Case No.: 841

THE DISCIPLINE APPEALS BOARD
UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on January 7, 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

THE UNIVERSITY OF TORONTO

Appellant

- and -

L[redacted] S[redacted]

Respondent

REASONS ON APPEAL

Hearing date: October 16, 2017

Panel Members:

Mr. Ronald G. Slaght	Chair
Professor Elizabeth Peter	Faculty Panel Member
Mr. Sean McGowan	Student Panel Member
Ms. Alena Zelinka	Student Panel Member

Appearances:

Ms. Tina Lie	Counsel for the Provost, Paliare Roland Barristers
Mr. Robert Sniderman (DLS)	Counsel for the Respondent

In Attendance:

Ms. L[redacted] S[redacted]	Respondent
Ms. Lucy Gaspini,	Manager, Academic Success & Integrity, Office of the Dean, UTM

INTRODUCTION

[1] This matter comes before the Discipline Appeals Board by way of appeal by the Provost from the Decision of a trial panel of the University Tribunal at a hearing held November 29, 2016. The Respondent, I[redacted] S[redacted], who was not represented at the hearing, was charged with plagiarism offences under ss. B.i.1.(d), B.i.1.(b) and B.i.3.(b) of the *Code of Behaviour on Academic Matters* (the *Code*), arising out of an essay she submitted in April 2015 in a second-year political theory course at the University of Toronto, Mississauga.

[2] At the conclusion of the hearing, after deliberations, the Chair (Shaun Laubman) gave oral reasons, recounting the nature of the Panel's deliberations, what had been considered, views about the burden of proof, whether the similarities between the papers as well as the additional evidence presented were sufficient to establish the Charges, and that there was some disagreement amongst the Panel members whether the similarities could arise from the nature of the particular assignment and the set up for the process for this particular assignment or whether those similarities were the result of Ms. S[redacted] knowing and representing another other student's ideas (S.D.) as her own.

[3] The Chair reported that while the Decision was not unanimous, a majority found the Charges had not been proven on a balance of probabilities and the minority, while agreeing that the charge under s. B.i.1.(b) had not been proven, had decided the other Charges had been made out by the University. The Chair advised that more detailed reasons would follow.[1]

[4] The Tribunal released its Reasons for Decision on March 13, 2017. The Chair and Professor Hirst were in the majority and Mr. Lim wrote dissenting reasons.

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[1] Transcript of Proceedings, pp. 164-167.

[5] On this appeal, the Provost seeks an Order setting aside the Decision of the Tribunal and entering a guilty verdict under Charge one or alternatively Charge three. At the appeal, Ms. Lie advised that counsel had consulted and that the Order now being sought by the parties, of course subject to this Appeal Board's discretion, was that if the appeal were allowed, that the Appeal Board Panel order a new hearing into the Charges.

[6] Following argument on the appeal, and after our own deliberations, we advised the parties that the University's appeal was dismissed, and that our Reasons would follow. These are our Reasons.

JURISDICTION AND STANDARD OF REVIEW

[7] The *Code* provides that the Provost may take an appeal from an acquittal of a student at trial, upon a question which is not one of fact alone. As has often been noted in Appeals Board decisions, the *Code* gives the Appeals Board very broad powers on appeal. The *Code* provides in relevant part that:

> The Discipline Appeals Board shall have power…(c)…to affirm, reverse, quash, vary or modify the verdict, penalty or sanction appealed from and substitute any verdict, penalty or sanction that could have been given or imposed at trial.[2]

[8] In its decisions over the years, the Appeals Board has introduced and adhered to a level of deference to decisions of trial panels. An appeals panel will not substitute the decision it would have made on the evidence, for that of the panel below. The Appeals Board's primary concern is to ensure principled and consistent decision making in the application of administrative law principles and in the interpretation and application of the body of the University Tribunal and

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[2] *Code*, s.E7(c).

Appeals Board cases. Where there are errors of law and significant errors of fact the Appeals Board will however exercise its authority.

