Case No.: 935

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on May 26, 2017

AND IN THE MATTER OF the *University of Toronto Code of Behaviour on Academic Affairs,* 1995 (the "Code")

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 –

A[redacted] G[redacted] (the "Student")

Dates of Hearing: July 10, 2018 and July 25, 2018

Members of the Panel:
Mr. Bernard S. Fishbein, Chair
Professor Michael Saini, Faculty Panel MemberMs. Natasha Brien, Student Panel Member

Appearances:
Ms. Tina Lie, Assistance Discipline Counsel for University, Paliare Roland Barristers
Mr. Thomas MacKay, Director, Faculty Governance & Curriculum, Faculty of Arts and Science
Ms. A[redacted] G[redacted], the Student

In Attendance:
Ms. Tracey Gameiro, Associate Director, Office of Appeals, Discipline, Faculty Grievances
Mr. Brian Alexic, IT Support, Office of the Governing Council

1. The Student was charged on or about May 26, 2017 with three charges of academic misconduct by the Provost of the University ("the Provost") under the *Code of Behaviour on Academic Matters* ("the Code"). The charges were:

> 1) on or about March 1, 2017, you knowingly represented as your own an idea or expression of an idea or work of another in a paper that you submitted in CRI1300H1 ("the Course"), contrary to section B.I.1(d) of the Code.
>
> 2) In the alternative, on or about March 1, 2017, you knowingly obtained unauthorized assistance in connection with a paper that you submitted in the course, contrary to section B.I.1(b) of the Code.
>
> 3) In the further alternative, on or about March 1, 2017, 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 another academic advantage of any kind in connection with a paper that you submitted in the Course, contrary to section B.I.3(b) of the Code.

2. The hearing of these charges was scheduled before this panel tribunal on July 10, 2018. Prior to the hearing the University and the Student entered into a written guilty plea and an agreed statement of facts.

3. The Student admitted and agreed that she had received a copy of the charges from the Provost, she had received a copy of the notice of hearing, and that she had received reasonable notice of the hearing. She agreed to plead guilty to the first charge. The Provost agreed to withdraw the second and third charges. The Student acknowledged that she had received a copy of the affidavit of Professor Vincent Chiao who taught the course, and that she had been given an opportunity to cross-examine Professor Chiao on that affidavit, but chose not to do so. The Provost and the Student agreed that the evidence in Professor Chiao's affidavit was true and agreed to for the purpose of these charges.

4. The Student acknowledged that she had met on March 31, 2017 with Professor John Britton, the Dean's Designate for Academic Integrity, to discuss the allegations against her. The Student acknowledged that Professor Britton gave her the warning that was required to be given under the Code. During their meeting the Student told Professor Britton that she did not know that she needed to put quotation marks around material copied from sources. The Student ultimately acknowledged that there was plagiarism in the paper but was reluctant to admit to anything more than making a mistake. She asked Professor Britton for a second chance. The matter was referred to the Provost who filed these charges.

5. Again, the charges arose out of the course, Theories of Criminal Justice, taught by Professor Chiao. Students in the course were required to submit two response papers, the first worth 25% and the second worth 35% of their final grades. The course syllabus provided to the Students stated as follows with respect to those two papers:

> The response papers should aim to (a) represent accurately and fairly the views of those to whom you are responding, supported by

> citations; (b) critically engage their arguments, for instance by raising a novel objection, extending their argument to other cases or contexts, or defending their position from objections raised during class. You should in every instance endeavor to represent the views of those whom are you responding to as sympathetically as you can. You should not rely on caricature or polemic, but rather careful, textually grounded analysis. The subject matter of the papers should be limited to the readings listed on the syllabus, as well as to the topics discussed in both the lecture and the class discussion for the relevant day.

