

**UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on January 21, 2016

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 (the "University")

- AND -

N D (the "Student")

REASONS FOR DECISION

Hearing Date: April 6, 2016

Panel Members:

Ms. Roslyn M. Tsao, Lawyer, Chair

Professor Pascal Van Lieshout, Department of Speech-Language Pathology, Faculty Panel Member

Mr. David Kleinman, Student Panel Member

Appearances:

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

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

Dr. Bernice Iarocci, Instructor for Fah101: Introduction to Art History

In Attendance:

Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Not in Attendance:

Ms. N D, Student

1. The Trial Division of the Tribunal heard this matter on April 6, 2016. The Student was charged on January 21, 2015 with the following:
 - (a) On or about November 27, 2014, she knowingly represented as her own an idea or expression of an idea, and/or the work of another in an essay titled "Modernity and the spaces of Femininity" (the "Essay") that she submitted for academic credit in FAH101H5F: Introduction to Art History (the "Course"), contrary to section B.I.1(d) of the *Code*.
 - (b) On or about November 27, 2014, she knowingly obtained unauthorized assistance in connection with the essay, which she submitted for academic credit in the Course, contrary to section B.I.1(b) of the *Code* (the "Essay").
 - (c) In the alternative, on or about November 27, 2014, she 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, which she submitted for academic credit in the Course, contrary to section B.I.3(b) of the *Code*.

Hearing to Proceed in Absence of Student

2. The Student did not attend at the Hearing. The Tribunal waited for a half hour after the scheduled commencement of the Hearing to allow for the Student to appear.
3. The University presented evidence to the Tribunal confirming the Student's ROSI Record, which set out her email address ("ROSI Email") and mailing address for service purposes. The Student has, throughout her attendance at the University actively updated her contact information on the ROSI system.
4. On January 21, 2016, the University served the Student with the formal Charges dated January 21, 2016 by e-mail to her ROSI Email.
5. Counsel for the University also emailed the Student on February 26, 2016 with a letter setting out a summary of anticipated evidence of its witnesses to her ROSI Email.

6. On March 7, 2016, the University served the Student by email to her ROSI Email with the Notice of Hearing dated March 7, 2016 advising of the April 6, 2016 hearing date.
7. There were no "bounce backs" of any of these three emails.
8. As service of the Charges and Notice of Hearing was effected in accordance with Paragraph 9(c) of the *Rules of Practice and Procedure*, the Panel proceeded with the Hearing in the absence of the Student.
9. The Student was contacted by the Office of the Dean at UTM (Academic Integrity) on or about March 31, April 9, 17 and 20, 2015 by email to her ROSI Email to schedule a Dean's meeting in regards to alleged academic dishonesty with regard to a paper submitted in the Course. There was evidence provided that the Student had logged into her ROSI account on April 14th, April 17th and April 27th, 2015.
10. As such, even though the Student was subject to an academic suspension after the Winter, 2015 term (ie., after April, 2015), she was aware by that time that there were efforts by the Dean's Designate to meet with her regarding allegations of academic dishonesty before that suspension. The Student failed to respond to the invitations of the Office of Academic Integrity to meet and was aware from the emails that the matter would be referred to the Tribunal.

Facts

Evidence of Dr. Bernice Iarocci, Instructor of FAH101

11. Dr. Iarocci was the instructor of the Course, Introduction to Art History, in the Fall of 2014. Dr. Iarocci was granted her doctorate degree from the University of Toronto in Art History in April, 2015 and has taught Art History for 20 years at the University.
12. In the Fall, 2014 session of the Course, there were approximately 150 students. There were 2 hours of weekly lectures and a 1 hour weekly tutorial. Evaluation was comprised of 2 writing assignments, a mid-term test and a final examination in addition to tutorial participation.

