

**THE UNIVERSITY TRIBUNAL  
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on January 16, 2017

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*

BETWEEN:

**UNIVERSITY OF TORONTO**

- and -

Q ■■■■■ L ■

**REASONS FOR DECISION**

**Hearing Dates:** November 24, 2017

**Members of the Panel:**

Ms. Sandra Nishikawa, Barrister and Solicitor, Chair  
Professor Pascal Riendeau, Faculty Panel Member  
Ms. Sherice Robertson, Student Panel Member

**Appearances:**

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland, Barristers  
Ms. Nisha Panchal, Student Conduct and Academic Integrity Officer, Office of the Dean & Vice-Principal Academic, UTSC  
Ms. Margaret Roberts, Facilitated Study Group Coordinator, The Centre for Teaching and Learning, UTSC

**In Attendance:**

Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Office of Appeals, Discipline and Faculty Grievances  
Mr. Sean Lourim, Technology Assistant, Office of the Governing Council

**Not in Attendance:**

Mr. Q ■■■■■ L ■, the Student

1. This panel of the University Tribunal held a hearing on November 24, 2017 to consider the charges brought by the University of Toronto (the “**University**”) against Mr. Q■■■■■■■■■■ (the “**Student**”) under the Code of Behaviour on Academic Matters, 1995 (the “**Code**”).

**A. Preliminary Issue: Proceeding in the Absence of the Student**

2. The hearing was scheduled to begin at 9:45 a.m. on November 24, 2017. At that time, Discipline Counsel, Ms. Tina Lie (“**Counsel**”) advised that neither the Student nor a representative of the Student had responded to the Notice of Hearing.

3. Counsel made submissions on proceeding with the hearing in the absence of the Student. She advised the Panel that the following attempts had been made to provide notice of the charges and hearing to the Student:

- (a) The Office of the Dean & Vice-Principal Academic at the University of Toronto Scarborough attempted to contact the Student from February to October 2016 regarding the allegation of academic misconduct, however, the Student did not respond to any of those attempts. The contact information provided by the Student in the University of Toronto Repository of Student Information (“**ROSI**”) was used.
- (b) On January 16, 2017, the Office of the Vice-Provost, Faculty and Academic Life served the charges in this matter on the student by email to the email address that the Student had provided in ROSI.
- (c) On January 23, 2017, Counsel sent an email to the Student at the same email address advising that important correspondence would be sent to his email account.
- (d) On May 19, 2017, Counsel’s assistant, Ms. Janice Patterson (“**Ms. Patterson**”) sent a letter enclosing the disclosure brief, another copy of the charges and a copy of the University’s *Policy on Official Correspondence with Students* (the “**Policy**”) by email to the same email address and by courier to the mailing

address that the Student had provided in ROSI. Neither a response nor a “bounce back” message indicating that the email could not be delivered were received. The disclosure package was not returned.

- (e) Counsel sent further emails to the Student on August 21 and September 18, 2017 regarding the scheduling of the hearing. No “bounce back” messages were received.
- (f) On September 14 and 15, 2017, Ms. Patterson, tried to call the Student at the phone number provided in ROSI. The automated voicemail greeting did not indicate to whom the voicemail belonged. She left two messages at the number.
- (g) On November 14, 2017, a process server attempted to serve the Student with the Notice of Hearing at the address provided in ROSI but was unable to because the address was the address for a private high school.
- (h) On November 16, 2017, Ms. Patterson called the Student’s phone number. The Student answered the phone and Ms. Patterson told him that a hearing was scheduled for November 24, 2017 at 9:45 a.m. regarding charges filed against him by the University. Ms. Patterson asked if the Student had checked his University email account. The Student stated that he had changed his email address and was not attending the University anymore. Ms. Patterson told the Student that Counsel wished to speak with him, and that he should check his emails and the documents that had been sent to him first.
- (i) The Student provided Ms. Patterson with a new email address, as well as a new home address. He confirmed that he had received the prior voicemail messages. Ms. Patterson arranged to have Counsel call the Student later that evening.
- (j) Counsel spoke with the Student later that evening and explained the outstanding charges against him, and the date and time of the hearing. The Student stated that he was no longer enrolled at the University and was not

aware of the hearing. Counsel further advised the Student that the charges would have to be resolved, and provided information about his options, including seeking assistance from Downtown Legal Services and requesting an adjournment.