6. In addition, the course syllabus stated as follows with respect to writing support and academic integrity:

> Writing support. Please visit the website Writing at the University of Toronto for resources about academic writing, plagiarism, and workshop series focused on improving your writing. Information about the English Language Learning program (ELL) is available here.
>
> Academic integrity. The University of Toronto treats cases of academic misconduct very seriously. Academic integrity is a fundamental value of learning and scholarship at the UofT. Participating honestly, respectfully, responsibly, and fairly in this academic community ensures that your UofT degree is valued and respected as a true signifier of your individual academic achievement.
>
> The University of Toronto's in *Code of Behaviour on Academic Matters* outlines the behaviours that constitute academic misconduct, the processes for addressing academic offences, and the penalties that may be imposed. You are expected to be familiar with the contents of this document. Potential offences include, but are not limited to:
>
> **In papers and assignments:**
>
> - Using someone else's ideas or words without appropriate acknowledgement.
> - Submitting your work in more than one course without the permission of the instructor.
> - Making up sources or facts.
> - Obtaining or providing unauthorized assistance on any assignment (this includes working in groups on assignments that are supposed to be individual work).

[...]

> All suspected cases of academic dishonesty will be investigated following the procedures outlined in *Code of Behaviour on Academic Matters*. If you have any questions about what is or is not permitted in this course, please do not hesitate to contact the instructor. If you have questions about appropriate research and citation methods, you are expected to seek out additional information from the instructor or other available campus resources like the College Writing Centers, the Academic Success Centre, or the U of T Writing Website. [Emphasis in original]

The paper was required to be submitted no later than the beginning of class two weeks from the date from which the reading was covered in class. The paper was required to be submitted electronically.

7. The Student chose to write her first response paper on *Brandenburg v. Ohio* which was covered in the class of February 14, 2017. Accordingly her first paper was due by the beginning of class on February 28, 2017.

8. On March 1, 2017 Professor Chiao received an email from the Student indicating that she had tried to upload her assignment the previous day. Professor Chaio checked, and determined that her first response paper was submitted that morning, March 1, 2017, at 7:21 a.m. As a result, on March 3, 2017 Professor Chiao responded to the Student indicating that her paper had been uploaded on March 1, 2017 at 7:21 a.m. Since it was late it was subject to a 10% late penalty. Later that day the Student responded stating that she had tried to upload the assignment twice on February 28, 2017 but "kept getting an error message" and that it "finally worked" on the morning of March 1, 2017.

9. The Student's paper was entitled "Response to KKK's Opponents". Upon reviewing the paper, Professor Chiao discovered several passages that appeared to have been drawn from outside sources without appropriate citations and/or quotation marks:

(a) an excerpt of "Ku Klux Klan" from the Wikipedia website (https://en/wikipedia.org/wiki/Ku Klux Klan);

(b) an excerpt of *"Brandenburg v.* Ohio" from the Wikipedia website (https://en.wikipedi a.org/wiki/Brandenburg v. Ohio);

The Wikipedia articles were not cited at all in the paper.

(c) "12 Horrific Crimes Committed by the KKK Between 1921 and 2016" by Rachaell Davis from http://www.essence.com/culture/horrific -kkk-crimes; and

The citation to this article was included in the text and references list in the paper, but the verbatim text from the article was not put in quotation marks.

(d) an excerpt of "Sticks and stones can put you in jail, but can words increase your sentence? Constitutional and policy dilemmas of ethnic intimidation laws" by Susan Gellman.

Again, the Student included verbatim text from this law review article without attribution. The Student did include a quotation, and citation, from what appeared to be an op-ed by Susan Gellman from the Chicago Tribune. Professor Chiao was not able to access the online source referred to by the Student to determine if the portions from the law review article were also contained in the op-ed that was cited. Whether or not the op-ed reproduced those portions of Gellman's law

article, the verbatim text in any event was not placed in quotation marks and attributed.

10. Again, in the signed agreed statement of facts, the Student admitted that she knowingly:

(a) included verbatim or nearly verbatim text and ideas in the paper that were taken from the sources identified by Professor Chiao;

(b) failed to attribute the verbatim or nearly verbatim text and ideas appropriately using citations, references or other appropriate means;

(c) represented in the paper the ideas of another person, the expression of the ideas of another person, or the work of another person as her own; and

(d) committed plagiarism, contrary to section B.I.1(d) of the code

11. The Student acknowledged that:

(a) The Provost had advised her or her right to obtain legal counsel; and

(b) That she had signed the agreed statement of facts freely and voluntarily, knowing the potential consequences she faced.

