

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on May 23, 2014,

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 -

F [REDACTED] A [REDACTED]

REASONS FOR DECISION

Hearing Date: April 13, 2015

Members of the Panel:

Ms. Sarah Kraicer, Lawyer, Chair

Professor Michael Evans, Department of Statistics, Faculty Panel Member

Ms. Lucy Chau, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland, Barristers

Dr. Robin Marushia, Instructor for BIOA02H3: Life on Earth: Form, Function and Interactions, University of Toronto Scarborough

In Attendance:

Professor Wayne Dowler, Dean's Designate, University of Toronto Scarborough

Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

Not in Attendance:

Ms. F [REDACTED] A [REDACTED], the Student

1. The Trial Division of the University Tribunal was convened on April 13, 2015 to consider charges brought by the University of Toronto ("the University") against Ms. F [REDACTED] A [REDACTED] ("the Student") under the *University of Toronto Code of Behaviour on Academic Matters*, 1995 ("the Code").

Preliminary Issue: Proceeding in the Absence of the Student

2. The Tribunal waited 10 minutes after the scheduled time to begin the proceeding. Neither the Student nor a representative of the Student appeared.
3. Pursuant to sections 6 and 7 of the *Statutory Powers Procedure Act* ("the Act"), and Rule 17 of the University Tribunal 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 at 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. The University requested that the Tribunal proceed with this hearing.
4. A notice of hearing may be served on a student by personal service, "by sending a copy of the document by courier to the student's mailing address contained in ROSI" [Repository of Student Information], "by emailing a copy of the document to the student's email address contained in ROSI" or "by other means authorized under the University's Policy on Official Correspondence with Students" (the "Policy") (Rules 9 (b)(c) and (d)).
5. The Policy states that Students are responsible for maintaining on ROSI a current and valid postal address and a University-issued email account. Students are expected to monitor and retrieve their mail, including electronic messaging accounts issued to them by the University, on a frequent and consistent basis.
6. The onus of proof is on the University under the Act and the Rules to establish that it provided the Student with reasonable notice of the hearing in accordance with these provisions.
7. The University filed evidence from Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances, with the Office of the Governing Council of the University, and from Janice Patterson, legal assistant at Paliare Roland Rosenberg Rothstein, counsel to the University, relating to the efforts that were made by the University to provide notice of this hearing to the Student.

8. As set out in more detail below, the University and counsel for the University provided notice to the Student by courier and email. In addition, the University made numerous attempts to communicate with the Student about this proceeding by email and phone, and spoke to a person who identified herself as the Student's mother, and who advised that she had provided the notice of hearing to the Student. The Student did not respond to any of these communications. The Tribunal is, however, satisfied, on reviewing the evidence outlined below, that the Student received reasonable notice of this hearing.
9. On May 23, 2014, a copy of the Charges in this proceeding were emailed to the Student at her ROSI email address. On July 22, 2014, a second copy of the Charges and disclosure material were emailed to the Student's ROSI email address and couriered to the Student's ROSI mailing address.
10. Both Ms. Lie and Ms. Patterson made several attempts between June 2014 and March 2015 to contact the Student by email at her ROSI address and by telephone at the number provided by the Student as her "business number". Two of these calls were answered by a woman who advised that the Student now had a different number, and (on the second call) that she had informed the Student about the first call. The Student did not respond to these calls or emails.
11. In an email dated March 9, 2015 sent to the ROSI email address, counsel for the University advised the Student that as she had not heard from her, that the hearing would be scheduled on Monday April 13, 5:45 p.m., and that a Notice of Hearing would be sent to the Student.
12. On March 18, 2015, the University served a copy of the Charges and Notice of Hearing for a hearing scheduled for Monday April 13, 2015 at 5:45 p.m. by email and courier to the Student's email and mailing addresses contained in ROSI. The courier package was accepted by "J. Ali" on March 19, 2015.
13. On April 10, 2015, Ms. Patterson again called the Student's phone number listed in ROSI and the woman who answered identified herself as the Student's mother. The Student's mother indicated that she (the mother) had seen the Notice of Hearing, was aware that there was a University of Toronto hearing scheduled for Monday, April 13, 2015 and asked if she could attend the hearing. She also advised that she had provided the Student with the Notice of Hearing, but did not know if the Student would be attending the hearing. She provided a different phone number for the Student.