13. The Course also comprised a mandatory Writing Module taught by Dr. Michael Kaler which would account for 15% of a student's final grade in the Course. There was a 1 hour weekly tutorial for the Writing Module. The evaluation for the Writing Module comprised 2 quizzes, 3 exercises and 2 assignments along with a Final Test.
14. Dr. Iarocci had 4 Teaching Assistants ("TAs") who were involved in the Course tutorials as well as the Writing Module tutorials and who attended to marking assignments, quizzes and exercises and other duties in the normal course.
15. Dr. Iarocci confirmed that she discussed the nature of academic dishonesty, as outlined in the syllabus, in the first lecture and that the TAs are told to address academic dishonesty in the tutorial dedicated to each of the two assignments in the Course. Dr. Iarocci believed that Dr. Kaler also discussed academic integrity in the Writing Module.
16. The allegation of academic dishonesty, which is being characterized as plagiarism and/or use of unauthorized assistance, came to the attention of Dr. Iarocci from the Student's TA.
17. The second written assignment in the Course was submitted by the Student on November 28, 2014 through Turnitin.com, an essay entitled "Modernity and the spaces of Femininity" ("Essay").
18. The TA, Mr. Murray, reviewed the Essay and became suspicious because of the following:
 - (a) the Student's first written assignment (submitted October 3, 2014) was markedly inferior with respect to grammar, punctuation, syntax, argument, structure and sophistication, having a grade of 63%;
 - (b) the Student's mark in the Writing Module to that point was 3.5/15; and
 - (c) the quality of the Essay was an "A" paper with proper grammar, punctuation, syntax, coherence and structure, and advanced level of analysis (which Dr. Iarocci compared to that of a very proficient undergraduate student).

19. Dr. Iarocci reviewed the Student's first assignment and the Essay and agreed with the TA's suspicion that the improvement in the Student's performance from the 1st Assignment to the 2nd Essay was not likely due to mere improvement in writing skills and analytical insight over a period of under 2 months.
20. As a consequence, Dr. Iarocci emailed the Student on December 17, 2014 and asked to meet with her to discuss her Essay the following day. The Student responded on December 18th advising that she had a final exam and offered to meet after finishing her exam the next day.
21. It appears from further emails tendered that Dr. Iarocci and the Student did not meet before the winter holidays. Dr. Iarocci emailed the Student on January 3rd, 2015 and asked to meet with her on January 5th when the new term began. The Student emailed in response on January 6th advising that she was out of the country and was returning on January 10th. On January 9th, Dr. Iarocci emailed about meeting on January 12th to which the Student responded asking for another time that day. Dr. Iarocci accommodated her request. It appears that the Student and Dr. Iarocci did not meet on January 12th and Dr. Iarocci submitted a report to the Chair of the department about the matter. Dr. Iarocci, nevertheless, invited the Student to meet with her on January 19th which the Student accepted by email.
22. Dr. Iarocci and the Student did meet but Dr. Iarocci had no recollection of the exact date. Anything discussed at the meeting would have been privileged in any event from the Tribunal.
23. With respect to the Essay, Dr. Iarocci commented as follows:
 - (a) one rarely sees the proper use of semi-colons, colon and dashes for students at this level;
 - (b) there was much more coherence in argumentation within paragraphs and overall in the Essay compared to the first assignment;

- (c) the content demonstrated a "high level of thinking", more akin to a 3rd or 4th year level student;
 - (d) the sentences in the Essay were longer and more complex in syntax than those used in the Student's 1st assignment;
 - (e) the citation of the source in the footnote was completely correct, which is notable for a first year student's paper;
 - (f) there was a sophistication in the Essay that was absent from the Student's 1st assignment with ideas/concepts that "built" through the paragraphs; and
 - (g) The Student's performance in the Course was not commensurate with the quality of the Essay, noting that the Student obtained grades of 15% in her mid-term and a final examination mark of 45%. The Student did receive 8/10 for Tutorial participation.
24. Dr. Iarocci believed that there might have been 1 or 2 other students in her course who would have been capable of writing an essay such as the Essay. However, given the Student's performance in the Writing Module assignments and the sample of her work in the 1st assignment, it was her view that the Essay was not the Student's work.
25. Dr. Iarocci did not speak to Dr. Kaler about the Student nor did she review any of the assignments submitted in the Writing Module. However, the TA, Mr. Murray, was the Student's TA and marked her assignments for the Course, including the Writing Module and he was in a position to query the difference in quality between the Student's 1st and 2nd writing assignments in the Course.

Evidence of Ms. Lucy Gaspini

26. Ms. Gaspini appeared on behalf of the Office of Academic Integrity at UTM. Emails from the Office to the Student were sent on March 31, April 9, April 17 and April 20, 2015 requesting a meeting with the Dean's office. There was no response to any of these communications by the Student even though the Student had logged into her ROSI account during that period.