12. In view of the written guilty plea and the circumstances as agreed to, the panel unanimously found that the University had established a violation of section B.I.1(d) of the Code. The University withdrew its other allegations.

13. The panel was prepared to proceed to the sanction portion of the hearing at that time. However, the University advised that it had been advised of a factor shortly before the hearing commenced that it wished to investigate. Accordingly, with the agreement of the Student, the University requested an adjournment of the sanction portion of the hearing until July 25, 2018 at 10:00 a.m. Accordingly, the hearing adjourned at that point in time.

14. By the time of the resumed hearing sanction on July 25, 2018 the University and the Student had entered into an agreed statement of facts and a supplementary agreed statement of facts on penalty. Again, the University and the Student had agreed that each document attached to the agreed statement of facts could be admitted into evidence for all purposes including for the truth of the document's contents and, if a document indicated it was sent and received by someone, that was *prima facie* proof that the document was sent and received as indicated. The agreed statement of facts consisted of an affidavit of Dr. Kristi Gourlay, who is the Manager, Office of Student Academic Integrity, Faculty of Arts at Science at the University. Again, the Student was given an opportunity to cross-examine Dr. Gourlay and chose not to do so, and again acknowledged that the University advised her of her right to obtain legal counsel, and that she signed the agreed statement of facts freely and voluntarily knowing the potential consequences she faced.

15. The affidavit indicated that the Office of Student Academic Integrity maintains a record of all Student academic discipline offences involving Students in the Faculty of Arts and Science, including matters that are resolved at the Dean's level.

16. The Student had two prior offences, both for plagiarism. The Student had first enrolled in the Faculty of Arts and Science in the fall of 2004. The Student's first academic

offence occurred in fall of 2007 in the course PHL271H1F (Law and Morality). The Student was alleged to have committed plagiarism in two assignments in that course. On May 16, 2008, the Student met with Professor R.C. Brown, the Dean's Designate. During their meeting the Student admitted the offence. As a result Professor Brown imposed on the Student the following sanction:

(a) zero for the two assignments in question, and

(b) annotation on her transcript from December 1, 2007 to November 30, 2009.

17. In the letter advising the Student of the sanction being imposed, Professor Brown also wrote:

> Academic offences are extremely serious and constitute unacceptable behaviour in the University. This letter is to serve as a strong warning to you that any future academic work must be conducted in full accordance with the rules and regulations of the University. In future if you are having difficulty with an assignment, please consult your instructor or Teaching Assistant for help or advice. It may also be helpful to visit your College Writing Centre for help and advice on essay writing.
>
> Following our meeting, an appointment was made for you to see Ms. Anna Kot at the Victoria College Registrar's Office. I encourage you to keep in touch with Ms. Kot during your time at the University, and particularly if you encounter any difficulties. She will be expecting to hear from you.
>
> Finally, while I hope that you have learned from this experience, I must warn you that a second offence will be treated more severely.

18. The Student was placed on an academic suspension for one year immediately following the inter 2008 term. That suspension was unrelated to any academic misconduct and was due to her cumulative and/or annual GPA's being below the required threshold.

Although the Student was entitled to return from her academic suspension as early as the summer of 2009, there was a gap and the Student did not enroll in any courses until winter 2013.

19. The Student's second offence occurred in the fall of 2013 in NMC495Y1Y (Independent Studies: The Concept of Jihad). The Student was alleged to have committed plagiarism in two assignments submitted in that course. The Student met with Professor Pamela Klassen, then the Dean's Designate, on January 28, 2017 to discuss these allegations of academic misconduct. During their meeting the Student admitted committing plagiarism on these two assignments. As a result, by letter dated February 23, 2016, Professor Klassen imposed the following sanctions on the Student for these admitted offences:

(a) zero for the course;

(b) suspension for eight months from May 1 to December 31, 2016 ("the misconduct suspension"); and

(c) annotation on her transcript from November 17, 2015 to graduation.