[9] Of particular relevance in this matter, the Appeal Boards, notwithstanding its broad jurisdiction, gives deference to trial panels over issues of credibility, where, of course, a trial panel, exercising one of its important functions, has the benefit of seeing the witnesses in person and measuring the quality and veracity of their evidence.[3]

[10] The Provost did not address the Standard of Review in its materials filed on the appeal. Ms. Lie submitted orally however that the University's main submission, that the Tribunal erred by assessing the evidence in a piecemeal fashion, rather than considering the evidence in its totality and in the context of all the evidence, constitutes an error of law, thus reviewable by this Appeals Board on a correctness standard. Secondly, Ms. Lie submitted that the majority had erred in its application of the standard of proof, putting the Provost to a higher standard of proof rather than a balance of probabilities, also an issue of law.

[11] The other issues raised by the Provost, that the majority decision below had given too much emphasis to differences in the two papers and that the Tribunal had erred in its consideration of some evidence, primarily that of the Provost's witness, Emma Planinc, are less obviously characterized as issues of law. Ms. Lie submitted they were fundamental mischaracterizations of the evidence or reviewable by the appeals panel as palpable and overriding errors, when considered with the mistakes in law said by the Provost to have been made by the majority.

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[3] See e.g. *M.K. v. University of Toronto*, Case No. 634, Book of Authorities of the Appellant, Tab 1;*University of Toronto v. A.L.*, Case No. 606, Book of Authorities of the Appellant, Tab 8.

[12] For the Respondent, Mr. Sniderman acknowledged the Appeals Board's jurisdiction with respect to errors of law but took the position that the University's position on this appeal mostly sought a review by the Appeals Board of what were essentially questions of fact, including issues of credibility, and that on Appeals Board jurisprudence, we should not engage in such an exercise.

FACTS

[13] The Charges involved an essay assignment, the second essay assignment in the Course, of an 8 to 10 page paper to be written on one of three assigned topics. The students were expressly discouraged from relying on sources other than the assigned texts for the course.[4]

[14] Of particular importance to the majority and to this Appeals Board, the essay assignment was designed to incorporate a peer review component. Students were to meet in small groups to review and comment on the drafts prepared by their peers. Students were to submit their final paper for grading following this peer review process.[5]

[15] The Provost's allegation was that Ms. S[redacted] plagiarized from a draft essay submitted by another student, S.D. S.D. was one of the three students who participated in the peer review process, with Ms. S[redacted] and Y.L.

[16] The peer review process, as originally contemplated, included participation by the head teaching assistant for the course, Emma Planinc, who was the Provost's sole witness at the hearing. There was however a teaching assistant's strike and the peer review process became optional, but, if a student did participate they received an extra grade of 5%. Students were to select their own peer review partners and were expected to organize and exchange draft papers amongst

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[4] Reasons for Decision of the Majority (Majority Reasons), Appeal Book and Compendium (ABC) p. 9, para. 6.
[5] Majority Reasons, ABC, p. 9, para. 7.

themselves.[6] Students were to use comments received from their peers to prepare and submit a final paper. There would no teaching assistant involvement in the peer review process.

[17] While there were three topics from which to choose, all the essays were to effect comparisons between the works of two authors whose works formed part of the course curriculum, including Topic B:

> Both Aquinas and Machiavelli argue that one must study "nature" in order to understand politics — but with very different results. Explain their different understandings of nature and what it teaches the student of political science. Whom do you find more persuasive?[7]

[18] The evidence established that Ms. S[redacted] in mid-March had submitted a draft of a paper on Topic A to the course teaching assistant, Ms. Planinc. As part of peer review, S.D. sent her draft essay, on Topic B, to Ms. S[redacted] and Y.L. for review on March 28, 2015 and received from Ms. S[redacted] her comments on the morning of March 31, 2015. Later that evening, the draft Ms. S[redacted] sent to her fellow students was not on Topic A, rather, it was on Topic B, the same topic chosen by S.D. Ms. S[redacted] advised Ms. Planinc on the same evening that she had changed topics from Topic A to a topic comparing the ideas of Aquinas and Machiavelli and attached that draft to Ms. Planinc with the comment that it was being peer reviewed.

