finally, with respect to a notation on the student’s record and transcript, we find that this should continue for three and a half years, or until the student graduates, whichever occurs first. The student is simply one course short of completing his degree. His suspension is properly lengthy, which reflects the seriousness of his actions, but we see no need for the notation to continue following graduation, which might inhibit the student’s rehabilitation, and is all that would be achieved by acceding to the University’s position.

Dated at Toronto, this 17th day of January, 2014.



Paul Schabas, Co-Chair