20. Again, in that letter Professor Klassen also wrote:

> Ms. G[redacted] it is troubling to me that neither your prior offence of plagiarism, nor concern for academic integrity, motivated you to take steps to ensure that you did not make a similar error in judgement when meeting your academic obligations. Sanctions are imposed to ensure that you understand how seriously the University views academic offences. Not only is such behaviour unethical, it is also a betrayal of the trust we must have in the integrity of students. As this is your second offence of plagiarism, and includes multiple pieces of work submitted to one course, the following sanction will be imposed:

- You will receive a final grade of zero (0) in the course NMC495Y1Y (20161)

- You will be suspended from the University for a period of eight (8) months, from May 1, 2016, to December 31, 2016

[...]

As I explained in our meeting, I am concerned that your essay-writing methods involve a strong reliance on material copied from the internet. Preparing essays in this manner is problematic not only as it puts you at risk for submitting work with work with unattributed content, but also because it denies you the experience of analyzing and interpreting primary sources. This is a standard expectation of upper-year students in the humanities, especially those given the opportunity to pursue an independent study under the guidance of an established scholar.

Please remember that in order to acknowledge your sources properly and thus avoid allegations of plagiarism, you must:

- Take careful and accurate notes, indicating clearly the source of the material, when you have copied material, and when you have put material into your own words.

- Identify all borrowed ideas, words, and phrases with an accurate citation or reference.

- Put exact words taken from a source inside quotation marks to show that they are not your own.

- List all sources which you use to write your paper in a Bibliography or Works Cited page.

For further information on how to cite, please consult your instructor, your college writing centre, or the advice files at http://www.writing.utoronto.ca.

In future, if you find it difficult to manage your time or academic obligations, please ask your college registrar for advice or a referral to the appropriate campus resources. If you have problems with a particular assignment, please contact your instructor or TA. I urge you to make use of campus resources such as the Academic Success Centre, a service for students that hosts workshops on topics such as time management, effective study skills, and note-taking strategies, in addition to offering one-on-one consultations. You may also find it helpful to use the Assignment Calculator to plan the stages of your research and writing, especially when several assignments are due within the same period.

> Finally, this is a warning that all future academic work must follow the rules and regulations of the University with which you are expected to be familiar. I strongly recommend that you ask your college registrar for advice about your academic goals and how best to achieve them while keeping the highest standard of academic integrity. While I hope that you have learned from this experience, if you should come to OSAI's attention again for another allegation of academic misconduct it is likely that your case will be submitted to the Provost for review with the recommendation that your case be heard before the University Tribunal.

21. Following the winter 2016 term, the Student was again placed on an academic suspension for three years ("the academic suspension"). This academic suspension was unrelated to any academic misconduct and was due to her cumulative and/or annual GPA's again being below the required thresholds. That three year academic suspension was to be served concurrently with the eight month misconduct suspension that Professor Klassen already had imposed.

22. On July 27, 2016, the Student filed a petition to the Committee on Standing requesting a return to the University in winter 2017. By that time the eight month misconduct had ended, but the three year academic suspension had not. The Student requested the "lifting" of the academic suspension to permit her to return in winter 2017.

23. In the Student's petition she referred to the academic misconduct as follows:

> "I would have met the mark requirements for being on probation had it not been for the academic allegation I have incurred in course NMC495Y. The reason for me failing NMC495Y was due to plagiarism found in an essay I submitted. I unknowingly submitted my essay without proper citation. I acknowledged that I have made a

> mistake by not citing my work properly. If given a second chance by the Faculty and the University of Toronto, I will make sure never to repeat the same mistake again. I will seek help from my Professors and writing centers before submitting my work to ensure that my work is without any errors. I will also use guidelines provided on the University website regarding proper citation and plagiarism."

24. The Student's request for an early return from her three year academic suspension was granted and the Student was permitted to return to the University in the winter of 2017.

25. The supplementary agreed statement of facts on penalty indicated that the Student was given a zero percentage grade on the paper that is the subject of these charges, and the Student would have failed the course because of her poor marks on the final examination and her poor marks for participation.

26. The University and the Student also agreed to file a series of medical notes or reports concerning the state of the Student's health. In particular there was a medical note dated July 8, 2018, indicating that the Student suffers from a chronic medical condition for which she was "under treatment for" in February and March of 2017 which was approximately the same time that the academic misconduct offences were committed. In addition there were series of notes from April 12, 2018 to May 31, 2018 indicating that the Student had been hospitalized with respect to treatment to of a chronic medical condition and which notes had earlier been produced to the University (leading to the adjournment of prior hearings scheduled with respect to these charges).