[19] The allegation of the Provost was that Ms. S[redacted] plagiarized from the draft essay submitted by S.D., which she had in her possession as a peer reviewer, changed topics and that the similarities between Ms. S[redacted]'s final essay and S.D.'s draft essay, in the thesis and the ideas

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[6] Majority Reasons, ACB, p. 9-10, paras. 8-11.
[7] Factum of the University of Toronto, p. 5, para. 18(b).

expressed, were both unique and creative, which no other student had come up with, and were acts of plagiarism by Ms. S[redacted].[8]

[20] The Tribunal had before it the various drafts and final papers that had been submitted by the peer group to Ms. Planinc during the course of their work leading to the final submissions on April 1, 2015. This included S. D.'s draft paper and Ms. S[redacted]'s final paper, which included the peer review sheets with the comments that S.D. and Y.L. had made on the student's paper.

[21] Ms. Planinc had annotated and marked with a highlighter those portions of S.D.'s draft and the final version of Ms. S[redacted]'s paper to indicate those parts of the two essays that she believed to be strikingly similar and evidence of plagiarism of the one by the other.[9]

[22] Ms. Planinc, who graded 80 of approximately 200 papers in the course, testified she was instantly struck by the similarities between Ms. S[redacted]'s essay and that of S.D. She then, subsequently, learned from the peer review sheets that Ms. S[redacted] had participated in a peer review with S.D. and that Ms. S[redacted] therefore had access to the rough draft of S.D.'s essay.[10]

[23] At the hearing, Ms. Planinc in her evidence went through the papers, giving evidence about the similarities that she had identified and discussing the annotations and highlighting that she made on the two essays, including the use of section headings in both papers, the introductions and theses of the papers and that the conclusions had similar concepts.

[24] Ms. S[redacted] was self-represented at the hearing, and did not cross-examine Ms. Plancic on her evidence, but the Panel did explore various aspects of Ms. Planinc's evidence.

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[8] Majority Reasons, ABC, p. 11, paras. 18-21.
[9] Majority Reasons, ABC, p. 12, paras. 22-23.
[10] Evidence of E. Planinc, Transcript, ABC, Tab 11, pp. 72-73.

[25] Ms. S[redacted] gave evidence in her defence and was cross-examined on her evidence.

[26] In her evidence, she explained her reasons for switching topics and the reason for her use of subject headings. S.D. had suggested using them during the peer review process. S.D. had raised no concerns regarding the content of her paper when she reviewed it and she explained to the Tribunal what she was attempting to achieve with her paper.

[27] She provided explanations and, using examples, maintained that the ideas expressed in the two were different and her own.[11]

DECISION OF THE TRIBUNAL

Credibility

[28] At the outset of its analysis, the majority set out the principal allegations of the University. It recognized the major thrust of the University's case lay in areas of similarity between Ms. S[redacted]'s paper and S.D.'s draft and that the thrust of Ms. Planinc's testimony was to review those similarities, with the aid of the comparative documents she had created with highlighting, to assist in that analysis.

[29] An important element of the Decision was the Panel's assessment of the only two witnesses at the hearing, Ms. Planinc and Ms. S[redacted]. The Panel had difficulty with Ms. Planinc's evidence and concluded that she was overreaching in her evidence and too aligned with the prosecution. The majority concluded that Ms. Planinc was not open to looking more broadly at

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[11] Evidence of L. S[redacted], Transcript, November 29, 2016, pp. 98-146.

the issues, rather than simply stressing the similarities between the papers. The majority did not agree with some of the highlighting comparisons that Ms. Planinc reviewed in her evidence.[12]