- (k) Later that evening, Counsel sent the Student an email at the new email address he had provided, attaching a number of emails and documents that had previously been sent to him. She set out his options and asked him to respond by November 18, 2017. The email message, however, bounced back.
- (l) Ms. Patterson called the Student the following day, and he provided a different email address. Ms. Patterson forwarded the email from Counsel to that email address, and it did not bounce back.
- (m) The Student did not respond to the email message, and Counsel sent further email messages and voicemail messages on November 20, 21 and 22. No response was received from the Student.
- (n) On September 18 and November 21, 2017, Counsel contacted Mike Wiseman, Acting Director, Information Security, Information Technology Services at the University asking Mr. Wiseman to advise her of the last date on which someone accessed the Student's email account. Mr. Wiseman advised that the account was last accessed on July 17, 2017.
- (o) On November 22, 2017, a process server served the Student personally with a letter, the Notice of Hearing and the charges at the new address that he provided to Ms. Patterson.

4. As of the date of the November 24<sup>th</sup> hearing date, the Student had not responded to any of the above-noted correspondence.

5. The University requested that the Panel proceed with this hearing in the absence of the Student. The onus of proof is on the University to demonstrate that it provided a student with reasonable notice of the hearing.

6. Pursuant to sections 6 and 7 of the *Statutory Powers Procedure Act* (the “**Act**”) and Rule 17 of the University of Toronto Rules of Practice and Procedure (the “**Rules**”), where reasonable notice of an oral hearing has been given to a party in accordance with the Act and the party does not attend the hearing, the Tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

7. Pursuant to Rule 9, a Notice of Hearing may be served on a student by various means, including by sending a copy of the document by courier to the student’s mailing address in ROSI or by emailing a copy of the document to the student’s email address in ROSI.

8. The University’s Policy on Official Correspondence with Students expressly states that students are responsible for maintaining a current and valid postal address and email account on ROSI. Students are expected to monitor and retrieve all mail, including emails, on a frequent and consistent basis.

9. Based on totality of the attempts made to provide notice to the Student and described above, including Counsel’s telephone conversation with the Student, during which she specifically advised him of the November 24<sup>th</sup> hearing date, the Panel concluded that the Student was given reasonable notice of the hearing in compliance with the notice requirements of the *Act* and the *Rules*. Moreover, the Student’s University email account had been accessed in July 2017, after the emails attaching the charges and the disclosure brief had been sent to that address.

10. The Panel therefore determined it would proceed to hear the case on its merits in the absence of the Student, and the hearing proceeded on the basis that the Student was deemed to deny the Charge made against him.

## **B. The Charge and Particulars**

11. The Charges and Particulars were detailed in a letter dated January 16, 2017 and are set out below:

- (a) On or about November 13, 2015, you knowingly represented as your own an idea or expression of an idea or work of another in a paper that you submitted in CTLA01H3, contrary to section B.I.1(d) of the *Code*.
- (b) In the alternative, on or about November 13, 2015, you knowingly obtained unauthorized assistance in connection with a paper that you submitted in CTLA01H3, contrary to section B.I.1(b) of the *Code*.
- (c) In the further alternative, on or about November 13, 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 a paper that you submitted in CTLA01H3, contrary to section B.I.3(b) of the *Code*.
- (d) On or about December 16, 2015, you knowingly represented as your own an idea or expression of an idea or work of another in the final examination in CTLA01H3, contrary to section B.I.1(d) of the *Code*.
- (e) In the alternative, on or about December 16, 2015, you knowingly obtained unauthorized assistance in connection with the final examination in CTLA01H3, contrary to section B.I.1(b) of the *Code*.
- (f) In the further alternative, on or about December 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 final examination in CTLA01H3, contrary to section B.I.3(b) of the *Code*.

#### Particulars

- (g) At all material times you were a student at the University of Toronto Scarborough.

- (h) In Fall 2015, you enrolled in CTLA01H3 (Foundations in Effective Academic Communication) (the “Course”), which was taught by Maggie Roberts.

**(1) *Research Paper***

- (i) On or about November 13, 2015, you submitted a research paper in the Course entitled “What Can Educators Learn from MOOCs” (the “Paper”), which was worth 7.5% of your final grade.
- (j) You submitted the Paper to obtain academic credit.
- (k) You knowingly represented the work of another person, or persons, as your own, and you knowingly included in the Paper ideas and expressions that were not your own, but were the ideas and expressions of another person, or persons, which you did not acknowledge in the Paper.
- (l) You knowingly obtained unauthorized assistance in connection with the Paper.
- (m) You knowingly submitted the Paper with the intention that the University of Toronto Scarborough rely on it as containing your own ideas, expressions of ideas or work in considering the appropriate academic credit to be assigned to your work.