27. In light of the agreed statement of facts on penalty and the supplementary agreed statement of facts on penalty, no further evidence was presented to the panel either by the Student or the University. The University and the Student made a joint submission on penalty that the following sanctions should be imposed:

(a) a final grade of zero in the course CRI300H1 in Winter 2017;

(b) a suspension from the University from the date the Tribunal makes its order for a period of three years; and

(c) a notation of the sanction on her academic record and transcript from the date the Tribunal makes its order for a period of five years or until graduation, whichever is later.

The parties further agreed that this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed in the University of Toronto newspapers, with the name of the Student withheld.

28. The joint submission on penalty also contained the following acknowledgements and undertaking by the Student:

Acknowledgment by the Student

1. The Student acknowledges that if she receives a final grade of zero in the course CRI300H1 in Winter 2017, her GPA for the session will fall below the required threshold in order to remain registered at the Faculty of Arts & Science (the "Faculty"). In particular, because she has already received academic suspensions of one-year and three-years, if her GPA for the session falls below the required threshold,

her academic status with the Faculty will be "Refused Further Registration".

2. However, the Student will have the opportunity to submit a petition to her college to register in courses following her suspension. The Student understands that any such petition will be assessed at the time, according to the usual policies and practices that apply to petitions submitted to the Faculty, and any appeal routes that apply to petitions submitted to the Faculty will apply to any petition submitted by the Student. For clarity, the University makes no representations respecting the likelihood of success of such a petition.

3. If the petition submitted by the Student is granted, the Student further acknowledges that the Faculty may impose such terms or conditions for her return as are appropriate or required by the Faculty's policies (including that she will be placed on academic probation upon her return).

Undertaking by the Student

4. If the Student is granted further registration in any course or program at the University following her suspension, the Student undertakes to complete at least six "Writing Plus" workshops offered by the St. George Campus College Writing Centres within the first term in which she is next registered for a course at the University. In the event that such workshops are not available at the time the Student attempts to complete them, the University will, acting reasonably, propose alternate and equivalent programs that the Student shall complete to fulfil her undertaking.

5. The Student further agrees and accepts that the Faculty may restrict further course enrolment and registration if she fails to fulfil the

undertaking contained in paragraph 7 of the joint submission on penalty [paragraph 4 above].

Further Acknowledgements

6.The Student acknowledges that:

(a) the Provost has advised her of her right to obtain legal counsel; and

(b) she is signing this JSP, and giving the undertaking at paragraph 4, freely and voluntarily, knowing of the potential consequences she faces and knowing that the Tribunal is not bound by this JSP and has the discretion to impose a different penalty, including one that is more severe than the JSP recommends.

29. The University then made submissions as to why the panel ought to accept the joint submission on penalty as appropriate and follow it.

30. First, the University pointed to the decisions of the Discipline Appeals Board in *S.F.* (Case No. 690, October 20, 2014) and *M.A.* (Case No. 837, December 22, 2016) for the proposition that while a panel is not obliged or required to accept the joint submission, an agreed upon joint submission should not be lightly interfered with. In the words of paragraph 22 of the *S.F.* decision:

> [22] In an effort to make more specific and understandable the high burden upon a tribunal which chooses to reject a joint submission, various expressions of the test have been attempted in a variety of decisions released by bodies and tribunals bound to apply these principles. One particularly illuminating expression of the concept is found in a decision of the Law Society Appeal Panel in a case that came before it on appeal, raising the same issues as this Appeals Board now has before it. In that matter, that Appeal Panel stated that only truly unreasonable or "unconscionable" joint

> submissions should be rejected. We think this a good, understandable expression of the test.

