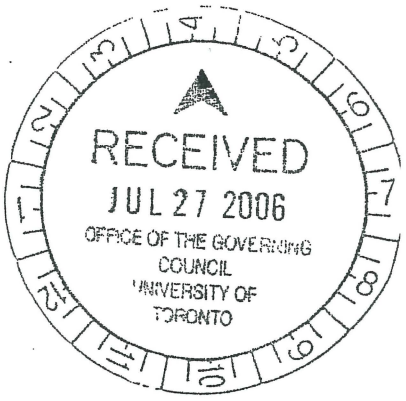
IN THE MATTER of the University Tribunal
of the University of Toronto
(Appeal Division)



Members of the Panel:
Patricia D.S. Jackson, Senior Chair
Cheryl Shook
Jorge Sousa
Lorraine Weinrib

B E T W E E N:	)	
	)	
University of Toronto	)	**Lily Harmer**
	)	
Appellant	)	
	)	
- and -	)	
	)	
	)	
MK. C.Z (THE STUDENT)	)	**Jennifer Krotz**
	)	
Respondent	)	
	)	
	)	**Heard March 30, 2006**

On appeal from the decision of the University Tribunal of November 8, 2004.

REASONS FOR DECISION

This is an appeal from the sanction imposed by the University Tribunal on November 8, 2004 and elaborated in reasons for decision issued April 14, 2005.

At the conclusion of a hearing held October 25, November 4 and November 8, 2004, the Trial Division of the University Tribunal found THE STUDENT guilty of the following charge of plagiarism:

> On or about March 10, 2004, you knowingly represented as your own, an idea or expression of an idea, and/or work of another in connection with the form of academic work, namely, Assignment No. 3 on the topic of Speech Application Language Tags (SALT), an assignment that you submitted with C.L. to fulfill the course requirements of FIS-2178, contrary to Section B.I.1(d) of the *Code of Behaviour on Academic Matters*, 1995 (the "*Code*").
>
> Pursuant to Section B of the *Code* you are deemed to have acted knowingly if you ought reasonably to have known that you represented as your own, an idea or expression of an idea or work of another.

The matters which are the subject of the conviction occurred in the last term of THE STUDENT's two-year graduate program in the Faculty of Information Studies. He had previously obtained a graduate degree from the University of Manitoba. He was found to have plagiarized large portions of an essay submitted in his name in a course called "Designing Electronic Descriptive Tools" in the Faculty of Information Studies. Much of the paper contained direct quotes from internet sources which were not attributed. The Tribunal held that THE STUDENT ought reasonably to have known that he was committing an academic offence, and entered a conviction. It found that THE STUDENT had a "rather haphazard in text citation method",

"an incomplete understanding of the nature and conduct of citation" that was "honest and honestly held", and that "he submitted [the paper] in good faith, and without any intention to portray the work of someone else as his own".

At the conclusion of the hearing on November 8, 2004, following its conviction of THE STUDENT, the Trial Division imposed the following sanctions:

(a) an oral and written reprimand to be delivered by Vice-Dean Cherry of the Faculty of Information Studies to THE STUDENT

(b) a requirement that THE STUDENT resubmit the written assignment at issue in its entirety, with proper citations in the APA citation style, and either footnotes or in-line citations together with a properly cited bibliography;

(c) a requirement that THE STUDENT write a letter to each author whose work was referenced in the written assignment, acknowledging the reference made of the work of the author, with a copy delivered to Vice-Dean Cherry;

(d) a 10% reduction of the final grade in course FIS-2178;

(e) a notation of this proceeding and of the conviction on THE STUDENT's transcript to remain until he has completed 3 citation courses in the Morum Instructional Series offered by the Faculty (C02, C03 and C04 or the equivalent); and

(f) publication of the decision in its entirety with the student's name withheld. The panel indicated that written reasons would follow its oral decision.

Following this oral decision and prior to the delivery of any notice of appeal, on November 17, 2004 the University permitted THE STUDENT to graduate. The University explains this by noting that but for the academic misconduct in issue, THE STUDENT would have been eligible to graduate from the University in June of 2004, and that the course in which the plagiarism occurred was not a course that he needed to graduate. It says that THE STUDENT had been waiting a number of months to have the allegations addressed and in these circumstances every effort had been made to conclude the matter as quickly as possible. The University now says this decision

was made without adverting to Article C.I.(a)12 of the Code of Behaviour on Academic Matters referred to more particularly below.

Having not yet received the written reasons for decision, the University filed a notice of appeal on December 3, 2004 and expressly reserved its rights to file an amended notice of appeal upon receipt of the written reasons.

