

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on October 7, 2015,

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 -

W ■ ■ J ■

REASONS FOR DECISION

Hearing Date: Thursday, December 3, 2015

Members of the Panel:

Mr. Bernard Fishbein, Chair
Professor Ann Tourangeau, Faculty Panel Member
Ms. Raylesha Parker, Student Panel Member

Appearances:

Mr. Robert A. Centa, Assistant Discipline Counsel, Paliare Roland, Barristers
Ms. Lauren Pearce, Articling Student, Paliare Roland, Barristers
Tyler Evans-Tokaryk, Associate Professor, Teaching Stream, University of Toronto
Mississauga
Professor Brian Price, Instructor of the Course, University of Toronto, Mississauga

In Attendance:

Mr. Christopher Lang, Director, Appeals Discipline and Faculty Grievances
Ms. Lucy Gaspini, Manager, Academic Affairs, University of Toronto, Mississauga

Not in Attendance:

Mr. W ■ ■ J ■, Student

[1] Mr. W■■■■ J■■ (‘‘the Student’’) was charged with violations of the University of Toronto (‘‘the University’’) *Code of Behaviour on Academic Matters, 1995* (the ‘‘Code’’) as follows:

1. On or about December 1, 2014, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in an essay titled ‘‘The ensnarement of the female protagonist in Alfred Hitchcock’s ‘Rebecca’’ (‘‘Essay’’) that you submitted for academic credit in CIN2O3H5F (the ‘‘Course’’), contrary to section B.I.1(d) of the *Code*.
2. On or about December 1, 2014, you knowingly obtained unauthorized assistance in connection with the Essay that you submitted for academic credit in the Course, contrary to section B.I.1(b) of the *Code*.
3. In the alternative, on or about December 1, 2014, 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 that you submitted for academic credit in the Course, contrary to section B.I.3(b) of the *Code*.

The particulars related to charges are as follows:

- (a) At all material times, you were a registered student at the University of Toronto Mississauga. In term 2014(9), you enrolled in the Course, which was taught by Professor Brian Price.
- (b) Students in the Course were required to submit an essay in partial completion of the Course requirements. On or about December 1, 2014, you submitted the Essay to complete this requirement.
- (c) You did not write the Essay or you knowingly obtained inappropriately extensive assistance from someone else.
- (d) You knowingly represented the work of that other person as your own. You knowingly included in the Essay ideas and expressions

that were not your own, but were the ideas and expressions of the other person, which you did not acknowledge in the Essay.

- (e) You knowingly received unauthorized assistance in completing the Essay from some other person.
- (f) For the purposes of obtaining academic credit and/or other academic advantage, you knowingly committed plagiarism in the Essay.

[2] A Revised Notice of Hearing was sent by e-mail to the Student advising of a hearing date of Thursday, December 3, 2015 at 1:45 p.m. in the Boardroom (Room 209) at Simcoe Hall at the University. The panel of the Tribunal waited until 2:00 p.m. but the Student failed to attend. In fact, the Student did not attend throughout the course of the hearing and apparently never really responded or participated at all in the procedures of the University since the incident that led to these charges.

I. Whether the Hearing Could Proceed in the Absence of the Student

[3] Counsel for the University requested that the Panel proceed in the absence of the Student. An Affidavit of Service was provided indicating that both the Revised Notice of Hearing and the Charges were served by e-mail to the Student at the e-mail address which the Student provided to the University's student information system ("ROSI").

[4] Both the *Code* and the *Statutory Powers Procedure Act* which govern the proceedings of the Tribunal require reasonable notice to be given to the Student.

[5] The relevant provisions of the Tribunal's *Rules of Practice and Procedure* (the "*Rules*") are:

- 9. Charges, notices of hearing, disclosure, material for use on motions, orders, and reasons for decision may be served on a student or sent to a student:

...

- (c) by e-mailing a copy of the document to the student's e-mail address contained in ROSI, ... and service shall be effective on the day the document is sent by e-mail; or

...

13. The Secretary shall provide the parties with reasonable notice of a hearing and shall send to all parties a notice of the hearing on the merits of the proceeding.

14. A notice of an oral hearing shall include

- (a) the date, time, place and purpose of the hearing;
- (b) a reference to the statutory authority under which the hearing will be held; and
- (c) a statement that if a person notified does not attend at the hearing, the panel may proceed in the person's absence and the person will not be entitled to any further notice in the proceeding.