14. On April 10, 2015, Ms. Patterson left a voicemail message at the phone number provided by the Student's mother, reminding her of the scheduled hearing date and time and leaving contact information.
15. The Tribunal has considered the evidence before it and the submissions of counsel for the University and has concluded that the Student has been given reasonable notice of the hearing in compliance with the notice requirements of the Act and the Rules. The content of the Notice of Hearing complies with the requirements of the Act and the Rules. The Notice of Hearing was sent to the Student via email and via courier to the addresses listed in ROSI, in compliance with the Rules and Policy on Official correspondence. In addition, the University spoke to a person who identified herself as the Student's mother and who informed the University that she had provided the Student with the Notice of Hearing, so it is likely that the Student has actually received the Notice of Hearing. The University also made numerous attempts to communicate with the Student and left messages via telephone, email and courier with information about the allegations, the charges and the scheduling of hearing. None of the emails ever "bounced back" and none of the courier packages were returned. Despite these efforts by the University, no response was ever received from the Student.
16. The University has proven that it provided reasonable notice of the hearing to the Student. The Tribunal therefore determined that it would proceed to hear the case on its merits.

The Charges and Particulars:

17. The Charges and Particulars are as follows:
 1. On or about April 1, 2013, you knowingly represented the ideas or the expressions of the ideas of another as your own work in the formal lab report that you submitted in BIOA02H3 (Life on Earth: Form, Function and Interactions) (the "Course"), contrary to section B.I.1(d) of the Code.
 2. In the alternative, on or about April 1, 2013, you knowingly obtained unauthorized assistance in connection with the formal lab report that you submitted in the Course, contrary to section B.I.1(b) of the Code.
 3. In the further alternative, on or about April 1, 2013, 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 formal lab report that you submitted in the Course, contrary to section B.I.3(b) of the Code.

Particulars of the offences charged are as follows:

1. At all material times you were a student at the University of Toronto Scarborough.
2. In Winter 2013, you enrolled in the Course. The Course/Lab Coordinator for the Course was Dr. Robin Marushia.
3. On April 1, 2013, you submitted a formal lab report (the "Lab Report") in the Course, which was worth 8% of your final grade in the Course.
4. You were required to complete and submit the Lab Report on your own, without collaborating with any other students in the Course.
5. You submitted the Lab Report:
 - (a) to obtain academic credit;
 - (b) knowing that it contained verbatim or nearly verbatim passages from other sources, including from the Lab Reports submitted by other students in the Course; and
 - (c) knowing that it contained ideas or expressions of ideas which were not your own, but were the ideas or expressions of ideas of others.
6. You knowingly obtained unauthorized assistance in connection with the Lab Report, including from other students in the Course.
7. You knowingly submitted the Lab Report 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.

18. At the outset of its submissions, counsel for the University stated that if the Tribunal were to find the Student guilty of Charge 1, it would withdraw Charges 2 and 3.

The Evidence

19. The Tribunal heard the evidence of Dr. Robin Marushia, Instructor, University of Toronto Scarborough. Dr. Marushia was the Course Coordinator for BIO A02S in the Winter 2013 session, in which the Student was enrolled. The Course Coordinator is responsible for oversight of the course as a whole including enrolment and marks management.
20. The charges against the Student relate to the formal lab report assignment she submitted worth 8% of the total course mark. Students worked in groups to gather and compile data for the reports, and therefore all students in the group were expected to employ the same data set. All students were, however, required to analyze the data and write the lab report on their own.
21. The Syllabus for BIO A02S that was provided to all enrolled students stated that the course “would be using the website [“turnitin.com”](http://turnitin.com) (“Turnitin”) for the submission of assignments (e.g. formal lab reports). The syllabus referred to the University policy for Turnitin, which indicated it was used “for a review of textual similarity and detection of possible plagiarism”. The Syllabus also included information on academic integrity, and stated that academic offences for in-term work such as for reports included using someone else’s ideas or words without appropriate acknowledgement, and obtaining or providing unauthorized assistance on any assignment.
22. The Student submitted a 5 page Lab Report dated April 1, 2013 entitled “The Effect on Growth and Development Using Various Nutrients”. The Turnitin Originality Report indicated a “similarity index” of 68% for the Student’s Lab Report to a lab report entitled “Examining the effect of nutrients on plant morphology” submitted by O.S., another student in the same course. Dr. Marushia stated while in general she examines every paper that has a higher than 30% match rate, for this assignment she used 50-60% cutoff because students were writing on the same topic with the same data set.
23. Alerted to the high similarity index for the Student’s lab report on Turnitin, Dr. Marushia examined the Student’s report and compared it to that of O.S. and determined that there were significant similarities between the two, despite the