27. Accordingly, the matter was referred to the Tribunal for resolution.

Decision of the Tribunal

28. The onus is on the University to demonstrate that there is clear and compelling evidence that the Student plagiarized part or all of her Essay and/or that the Student used unauthorized assistance to write her exam.
29. As counsel for the University argued, the level of change from the Student's prior performance to the Essay in late November was "so remarkable" as to be highly suspicious.
30. Upon review of the two written assignments, the Panel agrees that the degree of improvement in this case is not only suspicious but compelling enough to find that the Essay submitted by the Student contained ideas or expressions of another person without citation and/or the use of unauthorized and unattributed assistance.
31. It is more likely than not that another person, other than the Student, wrote the Essay given the Student's performance on the 1st Assignment and on the balance of the Course and Writing Module. It is not merely an improvement to the grammar and punctuation that can be observed, it is a wholesale development of advanced conceptual analysis and expression skills demonstrated in the Essay.
32. The Panel notes, and the University is not suggesting, that improvement of such caliber is not impossible. However, in this case, there is evidence which makes it very unlikely that Student improved to near the degree required to render the Essay independently: the quality of her first writing assignment, failing grades in her midterm and final examination, her substandard performance in the Writing Module and the consistency of one TA throughout the Course who had the ability to observe the presence or absence of any gradual improvement in the Student's performance over the term (in this case, absence of improvement which raised his suspicions).
33. Accordingly, the Panel finds the Student guilty of Charges 1 and 2.
34. The University withdrew the third charge.

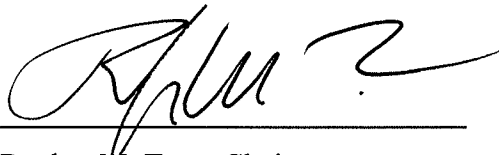
Penalty

35. The University sought the following penalty:
- (a) a zero in FAH101; and
 - (b) a suspension from the University for 2 years commencing the date when the Student's 3 year academic suspension ends on April 30, 2018; and
 - (c) a notation of the sanction be recorded on the Student's academic record from the date of this Order to a date which is two years after the date on which she re-enrols in the University following the completion of her suspensions.
36. The Student has no prior record of academic misconduct. The University tendered no other evidence on penalty.
37. The Student is currently suspended from the University on an academic suspension which commenced on May 1, 2015 for 3 years due to her poor GPA. Although the Course is a first year course, the Student was in her 2nd calendar year of studies having first enrolled in Fall 2012 with a partial course load.
38. The Panel agrees that a sanction of a zero in the course and a 2 year suspension is not inappropriate for a first offence of plagiarism/unauthorized assistance, however, the question of the commencement date for such suspension requires further consideration.
39. The University sought the commencement of the 2 year suspension to be consecutive to the academic suspension which would result in the Student's aggregate suspension period to be 5 years in total.
40. In terms of aggravating circumstances, the University noted that the Student ignored the communications from the Office of Academic Integrity to even address the allegations and has chosen not to participate in the process, leading to the necessity of a full hearing. The University stressed that specific deterrence would be forfeited if, for example, the suspension was concurrent to the academic (longer) suspension. We agree with that observation in part.

41. The Panel was not comfortable with the practical effect of a consecutive 5 year suspension in the circumstances as it is tantamount to the effects of expulsion. There may be a possibility, albeit small, that this Student could seek to re-enrol and overcome many challenges to graduate from the University and a first offence of this nature would not otherwise prohibit such attempt in another case.
42. The Panel, therefore, imposes the requested 2 year suspension starting on May 1, 2017, one year before the end of the academic suspension. This has the practical result of the Student being required to be absent from the University for a total of 4 years.
43. It is noted that this situation is somewhat anomalous in that there is a 3 year academic suspension contemporaneous to the Tribunal sanctioning.
44. We do not wish to be viewed as concluding that a consecutive suspension in other like situations is categorically not appropriate. It is a matter of discretion for the Tribunal hearing the matter and counsel kindly provided two cases illustrating same, one where the Tribunal suspension was consecutive to a lengthy academic suspension and one where the University did not seek a consecutive suspension where an academic suspension had not been completed at the time of sanction.
45. The Panel, therefore, imposes the following sanctions:
 - (a) **THAT** the Student receive a final grade of zero in FAH101H5 in Fall 2014;
 - (b) **THAT** the Student be suspended from the University for a period of two years, commencing on May 1, 2017 after the completion of two years of her existing three year academic suspension, and ending on April 30, 2019; and
 - (c) **THAT** the sanction be recorded on the Student's academic record and transcript to the effect that she was sanctioned for academic misconduct, from the date of this Order to a date which is two years after the date on which she re-enrols in the University following the completion of her suspension.

46. The Tribunal is to report this decision to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed in the University's newspapers, with the name of the Student withheld.

Dated at Toronto, this *21st* day of April, 2016

A handwritten signature in black ink, appearing to read 'R. Tsao', written over a horizontal line.

Roslyn M. Tsao, Chair