**(2) *Final Exam***

- (n) On or about December 16, 2015, you wrote the final examination in the Course (the “Exam”), which was worth 33% of your final grade.
- (o) You submitted the Exam:
  - (i) to obtain academic credit;
  - (ii) knowing that it contained verbatim or nearly verbatim text from sources, including:
    - a) the examination instructions; and

- b) Liu, L. (2011). An international graduate student's ESL learning experience beyond the classroom, *TESL Canada Journal* 29(1)

(collectively, the "Exam Sources");

- (iii) knowing that it contained ideas, expressions of ideas or work which were not your own, but were the ideas, expressions of ideas or work of others, including the Exam Sources; and
- (iv) knowing that you did not properly reference the ideas, expression of ideas or work, including the verbatim or nearly verbatim text that you drew from the Exam Sources.
- (p) You knowingly obtained unauthorized assistance in connection with the Exam, including from the Exam Sources.
- (q) You knowingly submitted the Exam with the intention that the University of Toronto Scarborough rely on it as containing your own ideas or work in considering the appropriate academic credit to be assigned to your work.

### **C. The Evidence**

12. The University called the evidence of Ms. Margaret Roberts, Coordinator, Facilitated Study Groups at the Centre for Teaching and Learning, University of Toronto Scarborough. Ms. Roberts' responsibilities include teaching the Course, which she designed and has been teaching since 2011. According to Ms. Roberts, the Course is intended to enable students who are not strong in English to become proficient in one semester and includes reading and writing activities to enable students to develop their skills.

13. Ms. Roberts testified that during the first class of the Course, she went through the syllabus closely with the students and discussed issues of academic integrity. The syllabus contains an "Academic Integrity Statement" which states that cases of cheating and plagiarism would be treated very seriously. The Statement provides a hyperlink to the Code



and gives examples of academic offences. The Statement further states that students will normally be required to submit their course essays to turnitin.com for a review of textual similarity. Ms. Roberts advised the students that they could submit their essays to turnitin.com before the due date and revise as necessary.

14. During the first week of the Course, students are required to take a diagnostic test to assess their English language needs. A student with a score below 63% is deemed to be “at risk.” The Student answered 33 out of 70 questions, with an accuracy rate of 7%. He scored 19% on another portion of the test.

15. Ms. Roberts testified that she observed in class that the Student had a very limited ability to speak English and was reluctant to try. He sat with an older student, upon whom he relied to translate for him. The Student did not participate in class, and when asked to do something, would ask the older student what to do. The Student’s attendance in class was also irregular. He attended eight out of twelve classes and two out of ten practicums.

### The Assignments

16. The Course evaluation included five journals, which were each worth 2% of the final grade, and a “synthesis assignment” worth 7% of the final grade. There was also a research assignment worth 10% of the final grade. The journals were to assist the students with the synthesis assignment. The Student did not complete the first two journals, but did submit the third journal (“Journal 3”) on October 2, 2015. The students had been given three articles, which they would have to summarize and use to answer questions. The Student’s journal largely excerpted one of the articles. The remainder of the journal was written in very poor English.

17. The Student submitted the synthesis assignment on October 11, 2015. When the assignment was submitted to turnitin.com, it resulted in a 54% similarity. Three out of five paragraphs are substantially the same as another source. The remaining two paragraphs were very poorly written, and the English was not at the same level of the other two paragraphs.

18. On October 19, 2015, Ms. Roberts sent the Student an email and asked him to see her for assistance with the use of sources and to rewrite the paper. The Student did not respond to the email, but Ms. Roberts spoke to him the following day. The Student did not initially appear to understand what was going on, but at the end of the meeting, he acknowledged that he had done something wrong. Ms. Roberts gave him two weeks to rewrite the assignment, but he did not resubmit it. Ms. Roberts followed up by email on November 8, 2015, expressing her concern about whether the Student would pass the Course and offering to work with him, but received no response.

19. On November 6, 2015, the Student submitted the fourth journal. The Student did not follow the instructions, which were to use two sources that the student would be using for the research assignment, and simply stated his opinion.

20. The Student submitted the final research assignment on November 13, 2015. The turnitin.com report reflected 0% similarity. However, the assignment raised some flags with the teaching assistant, Colette Grainger, who suspected that the Student had not written the paper.