31. The University then referred to the decision of the Tribunal in *Mr. C* (Case No. 1976/77-3, November 5, 1976) for its oft quoted criteria that ought to be applied when imposing sanction:

a) The character of the person charged;
b) The likelihood of a repetition of the offence;
c) The nature of the offence committed;
d) Any extenuating circumstances surrounding the commission of the offence;
e) The detriment to the University occasioned by the offence;
f) The need to deter others from committing a similar offence;

32. In terms of the character of the Student, the University pointed out that the Student has acknowledged her plagiarism. Although at the meeting with the Dean's Designate she refused to admit anything other than a mistake, at the Tribunal level she admitted the offence and acknowledged her guilt. The Student has cooperated, agreeing to statements of facts, and earlier when requesting adjournments, providing supporting medical evidence. Her cooperation demonstrated that she is "taking ownership" and responsibility for the offence. The University said that acknowledging that she might not be successful in being readmitted was further evidence of her taking ownership. As well, her undertaking to take the writing courses, demonstrated a desire to do so.

33. In terms of the extenuating circumstances the University pointed out that not only had the Student cooperated but was subject to chronic medical condition for which she was receiving treatment at approximately the time of the offences and that ultimately

did lead to her hospitalization. Although that was not an excuse for improper behaviour it was still a factor to consider.

34. In terms of the likelihood of the repetition of the offence, the University admitted to being somewhat troubled. The Student had already committed plagiarism twice before and the lesser sanctions imposed on those occasions had not been enough to preclude this third offence. The troubling nature was compounded by her petition to return and the assertions she had made in order to obtain that. However, in weighing all of this the University was of the view that a three year suspension (which effectively was almost four years since the Student had last been at the University) would be sufficient to preclude a repetition of this misconduct. If the Student ultimately did return in the fall of 2021 and enrolled in courses to complete her degree (the Student only needed 1.5 credits), it would have taken her almost 17 years to complete her degree and the University said this would be a long enough journey.

35. In terms of the other criteria, the University acknowledged that plagiarism is a very serious academic misconduct. Plagiarism threatened the academic integrity of the University. Written assignments and essays are a fact of university life and are essential to the evaluative process a university must engage in. Plagiarism represented a serious threat to that evaluative process.

36. Moreover, plagiarism was becoming increasingly prevalent. It was a regular offence before the tribunal and general deterrence was important.

37. Having said that, the University and the Student had agreed to a three year suspension, a serious penalty and certainly greater than the penalty imposed on the Student previously. Moreover, the University provided the panel with a Book of Authorities including *University of Toronto and Mr. C.* (Case No. 1976/77-3, November 5, 1976); *University of Toronto and N. A.* (Case No. February 29, 2012); *University of Toronto and T. I.* (Case No. 821, April 28, 2016); *University of Toronto and R. W.* (Case No. 896, May 17, 2017); *University of Toronto and T.-F. (O.) K.* (Case No. 495, January 26, 2011); *University of Toronto and K. P.* (Case No. 660, February 6, 2012); *University of Toronto and L. W.* (Case No. 625, February 13, 2013); *University of Toronto and A. A.* (Case No. 994, March 5, 2018); *University of Toronto and J. G.* (Case No. 753, April 10, 2014); *University of Toronto and S. A. M.* (Case No. 657, September 11, 2012); *University of Toronto and A. S.* (Case No. 835, October 12, 2016); *University of Toronto and J. J.* (Case No. 534, April 23, 2010); *University of Toronto and T. Z.* (Case No. 689, April 12, 2013); and *University of Toronto and H. M. E.-F.* (Case No. 941, February 16, 2018). The cases demonstrated that a three year suspension, although in the low range, was certainly a penalty that had been imposed previously and in the extenuating circumstances of this case was warranted.

38. After the University completed its submissions in support of the joint submission on penalty, the Student was asked if she wished to make any submissions. The Student declined.

39. The panel then recessed to consider the submissions. The panel unanimously accepts the joint submission on penalty and orders that the sanction previously quoted in this decision be imposed, specifically:

(a) a final grade of zero in the course CRI300H1 in Winter 2017;

(b) a suspension from the University from the date the Tribunal makes its order for a period of three years until July 24, 2021; and

(c) a notation of the sanction on her academic record and transcript from the date the Tribunal makes its order for a period of five years until July 24, 2023, or until graduation, whichever is later.

Dated at Toronto, this 21st of August, 2018.

Bernard Fishbein, Co-Chair