...

17. Where notice of an oral hearing, electronic hearing, or written hearing has been given to a person in accordance with this rule, and the person does not attend at or does not participate in the hearing, the panel may proceed in the absence of the person or without the person's participation and the person is not entitled to any further notice in the proceeding.

[6] In the University's submission, the notice (which was filed as an Exhibit) complied with the form and substantive content of the *Rules*, had been served on the Student in accordance with the Rules, and the Tribunal should proceed in his absence.

[7] We were further advised that the Student had in fact not attended any meeting with the Dean's Designate and voice mails earlier in the process in April 2015 and June 2015

had been left at the Student's phone number (indicated in ROSI) inviting him to participate in the process. He did not do so.

[8] As well, on April 9, 2015, an e-mail had been sent to the Student to which he failed to respond, seeking to confirm his attendance at a meeting on April 2015. The Student did telephone in response to that e-mail and indicated that he would attend the meeting and would check his e-mails and reply to them. The Student did neither.

[9] In any event, none of the e-mails sent to the Student at his ROSI e-mail address ever "bounced back" or indicated in any manner that the connection was not in service or the e-mails had not been received.

[10] In the circumstances, the Tribunal unanimously ruled that the Student had been given reasonable notice of the charges and of the hearing and the University was entitled to proceed in his absence.

II. The Charges Against the Student

[11] The charges related to the Student having submitted an essay on December 1st, in CIN203, a course with respect to the films of Alfred Hitchcock. The course required two essays – the first to be submitted on October 29 and the second on December 1, 2014. In the first essay, the Student received a failing grade of 40 out of 100. When the second essay was submitted, the improvement from the first was so dramatic that the teaching assistant brought it to the attention of the instructor and that led to the commencement of the University investigation. A report was prepared by Professor Tyler Evans-Tokaryk, a scholar of student writing and the teaching of student writing, who concluded that it was highly unlikely that the Student had authored the second essay.

[12] The Panel heard from Professor Evans-Tokaryk, who gave his testimony under oath. Professor Evans-Tokaryk is an Associate Professor, Teaching Stream and Acting Director of the Robert Gillespie Academic Skills Centre, the organization for teaching and developing academic skills including writing for undergraduate students (primarily) and teaching assistants at the University of Toronto, Mississauga (UTM). Professor Evans-Tokaryk reviewed his curriculum vitae. He has extensive experience in teaching and developing courses to teach and assess academic skills including writing. Presently the Acting Director

of the Robert Gillespie Academic Skills Centre, he has been working there since 2007. During that time, he has also been Adjunct Faculty & Visiting Scholar at the University of Johannesburg. Prior to that, he was an English Instructor at UTM, and prior to his arrival at UTM, had been an Instructor, Research Assistant and Teaching Assistant since 1994. He was a Member of many professional organizations and had authored many refereed publications, non-refereed publications and presented papers at many conferences and symposia. He dealt with at least 300 students per year on a one-on-one consultation basis, and thousands in lectures or groups. Seventy percent of his time was teaching and assessing written work and the balance of the time was teaching and dealing with ideas about how to teach writing. Accordingly, the Panel accepted Professor Evans-Tokaryk as an expert witness.

[13] Professor Evans-Tokaryk contrasted the two essays submitted by the Student in CIN203 and explained that the first essay was largely descriptive and not particularly analytical. He contrasted the essays based on various criteria used in his report:

- (a) paragraphing (the first essay paragraphs were overly long, contained multiple arguments and frequently had sentences that did not support the topic sentence or arguments made);
- (b) topic sentences;
- (c) sentence structure (simple sentence structure that did not deviate in the first essay, as opposed to sentences that varied both in length and complexity in the second essay);
- (d) grammar (the first essay contained many article errors (e.g. "the" vs. "an" vs. "a") typical of English-language learners, errors that a spell-check would not catch, difficulty with pluralization and subject-verb agreement, which were not apparent at all in the second essay); and
- (e) word choice and vocabulary (the first essay used simple conversational non-academic language).

[14] The level of analysis in the first essay was weak and superficial whereas in the second essay, the analysis was creative, sophisticated and erudite, which would not be

expected of a student below a third or fourth-year level course – the extreme opposite of the first essay.