21. At the hearing, Ms. Roberts provided a detailed analysis of the Student's research assignment and why she did not believe that it had been written by the Student. The level of vocabulary and language was much more sophisticated than any of the other written work submitted by the student. The use of sources was also sophisticated, citing multiple sources for a single point, when the Student had previously struggled to use sources properly. There were also complex grammar structures and language patterns that were beyond the language ability that the Student had demonstrated to date. Based on the Student's previous assignments and his lack of attendance, Ms. Roberts concluded that the Student's language proficiency could not have improved to this extent. Moreover, Ms. Roberts testified that none of the students in the Course could have written an essay at this level.

### The Final Examination

22. The final examination for the Course took place on December 16, 2015. On the first page of the exam booklet, students are required to sign that they have read and understood that the Code prohibits all forms of academic dishonesty, and that students who violate the Code may be subject to penalties including suspension or expulsion from the University. The Student signed this page.

23. The Student scored one out of 13 on the vocabulary portion of the exam. On the essay portion of the examination, the Student copied large portions from the text that had been provided for students to use to write the essay portion. The Student also copied portions of the examination instructions. The Student underlined these portions of the exam question and the article.

24. After the examination, Ms. Roberts emailed the Student twice requesting that he meet with her about the examination, but the Student did not respond.

#### **D. Decision of the Tribunal**

25. The onus is on the University to establish on a balance of probabilities, using clear and convincing evidence that the academic offence charged has been committed by the Student.

26. The Student was charged with a number of offences under the Code. Counsel advised that if the Student was found guilty of the first charge, charges two and three would be withdrawn, and the University would not proceed on the remaining charges. The first charge relates to plagiarism of the research assignment under Section B.I.1(d) of the Code, which reads:

It shall be an offence for a student knowingly: to represent as one's own any idea or expression of an idea or work of another in any academic examination or term test or in connection with any other form of academic work, i.e. to commit plagiarism[.]

27. At the hearing, the Panel found that in relation to the research assignment, the Student knowingly represented the work of another as his own, contrary to section B.I.1(d) of the Code. These reasons thus address our finding that the Student is guilty of the charge of plagiarism.

28. Based on Ms. Roberts' evidence as detailed above and the Panel's review of the Student's assignments, none of the Student's previous assignments reflected an English ability remotely proficient enough to author the research assignment just a few short weeks later. Moreover, the Student's attendance in class was irregular and he did not seek additional assistance to further his learning. The Student did not take up the offer of assistance to overcome his lack of understanding regarding the proper use of sources. Given these facts, it is not possible that the Student's English ability improved to the extent that he was able to write the research assignment himself.

29. The Student's submission of a research assignment that was not his work was not through inadvertence or error. He did not simply fail to cite a couple of sources. Because the quality of the work that he submitted was so superior to any assignment that he had previously submitted, and given his limitations in English, he knew or ought to have reasonably known that the work he submitted was not his own.

30. If the Student's English ability had improved to the extent that he could have authored the research assignment, this proficiency would have been reflected on the final examination. On the final exam, however, he answered only one vocabulary question correctly and substantially copied the essay portion. The Panel finds that the Student could not have written the research assignment and that it is more likely than not that he submitted the work of another as his own.

31. As Counsel advised, this is not a "typical" plagiarism case, since the turnitin.com report assessed the research assignment at 0% similarity and the work that may have been plagiarized is not in evidence. In *University of Toronto v W.J (Case No. 815, January 19, 2016)*, the Tribunal was faced with a similar situation and found that an original text to compare with the submitted work is not required. What is necessary to constitute plagiarism

is that a student represent someone else's work as their own. In this case as well, the Student represented work that he did not write, the research assignment, as his own. The University has demonstrated on a balance of probabilities that the student breached Section B.I.1(d) of the Code.

## **E. Sanction**

32. The matter continued with a hearing on the appropriate sanction. The University requested that the Panel make an order that: (i) the Student receive a zero grade in the Course, (ii) the Student be suspended for three years, (iii) a notation of the suspension be placed on the Student's record for four years, and (iv) the case be reported to the Provost, with the Student's name withheld, for publication of a notice of the decision of the Panel and the sanctions imposed.

