

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on February 22, 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 am. S.O. 1978, c. 88.

BETWEEN:

THE UNIVERSITY OF TORONTO

- AND -

Z ■ W ■

REASONS FOR DECISION

Hearing Date: June 24, 2016

Members of the Panel:

Mr. Andrew Pinto, Lawyer, Chair
Professor Louis Florence, Faculty Panel Member
Ms. Raylesha Parker, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Barristers
Professor Judith Poë, Bioinorganic Chemistry & Chemistry Education, University of Toronto, Mississauga
Professor Christoph Richter, Associate Chair, Undergraduate, Biology, University of Toronto, Mississauga
Ms. Lucy Gaspini, Manager, Academic Integrity and Affairs, Office of the Dean, University of Toronto, Mississauga

In Attendance:

Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances, University of Toronto
Ms. Z ■ W ■, the Student
Ms. Diane Matias, (Observer), Undergraduate Advisor, Department of Biology, University of Toronto, Mississauga

Preliminary

- [1] The Trial Division of the University Tribunal was convened on June 24, 2016 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the “Code”) laid against the Student by letter dated February 22, 2016 from Professor Sioban Nelson, Vice-Provost, Faculty and Academic Life.

Hearing on the Facts

- [2] The charges against the Student were as follows:

A. CHM 120

1. On or about January 14, 2015, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in an Laboratory Report #1 that you submitted for academic credit in CHM120H5S (20151) (“CHM 120”), contrary to section B.I.1(d) of the *Code*.
2. In the alternative, on or about January 14, 2015, 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 Laboratory Report #1, which you submitted for academic credit in CHM 120, contrary to section B.I.3(b) of the *Code*.

The particulars related to charges 1 to 2 are as follows:

- (a) At all material times, you were a registered student at the University of Toronto Mississauga. In term 20151, you enrolled in CHM 120, which was taught by Professor Judith Poë.
- (b) Students in the Course were required to submit a laboratory report in partial completion of the course requirements. On or about January 14, 2015, you submitted Laboratory Report #1 to complete this requirement.
- (c) You knowingly included in your Laboratory Report #1 ideas and expressions that were not your own, but were the ideas and expressions of another person, which you obtained from a website, and which you did not acknowledge in your Laboratory Report #1.
- (d) For the purposes of obtaining academic credit and/or other academic advantage, you knowingly committed plagiarism in Laboratory Report #1.

B. BIO 153

3. On or about January 16, 2015, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in a numeracy assignment ("Assignment"), which you submitted for academic credit in BIO153H5S (20151) ("BIO 153"), contrary to section B.I.1(d) of the *Code*.

4. In the alternative, on or about January 16, 2015, 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 Assignment, which you submitted for academic credit in BIO 153, contrary to section B.I.3(b) of the *Code*.

The particulars related to charges 3 and 4 are as follows:

- (a) At all material times, you were a registered student at the University of Toronto Mississauga. In term 20151, you enrolled in BIO 153, which was taught by Professor Christoph Richter.
- (b) Students in BIO 153 were required to submit an assignment in partial completion of the course requirements. On or about January 16, 2015, you submitted the Assignment to complete this requirement.
- (c) You submitted the Assignment knowing that it contained ideas, the expression of ideas, and verbatim or nearly verbatim text from the website Wikipedia.
- (d) You knowingly represented the work of that other person, or persons, as your own. You knowingly included in the Assignment ideas and expressions that were not your own, but were the ideas and expressions of the other person, or persons, which you did not acknowledge.
- (e) For the purposes of obtaining academic credit and/or other academic advantage, you knowingly committed plagiarism.

- [3] The Student attended the hearing but without a legal representative. The Tribunal inquired about the Student's facility with English, which was not the Student's first language. The Tribunal also explained to the Student that she could potentially request an adjournment to seek legal assistance. The Student confirmed that she did not believe that an interpreter was required and that she could meaningfully participate in the hearing without language assistance. She also declined to ask for an adjournment and wished to proceed with the hearing without further delay.

- [4] The Student pleaded not guilty to the charges.
- [5] Discipline Counsel provided an overview of the charges. The University alleged that in two courses, CHM 120 and BIO 153, the Student represented as her own and without attribution material that was available on the Internet. The University alleged that the Student had been cautioned about not engaging in plagiarism including from information contained in the course syllabi. The University planned to call three witnesses, the two professors from the courses in question, as well as the Manager of Academic Integrity and Affairs, University of Toronto Mississauga (UTM).
- [6] Discipline Counsel advised that, if the Tribunal found the Student guilty of Charges 1 and 3, the other charges, which were brought in the alternative, would be withdrawn.