[30] In contrast, the Panel generally accepted the evidence of Ms. S[redacted] and found that her evidence was not undermined on cross-examination and had been consistent since when she was first confronted with the allegations. It is evident that the Panel preferred Ms. S[redacted]'s explanations for the similarities between the papers and accepted her evidence that the ideas represented in the paper were her own, rather than accept the criticisms that Ms. Planinc advanced in her evidence.[13]

Similarities

[31] In its Reasons, the majority conducted a detailed review and analysis of eight alleged similarities between Ms. S[redacted]'s essay and S.D.'s draft paper identified and reviewed by Ms. Planinc in her evidence with the assistance of the highlighted and annotated aids. In the Reasons of the majority, each alleged similarity was identified, the highlighting and other evidence was discussed, and the Panel drew conclusions and inferences with respect to each of the claimed similarities as it proceeded through the list presented by the Provost.

[32] In some cases (three out of eight) the majority made a specific reference to plagiarism in conclusive terms, that the particular alleged similarity was not, in its view, evidence or persuasive evidence of plagiarism. For example, in its discussion of the first alleged similarity, which the Panel dealt with in considerable detail and analysis over four substantive paragraphs, the majority said the following:

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[12] Majority Reasons, ABC, p. 15, paras. 42-43; p. 17, paras. 47-48; p. 19, para. 52, p.24, para. 65.
[13] Majority Reasons, ABC, p. 13, paras. 29-35; p. 15, paras. 39-41; p. 18, para. 50; p. 26, para. 75.

> 48. For these reasons, we do not see the highlighted language in the introductory paragraphs for the two papers as constituting persuasive evidence of plagiarism.[14]

[33] The Provost on this appeal places considerable emphasis on this language in support of its submission that the majority erred by approaching the evidence on a piecemeal basis, rather than considering the evidence as a whole, including the overall effect of the eight alleged similarities, and that the majority misunderstood the burden of proof and applied a higher standard of proof to the Provost.

[34] It also is the case, however, that no reference at all to the burden of proof or the persuasive effect or not of the evidence was made by the Tribunal in five of its eight reviews of the alleged similarities.

[35] In the course of discussing each similarity, the majority grappled with the allegations, not just that the text of the papers were similar but also that the ideas expressed were borrowed by Ms. S[redacted] from S.D.'s draft. The majority was not persuaded in respect of any of the allegations.

[36] The Tribunal dealt with the alleged similarities in the fashion that the University had presented its case, namely Ms. Planinc went through each of the eight and gave her evidence in respect of them and the Tribunal in dealing with this evidence also went through the eight and gave its analysis of all the evidence in respect of each, including that of Ms. Planinc, that of Ms. S[redacted] and other evidence, together with its conclusions with respect to each one of them.[15]

[37] In a following section entitled, Absence of Clear and Concise Evidence of Plagiarism, the majority went on to discuss the evidence generally as it related to the allegations of plagiarism.

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[14] Majority Reasons, ABC, p. 17, para. 48.
[15] Majority Reasons, ABC, p. 15, paras. 44-63.

The Panel noted that the texts themselves were not in evidence and thus it was unable to determine for itself the probabilities that more than one student could use particular quotes from the texts, given the focus of the assigned question. The Tribunal pointed out again that the only evidence it had was the evidence of Ms. Planinc, with which it expressed some difficulties and that it had no "independent" evidence of the range of theses in the papers written on Topic B, and that Ms. Planinc had reviewed only 80 of the 200 submissions.

[38] The majority also considered it significant that having had the benefit of the written comments of the peer reviewers, the reviewers were complimentary of Ms. S[redacted]'s essay and neither of them identified or indicated any concern regarding similarities between the two papers. There was specific evidence that S.D. had not seen any issue with Ms. S[redacted]'s essay and the Tribunal placed some weight on this, balanced against the evidence of Ms. Planinc.

