

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on November 6, 2013

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:

THE UNIVERSITY OF TORONTO

- AND -

R ■■■■■ A ■■■■

Date of Hearing: October 20, 2014

Members of the panel:

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

Professor Michael Evans, Department of Computer and Mathematical Sciences, Faculty Panel Member

Mr. Michael Dick, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland, Barristers

Ms. R ■■■■■ A ■■■■, the Student

Professor Michelle Neely, Instructor for ENG208: Critical Approaches to Literature: Introduction to Literary and Cultural Theory

In Attendance:

Professor John Britton, Dean's Designate, Faculty of Arts and Science

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

introduced herself to the Professor, but she did not attend any further classes until the mid-term test. On February 28, 2013, the Student came at the designated time for the test and advised Professor Neely that she had been in an accident in the washroom, as a result of which, she had cut her hand on broken glass. She had a large bandage on her hand. The Student's injury has been confirmed as legitimate by the University.

- [5] Professor Neely volunteered to allow the Student to type the exam on Professor Neely's Apple computer as the Student did not have her own computer with her. In the course of the written test, Professor Neely observed the Student typing words into the computer. Professor Neely reminded the Student to save her work. At one point, Professor Neely, went to the Student's computer and saved the work for the Student.
- [6] During the test, Professor Neely's computer was connected to the internet. At some point during the test, Professor Neely noticed that the Student had a screen open that was not the screen the Student was using to type her answers on the test. When Professor Neely approached her, the Student closed the screen and began typing again. Professor Neely then watched the Student more closely. She noticed that the Student was typing content into the computer. Professor Neely watched the Student save her work and she saw that the Student continued typing.
- [7] Towards the end of the test, while the other students were handing in their tests, the Student called Professor Neely over to her computer and told Professor Neely that all her work had disappeared. Only the Student's name appeared on the document. Professor Neely felt uncomfortable. Professor Neely could not understand how this could have happened.
- [8] Although Professor Neely thought that it was somewhat suspicious that all of the Student's work had disappeared, other than her name, she offered the Student the opportunity to come the next day and do another handwritten test. The Student declined.

- [9] At the time that Professor Neely saw what she thought was the browser window open she did not mention anything to the Student about what she had seen.
- [10] Professor Neely then went to the Jackman Building and spoke to one of her colleagues. She was told to check the browser on her computer. When Professor Neely accessed the computer she looked at the history and noted that there were two entries in the history that were specifically linked to the questions on the test. This would indicate that the Student had used Professor Neely's computer, which was then linked to the internet, to attempt to obtain the answers to the test questions from the internet. Professor Neely took a screen shot of the history on the computer. She also took a screen shot of the text of the sites shown on the history. There were no date or time stamps on the searches that were performed by Professor Neely.
- [11] Professor Neely's evidence was that her computer was set up so that it auto-saved every ten minutes. Professor Neely also indicated in her evidence that she had herself saved the content of the Student's work twice and she observed the Student saving the contents three times. Professor Neely could not offer any explanation for why the computer did not have any of the Student's saved information in the computer, other than her name.
- [12] Professor Neely then reported the incident to the Dean's Office.
- [13] During the hearing, the Student questioned Professor Neely on the fact that she had left her computer connected to the internet with one of the windows open that appeared in the browser window. The Student suggested the possibility that the entries that were identified in the history of the computer could have been created after the test was completed. Professor Neely was able to explain very clearly that it was not possible for her to have made those entries after the test. Professor Neely testified that she had never lost work on her computer and that it had never malfunctioned resulting in lost work. Professor Neely testified in a straightforward and direct manner. The Tribunal accepts her evidence as credible.

- [14] The Student attended the hearing. She described the incident where she had cut her hand after tripping on some water in the washroom that was near where the test was being held at University College. She did not go to Medical Services, but instead she attended at the test site to write the test. She described how, in the course of the test, the screen showed a bunch of clocks and, as a result of this apparent malfunction, a lot of the work that she had done had been accidentally deleted. The Student indicated that she was not entirely familiar with Apple computers, although she had used an Apple computer in the past. The Student could not offer any plausible explanation as to what happened to the text, other than her name, or why the history on the computer showed that she had tried to access the test questions from the internet.
- [15] The only explanation offered by the Student to explain why the test was deleted was that the computer had certain glitches in it that caused the clocks to appear and that this was somehow linked to the disappearance of the text she had typed into the computer. The Student indicated that she was saving the material regularly not as a “save as” but as a simple save. Her evidence was unreasonable and lacking in credibility.
- [16] The University must satisfy us, on a balance of probabilities with clear and cogent evidence that the Student attempted to obtain unauthorized assistance in connection with the mid-term test by accessing the internet to attempt to answer certain of the questions. See *University of Toronto v. X*, (Case No. 497) a decision of the Discipline Appeal Board March 25, 2009 and *F.H. v. McDougall*, 2008 S.C.C. 53.
- [17] If the Student did use the computer which was provided by Professor Neely to attempt to obtain the answers to the questions on the test, an offence would be made out under section B.I.1(b) of the Code which provides as follows:
- B.I.1. It shall be an offence for a student knowingly:*
- (b) to use or possess an unauthorized aid or aids or obtain unauthorized assistance in any academic examination or term test or in connection with any other form of academic work;*