33. The appropriate sanction must be based on the individual circumstances of each case, and there is no "formula" that determines a particular result. (*University of Toronto v B..S., Case No. 697 – Sanction*, January 17, 2014 at para 8). The Tribunal has nonetheless identified the following factors as relevant in determining the appropriate sanction: the character of the person charged, the likelihood of repetition, the nature of the offence, the need to deter others from engaging in similar behaviour, the detriment to the University, protection of the public, as well as any extenuating circumstances. (*University of Toronto v Mr. C., Case No. 1976/77-3*; November 5, 1976 at p. 12.)

34. Plagiarism is a serious offence that "strikes at the core of academic integrity." (*University of Toronto v D.S., Case No. 554, October 7, 2009* at para 39). Plagiarism harms not only the student and fellow students, but also the University's credibility and objectives. Because of the broad availability of material on the internet, and the ease with which it can be copied, academic institutions bear the burden of constantly reinforcing the importance of academic integrity. As was evident in this case, students are reminded of this through the Code, their course syllabus and exam materials. A significant sanction is necessary to reflect the seriousness of the misconduct and its corrosive impact on academic integrity.

35. In this case, the Student was given multiple warnings and chances but did not learn from his early mistakes. He did not avail himself of the assistance offered by his instructor, but instead continued to submit work that was largely copied from other sources. While this may have been due to his limited English ability, he did not seek to understand the proper use of sources. Moreover, the offence was not limited to missing citations or errors that could be characterized as a lack of care. As Counsel noted, if the course were not a small course where the instructor knew the student well, the plagiarism may not have been detected. A significant sanction is necessary to deter others from engaging in this type of behaviour.

36. This was a first offence for the Student, during his first term at the University. Because the Student did not participate in the hearing, the likelihood of repetition can only be measured on the evidence of the University, which suggests that the Student gained no understanding, even during the final examination, that copying was against the Code.

37. Due to the Student's non-participation, we were unable to assess his degree of remorse or insight. Similarly, there was no evidence of any mitigating or extenuating circumstances.

38. Given our assessment of the relevant factors, a significant penalty was warranted. The sanction sought by the University is consistent with the sanction ordered by the Tribunal in similar cases. (See, e.g.: *B.S.*, *supra*; *University of Toronto v D.S.*, Case No. 451, August 24, 2007; *University of Toronto v M.H.H.*, Case No. 521, January 12, 2009). The Panel concluded that, under the circumstances, it was appropriate to order the sanction requested by the University.

## **F. Conclusion**

39. The Panel orders that the Student is guilty of knowingly representing as his own an idea or expression of an idea or work of another in a paper that he submitted in CTLA01H3, contrary to section B.I.1(d) of the Code;

40. The Panel ordered that the following sanctions be imposed on the Student:

- (a) A zero in the course CTLA01H3;
- (b) A suspension from the University of Toronto for a period of 3 years from the day the Panel makes its order for three years from November 24, 2017 to November 23, 2020;
- (c) a notation of the sanction on his academic record and transcript from the day the Panel makes its order for four years from November 24, 2017 to November 23, 2021; and

41. The Panel also ordered that the case be reported to the Provost, with the Student's name withheld, for publication of a notice of the decision of the Panel and the sanctions imposed.

*Prior to these Reasons being finalized, Justice Sandra Nishikawa was appointed a judge of the Superior Court of Justice of Ontario. Therefore these reasons were issued by the remaining two Panel members.*

Dated at Toronto this 9<sup>th</sup> day of February, 2018



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Professor Pascal Riendeau, Faculty Panel Member

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Ms. Sherice Robertson, Student Panel Member

- (a) A zero in the course CTLA01H3;
- (b) A suspension from the University of Toronto for a period of 3 years from the day the Panel makes its order for three years from November 24, 2017 to November 23, 2020;
- (c) a notation of the sanction on his academic record and transcript from the day the Panel makes its order for four years from November 24, 2017 to November 23, 2021; and

41. The Panel also ordered that the case be reported to the Provost, with the Student's name withheld, for publication of a notice of the decision of the Panel and the sanctions imposed.

*Prior to these Reasons being finalized, Justice Sandra Nishikawa was appointed a judge of the Superior Court of Justice of Ontario. Therefore these reasons were issued by the remaining two Panel members.*

Dated at Toronto this 18 day of February, 2018

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Professor Pascal Riendeau, Faculty Panel Member

A handwritten signature in black ink, appearing to read 'Sherice Robertson', written over a horizontal line. The signature is cursive and somewhat stylized.

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Ms. Sherice Robertson, Student Panel Member