[39] The majority also reviewed the evidence and the papers for differences between the papers, not just the similarities. Ms. Planinc apparently had not done this and the majority considered it significant to review the excerpts and even common elements with a view to determining on an overall basis whether the ideas expressed in the papers, arising from the use of similar materials, were the same or were they different, an analysis that the majority considered useful in its overall examination of the papers.[16]

[40] The majority also found, over the hotly contested common use of the phrase, "torrential rivers" in the two papers, that this commonality was not a product of the student's plagiarism but

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[16] Majority Reasons, ABC, p. 19, para. 52.

rather an expected by-product of the common assigned readings and limited scope of the essay topic addressed by both papers.[17]

[41] The Tribunal also considered it significant that the entire exercise was carried out under the altered peer review process, where the students were encouraged to review each other's papers, to make comments and that students could incorporate comments and suggestions of their peers into their final papers. This fact was clearly of significance to the majority. In its summation, the majority said the following:

> 80. The fact that the peer review process encouraged students to incorporate comments from their peers also made it impossible to conclude on a balance of probabilities that the Student had obtained unauthorized assistance with her Essay.[18]

[42] The majority expressed its ultimate conclusion in the following language:

> 79. After careful and thorough consideration of the documentary and oral evidence presented during the hearing, a majority of the Tribunal determined that the University had not met the requisite burden of proof. We could not say that it was more likely than not that the Student had knowingly represented as her own ideas or expressions taken from S.D.'s paper.[19]

The Dissent

[43] Mr. Lim agreed with aspects of the majority decision, including, for example, that the two students had the same thesis was not the product of plagiarism and that Ms. S[redacted] and S.D.'s idea for their particular thesis topic could well have arisen independently.[20]

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[17] Majority Reasons, ABC, p. 20, paras. 52 and 53.
[18] Majority Reasons, ABC, p. 27, para. 80.
[19] Majority Reasons, ABC, p. 27, para. 79.
[20] Dissent, ABC, p. 28, paras. 83-88.

[44] The minority opinion also agreed that Ms. S[redacted] must be acquitted of the Charge under Section B.i.1.(b) of the offence of obtaining "unauthorized assistance" in the preparation of her paper, as had the majority.

[45] The minority said this in that respect:

> 137. Section B.i.1.(b) makes it an academic offence for a student to obtain unauthorized assistance. I simply cannot find that the assistance the Student received from S.D. was unauthorized. Not only did the University sanction the peer-review process, but students were incentivized to participate in it by receiving extra credit. I think it would be unjust to punish the Student for taking part in the peer-review process which facilitated the assistance she received.

[46] The dissent ultimately however found that the University had proven on a balance of probabilities that there were plagiarized elements in Ms. S[redacted]'s essay. Mr. Lim concluded that aspects of the two essays were too strikingly similar to have arisen by chance or as a product of the chosen essay topic. The dissent put some emphasis on the fact that Ms. S[redacted] had retained a copy of the draft essay that she is alleged to have copied from. There were ideas and expressions of ideas in the paper, the dissent concluded, that were those of S.D.[21]

PROVOST ISSUES AND DISPOSITION

[47] The Provost raises four issues on appeal but in its materials and oral submissions, Ms. Lie concentrated on the first of these: that the majority erred in law in assessing the evidence on a "piecemeal" basis rather than considering the evidence as a whole, in reaching its decision to dismiss the Charges. Essentially, the Provost argues that the majority considered each of the alleged similarities on a standalone basis, concluding that each instance did not, on its own,

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[21] Dissent, ABC, pp. 41-42, paras. 134-136.

constitute persuasive evidence of plagiarism and in so doing failed to examine the similarities and the essay in question in its totality and in the context of the other evidence.

[48] The Provost relies on authorities in the criminal law context, *R. v. Knezevic*[22] and *R. v. Morin*,[23] the Supreme Court of Canada decision which established the principle that individual facts do not necessarily establish guilt but a link in the chain of ultimate proof.

