

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER of charges of academic dishonesty made on April 27, 2016

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters, 1995,*

AND IN THE MATTER OF the *University of Toronto Act, 1971, S.O. 1971, c. 56* as amended S.O. 1978, c. 88

B E T W E E N:

UNIVERSITY OF TORONTO (the "University")

- and -

Z██████ Z██████ (the "Student")

REASONS FOR DECISION

Hearing Date: July 14, 2016

Panel Members:

Mr. Paul Schabas, Barrister and Solicitor, Chair
Dr. Chris Koenig-Woodyard, Faculty Panel Member
Ms. Sue Mazzatto, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel for the University, Paliare Roland Barristers
Professor Thomas Kierstead, Department of East Asian Studies, University of Toronto
Dr. Kristi Gourlay, Manager of Office of Academic Integrity, Office of Student Academic Integrity

In Attendance:

Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances, University of Toronto

Not in Attendance:

Mr. Z██████ Z██████, the Student

THESE REASONS WERE DELIVERED ORALLY ON July 14, 2016.

1. The panel has considered this matter. Thank you very much for the efficient way in which you have presented this in your submissions Ms. Harmer. We are prepared to give you our Reasons at this time.
2. This case was commenced at 2:00 p.m. today, 15 minutes after the Notice of Hearing provided. We were asked to proceed in the absence of the Student.
3. We were presented with evidence from Ms. Fletcher on the various contacts and the attempts to contact the Student and we were satisfied that appropriate notice has been given by email and by attempts by courier delivery, and agreed that this matter should proceed in the Student's absence.
4. We also note the evidence that the Student was enrolled and participated in courses in the Winter Term from January to April of 2016 and therefore was at the University, and the inference from that again supports the fact that the Student has chosen not to participate in this proceeding.
5. The Charges are set out in the charging document, at Exhibit 3.
6. There are six Charges, I will not read them. They contain particulars from A to N and we've reviewed those Charges and the Particulars, and our Reasons with respect to those Charges follow.
7. First the evidence. The first witness was Professor Tom Kierstead, who is the Professor in Course EAS103H, ("the Course"), in the Fall Session. Professor Kierstead is an Associate Professor in the Department and a former Chair of the Department. He has been teaching for approximately 30 years at the University of Toronto and several other Universities, including the University of California, Indiana, and Buffalo.
8. Professor Kierstead described the nature of the Course and took us to the Syllabus which was before us, and also described to us how as a first year course there was a strong emphasis on developing students' written skills including a range of documents and as Ms. Harmer put it, documents which were replete with warnings and advice about compliance with academic rules respecting plagiarism and ensuring that the work you produce is your own or is properly attributed. This includes warnings about paraphrasing, the need for quotations, and if and when assistance is used by a student that there must be attribution.

9. The Professor also told us that this was a strong emphasis in the tutorials for the students run by his teaching assistants.
10. The Professor said that when he received the paper marked as Essay Number 1, which was handed in November 11th, he said that it impressed him as being written like a Wikipedia article. He then conducted some Google searches and phrases in the essay and found numerous overlaps. He took us through many of those overlaps in the essay, which were marked on it, using his initials as TK2 to TK10, where he found numerous overlaps in words, phrases, sentences, that were not attributed to articles and was clearly not the work of the student.
11. He also found in what he noted as TK15 to 17 citations or references or use of language which was, as he put it, clearly taken from other documents and there was either not proper attribution or there was no attribution. At the end of his evidence, he told us he made some investigation into the document properties, and for Essay Number 1, he noted that the Essay Number 1 had an author named Kamau, and he provided us with a print out of the document property section. We will come back to that later, because in the Essay Number 2, there are different document properties showing a different author.
12. Professor Kierstead then told us about making attempts to contact the Student to discuss Essay Number 1 with him and those attempts were met with silence. The second attempt warned the Student that if the Student didn't respond, the matter would be reported to the Office of Student Academic Integrity.
13. Professor Kierstead then told us about the receipt of Essay Number 2, which was completely different from Essay Number 1. The Course provided that the second essay was to be effectively a revision of the first essay and instead the Professor received a completely new essay on a different topic. He described how Essay Number 2 also read completely differently, in the sense that it was well written in virtually perfect English, grammar, spelling, syntax, punctuation, and so on, and that contrasted starkly with Essay Number 1. He also contrasted it with the reading responses that the Student submitted and the exams. The reading responses and the exams showed that the Student's English was much weaker, and was replete with spelling mistakes, poor grammar, poor punctuation, poor syntax, and so on. He drew the inference that Essay Number 2 could not possibly have been written by the Student who had written reading responses and the earlier exams.
14. There was also a reference in the Essay Number 2, in a few spots to a source written by someone named Howe; however, there were no page references or proper citations to Howe such as the date of publication, or where it was