University's Evidence re: CHM 120

- [7] Prof. Judith Poë was called as the University's first witness. Prof. Poë briefly described her professional background which includes being the current Chair of the Academic Affairs Committee at UTM. She has also received a number of teaching awards.
- [8] The Student was enrolled in Prof. Poë's CHM 120 course. Prof. Poë stated that in the first lecture class and in the first laboratory class the students were reminded about the importance of academic integrity. In the course syllabus there is a section on academic integrity which directs students to a number of resources including a document on "How Not to Plagiarize" by M. Proctor.
- [9] The Professor learned from a Tutorial Assistant that one of the Student's lab report assignments worth 5% of the course grade appeared to have large sections lifted from the Internet without any form of proper citation or attribution. The Professor came to the conclusion that the Student had attempted to represent as her own work that originated elsewhere.
- [10] The Student did not cross-examine Prof. Poë on her evidence. The University called no other evidence with respect to the CHM 120 related charges.

University's Evidence re: BIO 153

- [11] Prof. Christoph Richter was called as the University's second witness. He briefly described his professional background including being Associate Chair of Undergraduate Biology at UTM.

- [12] The Student enrolled in Prof. Richter's BIO 153 course. Prof. Richter discussed the steps taken in BIO 152, a prerequisite course, and the steps taken in BIO 153 to bring issues of academic integrity to the students' attention.
- [13] Prof. Richter learned through a TA that the Student handed in a numeracy assignment worth 2% of the course grade that had registered a high degree of similarity with external sources, when the assignment was analyzed through Turnitin.com. Large parts of the assignment were verbatim or almost verbatim with material found on the Wikipedia website.
- [14] Prof. Richter concluded that the Student had attempted to represent as her own work that originated elsewhere.
- [15] The Student questioned Prof. Richter who confirmed that only one section of her numeracy assignment appeared to be lifted from the Internet; and that students completing the assignment in question had the opportunity, following feedback, to change their answers.

University's Evidence re: Discipline Process

- [16] Lucy Gaspini, Manager, Academic Integrity and Affairs, Office of the Dean, UTM was the University's third witness. Ms. Gaspini confirmed that the Student met with the Dean's Designate. Ms. Gaspini met with the Student before and after the Dean's Designate meeting but did not attend the actual meeting. Ms. Gaspini confirmed that the Student did not admit to any of the charges.
- [17] The Student did not cross-examine Ms. Gaspini.
- [18] The Student testified at the Hearing. The Student repeatedly stated that she wrote the materials she handed in herself. She also stated that she thought that "copying from the Internet was okay." She stated that Prof. Richter said, with respect to the numeracy assignment in BIO 153, that it was not a final report and she could improve on it. She also stated that, in future, she wanted to go to the University Writing Centre and improve her report writing.
- [19] Discipline Counsel cross-examined the Student. The Student acknowledged that she had received the Course Outline in BIO 153 but claimed that she had not read the section on the Code of Student Conduct. She stated that maybe her English was not good enough to understand what plagiarism meant or that, because she did not attend every class, she might have missed the class in which academic integrity was discussed.
- [20] The Student acknowledged that academic integrity was discussed in the prerequisite courses to CHM 120 and BIO 153. However, her answers

vacillated from agreeing that most of the material in her assignments was copied from the Internet to claiming that “she could not remember”. Ultimately, the Student landed on acknowledging that “if you can find it from the Internet, then [that part of the assignment] is from the Internet but, if you cannot find it, then I wrote it.”

- [21] Discipline Counsel took the Student to a number of points where it appeared obvious that the Student had wholesale copied from the Internet. In her BIO 153 assignment, for example, there was a footnote indicator in the Student’s text but no corresponding footnote description elsewhere in the assignment. Discipline Counsel suggested that the only explanation was that the Internet source material contained the footnote indicator and that when copying from the Internet the Student had intentionally or inadvertently not copied the footnote description.
- [22] Discipline Counsel also pointed out an instance where, in the Internet source material the text used the latin phrase “*Id est*”, whereas in the Student’s assignment the text read “That is to say”. The Student’s assignment and the Internet source material contained identical verbiage following this phrase. Discipline Counsel suggested that, contrary to the Student’s explanation, the words did not originate with the Student but rather were the result of her translating the latin phrase into English. After a few exchanges with Discipline Counsel, the Student ultimately conceded “I think I took it from the Internet.”
- [23] The Student did not present any Reply evidence.

The University’s and Student’s Submissions

- [24] Discipline Counsel made a number of points in his closing submissions. He recalled that the definition of “knowing” in the *Code* includes the concept of the offence being deemed to have been committed if the person “ought reasonably to have known” s/he was committing an offence. Here, there was evidence that four course instructors provided the Student with information and resources on academic integrity and how to avoid plagiarism. Even if the Student chose not to review the relevant academic integrity information, the Student ought reasonably to have known that copying material from the Internet and submitting it as her own without citation or attribution constitutes an academic offence.
- [25] Discipline Counsel suggested that, even if the University were to only rely upon material clearly copied from the Internet, and not upon the Student’s text that appeared to have been copied from course material, the charges would be proven. The evidence was overwhelming that the Student engaged in plagiarism.