FINDINGS AND CONCLUSION BASED ON THE EVIDENCE

[18] On the basis of all the evidence, we find that the Student did use Professor Neely's computer to access the internet to attempt to answer the questions presented on the test. There was no other possible explanation for how the history on Professor Neely's computer would indicate the entries other than that the Student accessed those sites using the professor's computer. The Student offered various speculative theories about how the entries could have been shown on the history of the computer, but none of these were plausible. We also find that the Student intentionally deleted the text that she had typed in the computer other than her name, to avoid detection. The only possible inference or explanation is that the student intentionally deleted the content of what she had typed into the computer, other than her name. Although this was not a necessary finding with respect to Count 1, it is corroborative in the sense that it indicates a guilty intention on the part of the Student rather than some accidental or unintentional conduct. Although the evidence is indirect and circumstantial, we find that the University has provided clear and convincing evidence that the Student violated the Code. We find her guilty of the offence set out in Count 1.

[19] The University indicated that its intention would be to withdraw Count 2 upon a finding of guilt on Count 1.

PENALTY PHASE

[20] No additional evidence was led at the Sanction Phase of the hearing. The University sought the following penalty:

- (a) A mark of zero in course ENG280H1S
- (b) A suspension of the Student from a period of two years
- (c) A notation on the Student's academic record and transcript for a period of three years and,
- (d) that the case be reported to the Provost for publication of the notice of the decision of the Tribunal and the sanctions imposed, with the name of the Student

withheld.

- [21] Counsel to the University submitted several cases to the Tribunal, the essence of which was that, for a first offence of plagiarism, a two year suspension is normal, subject to aggravating or mitigating circumstances. The University sought that suspension from the date of the hearing which as noted above was October 20, 2014.

GUIDELINES ON PENALTY

- [22] 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.
- [23] The Tribunal, in determining the appropriate penalty, should consider various factors in order to find a fit sentence for this offender and for this offence in this community. In doing so, fairness and proportion must be balanced.
- [24] There should be some measure of uniformity or proportionality so that similar penalties are 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.
- [25] 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.

- [26] Applying these principles to this case, the Tribunal considered the following factors. The Student attended the hearing. There were no prior offences on the Student's academic record. The circumstances of this offence are somewhat unique in that the Student did attempt to cheat on a test when provided with the opportunity to do so by being allowed to use the professor's computer which was linked to the internet during the test. This may have been an insurmountable temptation to the Student, but nonetheless, clearly, the Student attempted to access the internet. There is no way of knowing whether she actually used what she obtained from the internet because the text that she had written was ultimately deleted. The deletion of the work that had been typed into the computer has to be viewed as an attempt to avoid detection or to create the impression that the computer was malfunctioning. The Student did not offer any good explanation for her conduct and did not appear to be particularly remorseful or appreciative of the seriousness or significance of her conduct. The Student did express an interest in continuing her academic career and expressed a concern as to the length of the suspension.
- [27] The Tribunal noted that, as the date of the hearing was October 20, 2014, a two year suspension from the date of the hearing would effectively mean that the Student would be suspended from the University until after the commencement of the fall term in 2016, as most full year courses start in the fall. The offence was committed in February, 2013 and although there is no basis for any suggestion of undue delay on the part of the University or the Student in terms of the scheduling of the hearing, the Tribunal considered that it would be reasonable in the circumstances to commence the period of suspension prior to September 1, 2014, or alternatively, to provide for a somewhat shorter period of suspension so that the Student could recommence her studies in the Fall term of 2016 if she chose to do so.

ORDER

[28] Accordingly, the Tribunal has determined that the appropriate penalty in the circumstances is as follows:

- (a) impose a final grade of zero in the course ENG280H1S;
- (b) suspend the Student from the University commencing October 20, 2014, until August 20, 2016;
- (c) impose a notation on the Student's academic record and transcript from the date of the Order until August 20, 2017; and
- (d) report this case to the Provost for publication of the nature of decision, with the name of the Student withheld.

Dated at Toronto, this 15th day of January, 2015.



John A. Keefe, Chair