published. Professor Kierstead explained that the information was available to the Student on Blackboard; however, if one simply downloaded and reproduced the paper in PDF form from Blackboard, it did not contain those references, and therefore he asked us in effect to draw the inference that the person who wrote the Essay may have had access to the PDF version, but, since that person was not the Student, and didn't have reference to Blackboard, would not have had access to the citation.

15. Professor Kierstead also did a document property search as I noted and the document property search in the case showed that the author at least on the print out was someone named Maria Angelica, which is different of course than the Essay Number 1.
16. Dr. Gourlay, the Manager of OSAI, also testified that she reviewed Professor Kierstead's analysis of Essay Number 1 and confirmed the investigation he had done, and that his highlighting was consistent with her findings. She actually went further and found additional use of unattributed sources and phrases in particular on page 6, of the Essay Number 1.
17. Dr. Gourlay also checked citations, at least to the top of the third page of Essay Number 1, to check page references. She found that in every case up to the top of page 3, when she stopped doing it, the page numbers were incorrect at the very least and did not support what the student did. In some cases there were no actual page numbers referenced, in another situation such as the Raz article, the text on that page had nothing to do with what it was cited for. She also noted that in many cases there appeared to be a pattern in which the Student had substituted the words East Asian for the word Chinese and that occurred in both the text of the article and curiously as well in the work cited, making it appear that there may have been some global changes done to disguise the use of unattributed sources.
18. Dr. Gourlay also commented on the document properties which not only showed that the authors were different, at least different names appeared, but also that the time when the content was created and last saved seemed to be identical with respect to each of the two documents, and said that is consistent with for example writing something and sending it to somebody, so it is created and saved on their computer at the same time, and she said that this is something seen in other cases where there is plagiarism.
19. The evidence was of course, unchallenged and uncontradicted; it was presented to us in a clear and forthright manner. There were no issues of credibility; the oral evidence is supported by and consistent with the written evidence.

20. In light of that evidence, we have no hesitation in finding it to be credible and we accept the evidence.
21. Our decision is therefore that with respect to Essay Number 1, the evidence establishes clearly to us on a balance of probabilities that Essay Number 1 contained work, expressions, and ideas which were not those of the Student who submitted them and we find the Student guilty under Count 1.
22. Having entered that finding, we do not need to make findings under Counts 2 and 3.
23. With respect to Essay Number 2, we find the evidence clear and cogent and are able to conclude again on a balance of probabilities that Essay Number 2 is not the work of the Student and therefore, the Count number 4 in the Charges is also made out. Accordingly, we do not need to make findings on Counts 5 and 6.
24. Those are our Reasons.