- [26] In her brief closing submissions, the Student continued to assert that she was not guilty of the charges. First, she suggested that someone else “taught her how to lie” but did not explain how this excused her conduct. Second, she suggested that the English Language Program at UTM had let her down. Third, she suggested that, in China, where she was raised and educated, Chinese lab reports are done using a completely different writing style. Finally, the Student insisted that she had not intentionally changed any text to make it seem like she had not copied from the Internet.
- [27] Members of the Tribunal asked the Student a few questions to better understand her statements. Ultimately, it appeared that, while the Student reluctantly admitted to some of the conduct alleged (i.e. copying material from the Internet and presenting it as her own), she did not think she was guilty of academic misconduct.

Decision of the Tribunal on Charges

- [28] The Tribunal had no difficulty reaching the conclusion that the Student was guilty of the offences as charged. The evidence was overwhelming, with respect to both CHM 120 and BIO 153, that the Student had submitted material that was not her own and without attribution, much of it copied from sources available on the Internet. The impugned text was verbatim or almost verbatim.
- [29] The Tribunal was troubled by what it regarded as the Student’s disjointed explanations that were offered to excuse her conduct. Some explanations were inherently contradictory: the Student could not have *not* copied from the Internet *and* copied from the Internet, thinking it was acceptable; the Student could not have “not changed any words” and changed the words “*id est*” to “that is to say”. It may well have been that, as a result of various disparate factors, including her alleged experiences in a different educational setting, her language difficulties in English, or neglecting to read the University’s information on academic integrity, that she thought copying from the Internet was acceptable; however, the Tribunal was convinced that the Student ought reasonably to have known that her conduct was unacceptable and constituted an academic offence.
- [30] The Tribunal also rejected the Student’s suggestion that, because the 2% numeracy assignment in BIO 153 involved submitting a mere “draft” and not the final report, submitting work that was not her own, was acceptable. There was nothing in the assignment description that would reasonably lead a student to conclude that submitting non-original work without citation was acceptable.

- [31] Following deliberation, based on the evidence of the three witnesses presented by the University, the evidence of the Student, a review of the documents contained in a Book of Documents submitted by the University, and the submissions of the parties, the Tribunal found the Student guilty of Charges 1 and 3. The University agreed to withdraw Charges 2 and 4 which were brought in the alternative. Consequently, the Student stood convicted on Charges 1 and 3.

Penalty

- [32] The matter then continued with a hearing into the appropriate sanction.
- [33] The parties presented no further evidence at the penalty phase of the hearing.
- [34] The University requested that the Student receive a sanction that included, *inter alia*, a suspension from the University for 3 years and a notification of academic offence on the Student's academic transcript for 4 years.
- [35] Discipline Counsel presented a Brief of Authorities containing relevant cases as well as a document summarizing the cases in the Brief of Authorities.
- [36] The Student did not have a prior discipline history. Discipline Counsel suggested that while there were no aggravating factors present, there were no mitigating factors either. Referring to the factors listed in the decision of *Mr. C* (Case No. 1976/77-3; November 5, 1976), he suggested that the Student had not demonstrated much insight or remorse concerning the commission of the offence.
- [37] The Chair requested clarification about whether, despite the Student not having a prior discipline history, the Tribunal should treat the Student as having committed one offence or two offences. Here the Student engaged in academic misconduct with respect to CHM 120 on or about January 14, 2015, and did the same, with respect to BIO 153 on or about January 16, 2015. Clearly, these were two separate infractions but only two days apart. Subsequently, the Student attended a meeting with the Dean's Designate but did not admit to any of the charges at the meeting.
- [38] Discipline Counsel acknowledged that the University distinguishes between a student who commits a second offence (or third, etc.) *after* the imposition of an academic discipline process that results in a finding of guilt (whether at the Dean's Designate level or through a Tribunal hearing), and a student who commits multiple infractions prior to the imposition of a first academic discipline process.