[15] Therefore, in his opinion, it was very unlikely that the Student who wrote the first paper could have improved so dramatically, in the course of 30 days, and written the second.

[16] The Panel also heard from Professor Brian Price who also gave his testimony under oath. Professor Price is an Associate Professor of Cinema Studies in the Department of Visual Studies at UTM. He was the instructor for CIN203 and identified the syllabus and the course contents. He identified the first essay which had received a grade of 40 out of 100 from the teaching assistant who graded it. He also identified the second essay which was marked by the same teaching assistant. She did not assign a grade because, when compared to the first essay, she became immediately suspicious of plagiarism, and brought it to Professor Price's attention.

[17] Professor Price also testified to the stark contrast between the two papers. The second paper had a high degree of sophistication rarely seen at this level as contrasted to the first paper which was obviously of an English-language learner. Equally, the second paper had a level of analysis that was innovative and very substantial as contrasted to the first paper which had very little analysis, if any, and only described some examples.

[18] Professor Price also explained that he had met the Student. The Student had approached him at least twice after class to ask questions. The Student spoke English very poorly, to such an extent, that Professor Price was struck by it. His questions were not so much about the content of the course but the logistics of it. In Professor Price's view, neither paper was consistent with the level of the Student's oral skills that he had observed, which only made the dramatic improvement in the second one even more striking and improbable.

III. The Submissions of the University

[19] The University acknowledged that the burden was on it to establish the charges were made out and it had to do so on a balance of probabilities that the Student committed the offences and it had to do so on clear and convincing evidence.

[20] There were two charges: that the Student had committed plagiarism contrary to section B.I.1(d) of the *Code*; and that the Student had availed himself of unauthorized assistance contrary to section B.I.i(b). The University indicated that if the Tribunal made a finding of plagiarism, which it felt was the more appropriate charge, it would withdraw the charge of unauthorized assistance.

[21] Here, the plagiarism was unusual only in the sense that there was usually an original text to compare with the submitted work, but that was not necessary or required – what was necessary was that someone represent someone else's work as their own to constitute plagiarism.

[22] In the University submissions, the two essays demonstrated an impossible achievement and improvement within one month – from an inferior failing product to a superior product to be expected of a student of a much higher level. Both essays, arguably (and the second, most assuredly), were inconsistent with the spoken English ability of the Student. On all of the different criteria that Professor Evans-Tokaryk had compared the essays (and explained in his testimony), the difference in the two essays was too stark to possibly be the work of the same student. Alternatively, for such a startling dramatic improvement, the Student must have made inappropriate use of assistance in the second essay.

[23] After considering the submissions of the University, the Panel unanimously found that the University had established a charge of plagiarism and that section B.I.1.(d) of the *Code* had been contravened. In the circumstances, the University withdrew the other charge against the Student.

IV. Sanction

[24] The University introduced a prior letter dated October 23, 2014 from the University to the Student confirming that previously, on October 14, 2014, he had admitted guilt to academic misconduct. In particular, he admitted to plagiarizing and obtaining unauthorized assistance for an assignment which he submitted for credit in the course CIN202, coincidentally also taught by Professor Price. This took place only a week before the first paper was due in CIN203 and five weeks before the second.

[25] In the circumstances, the University sought a sanction of a grade of 0 in the course, a suspension for three years, and the offence to be noted on the Student's transcript for four years publication of the decision with the name of the Student withheld.

[26] Counsel for the University reviewed a number of previous Tribunal decisions with the Panel – *B. S.* (January 17, 2014), *S. B.* (November 14, 2007), *M. H. H.* (January 12, 2009) and *D. O. S.* (October 7, 2009), which the University submitted established the proposition that plagiarism offences warranted a 2-year suspension for a first offence and a 3-year suspension for a second offence. In these circumstances, the University was seeking a 3-year suspension.

[27] As well, the University noted that there were no mitigating circumstances that could be said to apply to the Student – the Student had failed to attend and offer any such mitigating circumstances.

[28] The Panel unanimously accepted the University's submissions for sanction and imposed a 0 grade in the course, a 3-year suspension, and the offence to be noted on the Student's academic transcript for 4 years and published with the name of the student withheld.

Dated at Toronto, this 19th day of January, 2016

Bernard Fishbein, Chair