[49] We of course accept the principal from these cases but the issue at hand is whether the majority decision ran afoul of the principal in this matter. Each case will have its own context and elements of the alleged offence.

[50] In the course of the argument, Ms. Lie conceded that if this Appeals Board was satisfied that the Panel did assess the cumulative effect of the evidence, then it committed no error of law.

[51] We are unable to give effect to the Provost's submission. In our view, the criticism of the majority's approach to its assessment of the similarities, dealing with each one as it came up in the evidence is misplaced. This was an allegation of plagiarism, and the University presented its evidence in that same way, taking its only witness, Ms. Planinc, through her own compilation of highlights and annotations and reviewing each of the eight alleged similarities one by one, or, in piecemeal fashion. It is, in our view, not a fair criticism of the Panel if it approached its analysis of these eight alleged similarities in the same fashion, at first instance, before, as we find it did, setting its conclusions and the allegations generally into the context of the other evidence, making findings on all the evidence. This led the majority, cumulatively, to conclude that the University had not met its burden of proof on clear and convincing evidence on a balance of probabilities.

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[22] *R. v. Knezic*, 2016 ONCA 914, Provost Book of Authorities, Tab 2.
[23] *R. v. Morin*, [1988] 2 S.C.R. 345, Provost Book of Authorities, Tab 4.

[52] Specifically as to the three instances out of eight, where the majority concluded that it was not satisfied that the particular allegation amounted to evidence of plagiarism, we find it difficult to accept this criticism in the context of this case, as it was the University putting forward these individual similarities, making the allegation that in each instance the evidence did amount to evidence of plagiarism.

[53] In making these statements, including the one that I have referred to at paragraph 32 above, and like statements, the majority was commenting on the particular evidence, but not on the overall burden of proof, which it proceeded to do in multiple other sections of its reasons.

[54] We also have some difficulty with the concept that, having reviewed each of the eight similarities and finding none of them compelling, in respect of all eight taken together, the majority would have somehow concluded they did overall amount to plagiarism from SD's draft.

[55] The Provost also argues that the majority either discounted or ignored other evidence, which the Provost relied upon in its case, for example the repeated complaint to us that the Panel ignored the fact that Ms. S[redacted] had access to S.D.'s draft for three days before she circulated her revised draft and submitted her paper. There are other such references to evidence, made by the Provost in the course of its submissions.

[56] We find no merit in this argument. First, it is for the Panel to sift through the evidence and assess its significance in the overall picture in coming to its findings. The majority was well aware of the timing evidence and referred to it at least twice in its Reasons[24] but the significance of that evidence fell away in the majority's conclusion that there were some coincidences in the

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[24] Majority Reasons, ABC p. 12, para. 24; p. 14, para. 37.

similarities but that overall, the student's ideas were her own and that the peer review process would lead to a necessary mixing of comments and ideas, for which the majority was not prepared to find the student responsible.

[57] All of these findings were open to the Panel to make on this evidence, and it is not a fair criticism of the Tribunal to complain that in making its decision the majority did not place the same emphasis or meaning on particular pieces of evidence that the prosecution thought it should or wished it had.

Focus on the Differences Rather Than the Similarities

[58] The Provost maintains that the majority erred because it focussed on the differences in the two papers under consideration rather than the similarities. The Provost argues that Ms. S[redacted] committed plagiarism if any idea contained in her paper was the idea or the expression of the ideas of the work of S.D. In focussing on the differences, the Provost argues that the Panel misdirected itself on the essential question before it. We find no merit in this submission, mostly on a plain reading of the majority's decision. The majority did not focus on the differences between the papers, but rather, as it was asked to do by the prosecutor, focussed on the alleged similarities.

[59] We accept, as the dissent pointed out, that plagiarism may result if the foundational ideas in two works are the same even if the expression of the ideas in both papers differ. This might, in a given case be a nice question to consider, but in our view, the majority decision when read as a whole dealt with differences in an acceptable manner. The majority's discussion of differences was in the context of looking at the two papers as a whole. In its assessment, it concluded that the similarities in language resulted in the expression of different ideas in the two papers by the two students.