Sanction

25. We have considered the submissions of Ms. Harmer and are prepared to give our decision on Sanction at this time.
26. Ms. Harmer has taken us to three authorities that arise in the circumstances where essays were purchased and asks us to apply those cases as the appropriate jurisprudence to consider in this case.
27. Although we made no explicit finding that Essay Number 2 was purchased in our Reasons, on the evidence we agree with her that it is appropriate to consider the purchased essays jurisprudence in this case.
28. The evidence clearly shows that the Essay Number 2 was a custom written essay, not written by the Student and it is a reasonable inference to make that Essay Number 2 was purchased. It is difficult to imagine that Essay Number 2 would have been written for free, especially having regard to the well written nature of it which demonstrates that it was professionally done and of course we have no evidence to the contrary, and we are also mindful of the emphasis Ms. Harmer put on the difficulty in many cases of detecting whether an essay is purchased or not.
29. We have no difficulty at all with her reliance on the purchased essay jurisprudence.

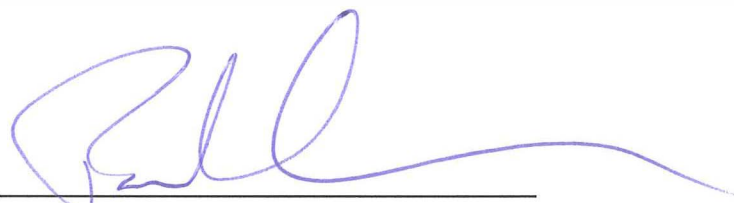
30. She has taken us to three cases: the first one is the *University of Toronto v. O* [redacted] *H* [redacted] and *K* [redacted] (Case No. 596, 597, 598, November 23, 2011), a Discipline Appeals Board Decision; the second case is *T* [redacted] (Case No. 783), a decision of a hearing panel, dated April 30, 2015; and the third one, *T* [redacted] (Case No. 645), hearing panel, dated March 24, 2011.
31. Ms. Harmer relies on the factors described in the Appeal Panel decision of 2011, and the Direction in that case that where there is evidence that an essay has been purchased, that the appropriate starting point of the analysis is to regard expulsion as being an appropriate remedy given that it is difficult to think of a more serious academic offence than purchasing an essay. She has taken us to those factors, emphasising the fact that a purchased essay situation involves a student acting intentionally and deliberately and in a very premeditated way to subvert the academic process.
32. We have regard as well to the fact that in that case, there are difficulties in detection, there is a need for a strong deterrence in these matters and that it would only be unusual circumstances of mitigation or other extraordinary situation that would provide some excuse or some explanation where the penalty would not be expulsion.
33. We note that in second case, *T* [redacted] there was some degree of extenuating circumstances which caused the panel to only impose a suspension, but in the final case we were taken to, *T* [redacted], the penalty was also expulsion.
34. In this case, our starting point is that the appropriate penalty for a purchased essay, is expulsion. We have had regard to the factors in the hearing appeal panel decision. We have therefore turned our mind to whether there are mitigating or extenuating factors in this case and we are aware of none.
35. Of course the Student in this case not only chose not to engage, the Student was aware when Essay Number 2 was handed in that concerns had already been raised of his conduct with respect to Essay Number 1.
36. It's clear from his continued attendance at the University that he was aware of this process going on and that he chose – clearly chose – not to engage, and chose not to come and provide any extenuating and mitigating factors.
37. And so, in those circumstances, having regard to jurisprudence and in particular the Appeal Board jurisprudence, we find that the appropriate remedy is to recommend expulsion.

38. Our Order is that:

- [1] The President of the University request that the Governing Council expel the student from the University of Toronto;
- [2] If this recommendation is accepted, there should be a permanent notation of the expulsion recorded on the Student's record;
- [3] Pending the decision of the Governing Council, the Student is suspended from the University for a period of 5 years, beginning July 14, 2016 with a corresponding notation on the Student's academic record and transcript for that same period;
- [4] That a grade of zero be assigned to the Student in the Course, EAS103H; and
- [5] That the decision of the Tribunal and the sanctions imposed, be reported to the Provost for publication throughout the University, with the Student's name withheld.

32. Unless I missed anything, I think that concludes the hearing.

Dated at Toronto, this 23 day of August, 2016



Paul Schabas, Co-Chair