fact that the two students were in different groups and therefore not sharing the same data set. The evidence before the Tribunal indicates that approximately 50% of the text in first three sections of the Student's report (Abstract, Introduction, Materials and Methods) is identical to the text in O.S.'s lab report. Approximately 90% of the text in the Results section is identical to the results section of O.S.'s lab report. The entire Discussion section in the Student's report is identical to the discussion section in O.S.'s lab report. In summary, three of the five written pages of the Student's report have the identical verbatim text as that in O.S.'s report, while the remaining two pages share about 50% of the same text.

24. On April 8, 2013 and on April 22, 2013 Dr. Marushia emailed the Student to request a meeting to discuss her lab report which had been "flagged for plagiarism". The April 22 email further indicated that if no response was received, the assignment would be submitted to the department chair and possibly the office of Academic Integrity. Dr. Marushia received no response from the Student.
25. Dr. Marushia testified that she had occasion to speak to the Student the previous term in connection with BIO A01 when the student's formal Lab Report in that earlier course was also flagged by Turnitin with a high similarity index to a lab report that had been submitted by another student in a previous year. The Student received a zero on that report in BIO A01. The University led no further evidence about this incident, and, as set out below, does not rely on it as a prior offence. The Tribunal has therefore not considered this prior incident in its determination of the Charges.
26. Dr. Marushia stated that she met with the student O.S. about his lab report, and that he was given a grade of 0% for that assignment in the course at the divisional discipline level.

Decision of the Tribunal on the Charges

27. The onus is on the University to establish on clear and convincing evidence on a standard of probabilities that the academic offence charged has been committed. The Student is charged under Charge 1 with knowingly representing the ideas or the expressions of the ideas of another as her own work. The Code provides that "knowingly" includes where a person ought reasonably to have known. The University submits that it is not required to show how the student committed the offence. Whether she plagiarized the work of O.S., or assisted O.S. in

plagiarizing her work and therefore was a party to the offence under section B.ii.(a)(b) the offence is committed and the same sanctions apply. The Tribunal agrees.

28. The Tribunal is of the view that the evidence establishes that the Student knowingly represented the ideas or expression of ideas of another as her own work in her formal Lab Report. The extent of the duplication between her Report and that of O.S. can only be the result of extensive copying of the ideas and expression of ideas of the other student. She was advised that such collaboration was not permitted in this assignment, and that the assignment would be subject to review for plagiarism by Turnitin and by the course instructors. The evidence establishing the offence is cogent and compelling and has met the University's burden of proof with respect to Charge 1.
29. The Tribunal finds that the Student is guilty of Charge 1.
30. Charges 2 and 3 were withdrawn by the University.

Decision of the Tribunal on Penalty

31. The University sought the following sanctions:
 - (a) a final grade of zero in the course BIOA02H3;
 - (b) a suspension from the University of Toronto from the date of this order for a period of two years, ending April 12, 2017;
 - (c) a notation of the sanction on her academic record and transcript from the date of this order for a period of three years, ending on April 12, 2018; and,
 - (d) that this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with Ms. A [REDACTED]'s name withheld.
32. The University did not lead any additional evidence with respect to the sanction.
33. The Tribunal has considered the principles and factors relevant to sanction set out in *University of Toronto and Mr. C* (Case No. 1976/77-3; November 5, 1976). The determination of an appropriate penalty in every case by the Tribunal will

depend on an assessment of these principles and factors in the individual circumstances of the case. At the same time, it is important that there is general consistency in the approach of Tribunals to sanction, so that students are treated fairly and equitably. (Discipline Appeal Board, *University of Toronto v. D.S*, Case No. 451; August 24, 2007).