- [39] In the former situation, the University can legitimately assert that the student committed the second offence despite involvement in the University's discipline process. These circumstances reflect poorly on the student's ability or willingness to have gained insight from the discipline process.
- [40] In the latter situation, however, a student may have engaged in one or more infractions that separately or cumulatively constitute academic misconduct. The infractions may have been separated in time but collectively occurred prior to the student's involvement in a first academic discipline process. The student may end up being found guilty of multiple charges of academic misconduct. In these circumstances, the University would not be able to assert that the student ought to have gained insight from the academic discipline process. Depending on the facts, particularly where the infractions occurred within a relatively short period, the University may assert, or the Tribunal may independently conclude, that the multiple infractions should be bundled up in one offence or be considered two or more offences that occurred within a short spate of time.
- [41] The Tribunal wishes to emphasize that whether or not a student has participated in a prior academic discipline process is but one factor among many that must be weighed in the sanctioning process. To be clear, that a student has not engaged previously in a discipline process is not a mitigating factor. Rather, where a student is found guilty of an academic infraction that was committed *after* the student participated in an academic discipline process, the Tribunal will consider this as a factor that may warrant a more serious sanction since the student's prospects for rehabilitation are diminished.
- [42] Here the University provided a Brief of Authorities to support its proposal that, *inter alia*, the Student should receive a suspension from the University for three years. Three of the four cases in the Brief of Authorities involved a student who was convicted of two charges of plagiarism.
- [43] In *University of Toronto v. M* [REDACTED] *H* [REDACTED] *H* [REDACTED] (Case No. 521, January 12, 2009), similar to the case at hand, the student had no prior discipline history and committed two plagiarism infractions, one each in two different courses. There was a 3 month interval between the two infractions and, subsequently, the student attended the Dean's Designate meeting but did not admit to the charges. The student did not ultimately attend the hearing although he sent an email on the hearing day purporting to excuse his non-attendance. The MHH, *supra* panel agreed that "a two year suspension appears to be the threshold for a first time offence" but concluded that "a three year suspension is warranted having regard to the Student having been found guilty of a second count of plagiarism."

- [44] In *University of Toronto v. J. D.* (Case No. 417, Heard July 21, 2005), the student had pled guilty to a plagiarism offence two years earlier in 2002, and was then found guilty of two further plagiarism infractions that occurred on February 9 and April 7, 2004, one each in two different courses. The panel issued a sanction of three years' suspension and a notification of suspension on the student's transcript to last 4 years.
- [45] In *University of Toronto v. T. W.* (Case No. 721, October 9, 2014), the panel found that the student had committed two plagiarism infractions, one each in a History and English course. The panel held that the second plagiarism infraction, in the English course, occurred soon after the student was confronted with academic misconduct allegations in the History course; and further, that there was evidence of deception in the English assignment in the manner in which the student slightly altered text, instead of copying and pasting it directly. The student in TW, *supra* received a sanction that included a 3 year suspension from the University and a four year notation of sanction on her academic record.
- [46] The Tribunal distinguished the present case from the above three decisions which were presented in support of a 3 year suspension where the student had committed two plagiarism infractions.
- [47] First, we noted that the Student had committed the two infractions two days apart. The infractions remain two distinct occasions which supported the two separate charges for which the student stood convicted but, from a penalty perspective, the panel took the view that there was probably little opportunity in that short time frame for the Student to be reminded of her obligations towards academic integrity. The Student's ability to have "known better" was no different when she committed the second offence than the first. For clarity, on these facts, we find that the Student committed two offences, not one, but the close succession of the offences must be considered in context with other facts.
- [48] The Tribunal distinguished the Student's situation from TW, *supra* where the student committed two plagiarism infractions in quick succession, as did the Student here, but with the important difference being that the student in TW, *supra* committed the second infraction right after being warned of a possible academic integrity offence in her other course assignment.
- [49] Second, since we concurred that JD, *supra* was correctly decided, where the student received a three-year suspension but with a prior conviction two years earlier, consistency would suggest that the Student, who has no prior conviction, should receive something less than a 3 year suspension from the University.

[50] Finally, we noted that, unlike the students in MHH, *supra* and TW, *supra* who did not attend their hearings, the Student participated in both the Dean's Designate meeting and the Tribunal hearing. Because the Student continued to deny wrongdoing throughout, the Tribunal could not say that the Student "cooperated" in the discipline process, but it would be incorrect to treat the Student akin to students who partially or wholly avoided the discipline process altogether.

[51] In light of the evidence presented, the parties' submissions and the Tribunal's review of similar cases, the Tribunal imposed the following sanctions, by way of a signed Order:

1. **THAT** Ms. W■■■■ is guilty of two counts of the academic offence of plagiarism, contrary to section B.I.1(d) of the *Code of Behaviour on Academic Matters*;
2. **THAT** the following sanctions shall be imposed on Ms. W■■■■:
 - a. she shall receive a final grade of zero in the courses CHM 120 and BIO 153;
 - b. she be suspended from the University for 2 years from the date of this Order; and
 - c. the sanction be recorded on her academic record and transcript for 3 years from the date of this Order;
3. **THAT** this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanction imposed, with the name of the student withheld.

All of which is ordered on June 24, 2016,

Dated at Toronto, this 21 day of September, 2016.



Andrew Pinto, Co-Chair