[60] For example…"Moreover, the Student uses the quotation about "torrential rivers" to make a different point from S.D.'s."[25] And, another example…"(S.D.'s text uses the word "religion" in quite a different context)."[26]

[61] The majority's use and analysis of the differences was in the context of examining the ideas expressed in the papers and in assessing the similarities and what the Panel was prepared to take from them. All of this was open for the Panel on the evidence and we are not prepared to interfere with the findings and analysis that resulted from the majority's review.

[62] It is also noteworthy that in its conclusory section, the majority made no reference to "differences" at all, but rather concluded that the similarities that existed were more likely the natural product of the fact that students were writing on the same essay topic and relying on the same source material, in the context of a peer review process.[27]

Misapplication of the Standard of Proof

[63] The Provost argues that although the majority gave lip service to the requisite standard of proof – the balance of probabilities, and whether it was more likely than not that the plagiarism occurred, which the majority did refer to on at least four separate places in its Reasons. The Provost argues that the majority "appeared to put the Provost to a higher evidentiary standard."[28]

[64] The Provost relies on two main submissions for this argument including that the majority stated in the course of its Reasons that "the evidence against the Student was entirely

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[25] Majority Reasons, ABC, p. 19, para. 52.
[26] Majority Reasons, ABC, p. 23, para. 63.
[27] Majority Reasons, ABC, p. 27, para. 80.
[28] Factum of the University of Toronto, p. 26, para. 75.

circumstantial in our view"[29] We do not agree that in using this characterization, including in the context of the paragraph where it was used, that the majority is elevating the standard of proof to something more than the actual prosecution's burden.

[65] It is entirely common for triers of fact to describe the nature of the evidence at some point in the course of reasons as circumstantial, if it is in fact circumstantial, as this evidence was. If this serves as a reminder that the burden of proof rests on the Provost in these cases and that the standard is to meet a reasonable level of clear cogent evidence on the way through, then that is entirely appropriate.

[66] There are some additional points. Reading the decision as a whole, including the Panel's reference to having no direct evidence, which is also a matter of complaint by the Provost, it is clear that the majority was commenting that this case of alleged plagiarism was not of the "cut and paste" variety but rather was of a more nuanced and difficult nature. The Decision would have to result from inferences from the evidence.

[67] In the course of its Reasons, the majority commented that among other things, it did not have the texts that were under consideration, it did not hear from the other students involved in the peer review process, it did not have access to any papers not reviewed by Ms. Planinc and, whether another Panel would have felt the same, this Panel believed these pieces of "direct" evidence would have been helpful.

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[29] Majority Reasons, ABC, p. 14, para. 37.

[68] When taken with the very clear references to the correct standard of proof in various paragraphs of the majority's decision, we are unable to conclude that this Panel did not do exactly what it said it did, namely, apply the correct standard of proof.

Ms. Planinc's Evidence

[69] The fourth submission the Provost makes on this appeal is an argument that the majority erred in not accepting Ms. Planinc's evidence, that she followed the process set out in the *Code* and that Ms. Planinc in all respects testified in an honest and straight-forward manner, and her evidence ought to have been accepted.

[70] As we have said, the assessment of the evidence in this respect is for the trial Panel and not for this Appeals Board. We have carefully reviewed Ms. Planinc's evidence and can find nothing to suggest that she betrayed any bias or conducted herself in her investigation and evidence in anything other than a proper manner. At the same time however, it was open to the Tribunal to assess her evidence in the overall context of the case, as it did, and we are in no position to substitute our own views when it comes to assessing credibility or the relative weight to be given to the evidence of witnesses.

CONCLUSION

[71] For these reasons, we are of the view that this Appeal must be dismissed.

Dated at Toronto: October 31, 2017

Ronald G. Slaght, Q.C.
Chair, for the Appeals Board Panel