34. The University has presented a number of cases to support their argument that there is a “general standard” for a two year suspension for a first offence of plagiarism. The Tribunal does not consider itself bound by any such general standard, and notes that in *D.S.*, the Discipline Appeal Board observed at para 49 that “students who are first time offenders committing one act of plagiarism, generally have received sanctions in a range of one to two years”. However, for the reasons set out below, and based on a consideration of all of the relevant principles and factors, the Tribunal considers the sanctions proposed by the University, including a two year suspension, to be appropriate and reasonable in the circumstances of this case.
35. The Student has not participated at any stage of the discipline process and has not responded to any communications from the Instructor, Registrar, Dean’s Office or counsel to the University regarding these issues and allegations of misconduct. There is accordingly no evidence before us of mitigating or extenuating circumstances, good character, remorse or insight.
36. On the other hand, while there was some limited evidence that she had received a zero on a lab report in a different course in the previous term, the University clarified that it considered this to be a first offence and that the Tribunal should not consider that the Student had been subject to formal discipline or that she had received a clear warning about future behavior. The Tribunal therefore is of the view that the evidence does not disclose a pattern of conduct that would suggest that she will repeat the offence.
37. As to the nature of the offence, plagiarism is a very serious offence that strikes at the heart of academic integrity at the University and that undermines the essential relationship of trust, learning and teaching between all students and the University. The grave threat that plagiarism poses to the core of academic integrity warrants a strong penalty. In addition, the sanction must serve as an effective general deterrent to others, as plagiarism is an ongoing and significant issue for the University.
38. The extent of the plagiarism here was significant, as the majority of the Student’s lab report was plagiarized work. The seriousness is somewhat lessened by the

fact that the mark value of the plagiarized assignment was only 8% of the total course work.

39. We do not consider the much lighter sanction administered to O.S. at the divisional level for his similar plagiarism to be a relevant factor in our determination of sanction. Unlike the Student, O.S. agreed to meet with University officials and chose to avail himself of this informal process to resolve his misconduct. Procedures and sanctions are different at the divisional stage in order to promote early resolution, and such sanctions can only be imposed where a student admits misconduct. While a student should not be penalized for not admitting misconduct at the decanal level, a failure to participate at any stage of the process means that the Tribunal has no evidence of remorse, assumption of responsibility, or other mitigating factors. (See *University of Toronto v. J.H.C.* (Case No. 741; February 4, 2014, para 10). Decanal level sanctions are not comparable to tribunal sanctions. Tribunal sanctions should be reviewed for consistency with other Tribunal sanctions, and not with divisional level sanctions (Discipline Appeal Board, *University of Toronto v. D.S.*, Case No. 451; August 24, 2007, at para 43).
40. Our review of the Tribunal cases presented to us indicate that a two year period of suspension would be generally consistent with the sanctions administered to other students in similar circumstances. In particular, in *University of Toronto v. H-S. M* (Case No. 788; February 18, 2015) and in *University of Toronto v. J.H.C.* (2014), the Tribunal ordered a two year suspension for a first offence of plagiarism where the students had also failed to participate at all in the discipline process.
41. In all of the circumstances, and with regard to the factors identified in the C. case, the Tribunal is satisfied that the University's proposed sanctions are fair and appropriate.

Order of the Tribunal

40. The Tribunal issued the following Order on April 13, 2015:

THAT Ms. A [REDACTED] is guilty of one count of knowingly representing an idea or expression of an idea or work of another as her own, contrary to section B.I.1.(d) of the *Code*;

THAT the following sanctions shall be imposed on Ms. A [REDACTED]:

- (a) a final grade of zero in the course;
- (b) a suspension from the University of Toronto from the date of this order for a period of two years, ending on April 12, 2017; and
- (c) a notation of the sanction on her academic record and transcript from the date of this order for a period of years, ending on April 12, 2018; and,

THAT this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with Ms. A [REDACTED]'s name withheld.

Dated at Toronto this 16 day of June, 2015



Ms. Sarah Kraicer, Co-Chair