On April 14, 2005 the Trial Division issued its written reasons for decision. On May 13, 2005 the University filed an amended notice of appeal taking issue with the sanctions, save the publication imposed, on the following bases:

(a) the Code does not give the Tribunal jurisdiction to impose the sanctions referred to in paragraphs (b), (c) and (e) above and the Tribunal exceeded its jurisdiction in so doing;

(b) the sanctions do not reflect the serious nature of the offence of plagiarism including the necessity for a sanction which would deter the student from re-offending and other students from committing similar offences; and

(c) the sanctions were inconsistent with those imposed in other cases of plagiarism with which the Tribunal has dealt.

The reason the University says the Tribunal lacked the jurisdiction to impose the sanctions it did are the provisions of s. C. II(b) of the *Code* which read as follows:

Tribunal Sanctions

1. One or more of this following sanctions may be imposed by the Tribunal upon the conviction of any student:

(a) an oral and/or written reprimand;

(b) an oral and/or written reprimand and, with the permission of the instructor, the resubmission of the piece of academic work in respect of which the offence was committed, for evaluation. Such a sanction shall be imposed only for minor offences and where the student has committed no previous offence;

(c) assignment of a grade of zero or a failure for the piece of academic work in respect of which the offence was committed;

(d) assignment of a penalty in the form of a reduction of the final grade in the course in respect of which the offence was committed;

(e) denial of privileges to use any facility of the University, including library and computer facilities;

(f) a monetary fine to cover the costs of replacing damaged property or misused supplies in respect of which the offence was committed;

(g) assignment of a grade of zero or a failure for any completed or uncompleted course or courses in respect of which any offence was committed;

(h) suspension from attendance in a course or courses, a program, an academic unit or division, or the University for such a period of time up to five years as may be determined by the Tribunal. Where a student has not completed a course or courses in respect of which an offence has not been committed, withdrawal from the course or courses without academic penalty shall be allowed;

(i) recommendation of expulsion from the University. The Tribunal has power only to recommend that such a penalty be imposed. In any such case, the recommendation shall be made by the Tribunal to the President for a recommendation by him or her to the Governing Council. Expulsion shall mean that the student shall be denied any further registration at the University in any program, and his or her academic record and transcript shall record this sanction permanently. Where a student has not completed a course or courses in respect of which an offence has not been committed, withdrawal from the course or courses without academic penalty shall be allowed. If a recommendation for expulsion is not adopted, the Governing Council shall have the power to impose such lesser penalty as it sees fit;

(j) (i) recommendation to the Governing Council for cancellation, recall or suspension of one or more degrees, diplomas or certificates obtained by any graduate; or

(ii) cancellation of academic standing or academic credits obtained by any former student

who, while enrolled, committed any offence which if detected before the granting of the degree, diploma, certificate, standing or credits would, in the judgement of the Tribunal, have resulted in a conviction and the application of a sanction sufficiently severe that the degree, diploma, certificate, standing, credits or marks would not have been granted.

The University asks that the appeal be allowed and the following sanctions substituted:

(a) a grade of 0 in the course;

(b) suspension from the University for 1 year (the University acknowledged in oral argument that, given the student's graduation, this provision would have no practical effect);

(c) a record of the sanction on THE STUDENT's academic record for 2 years; and

(d) publication with the student's name withheld.

During the course of the oral argument of the appeal, the parties referred to the following language in section C.I.(a)12 of the *Code*:

> No degree, diploma or certificate of the University shall be conferred or awarded, nor shall a student be allowed to withdraw from a course from the time of the alleged events until the final disposition of the accusation....

This led the panel to ask the parties to consider the jurisdiction to proceed with the appeal in light of these provisions. Specifically, the parties were asked to address the question of whether, since THE STUDENT had graduated, the decision of the trial panel had not necessarily become the final disposition of the accusation. Ultimately, the parties were invited to provide further written submissions on this issue, which they did.

The University's position was that THE STUDENT had been allowed to graduate to avoid any unwarranted prejudice, that the section in question addressed what a student could or could not do while an allegation of academic misconduct was under review and was not intended to bring the proceedings to a "premature end", and that at no time did the University intend to waive its right to appeal. It suggested its interpretation was strengthened by another portion of the *Code* which permits the University to prosecute former students who have graduated for

alleged academic offences committed while they were students (section B.I.4 of the *Code*). Finally, the University said it should not be penalized for having acted quickly and in the student's favour where it was clearly not the intention of the University to waive an appeal and where the language of the *Code* does not support, or at least does not clearly support, the existence of such a waiver in the circumstances.

Counsel for THE STUDENT submitted that by permitting THE STUDENT to graduate the University had accepted the Tribunal's disposition as final, and was estopped from appealing the sanctions imposed. She distinguished the provisions of section B.I.4 of the *Code* as applying in circumstances where the University does not detect the offence until after the student has graduated and therefore could not have taken steps under the *Code* that would have delayed graduation until the final disposition of the accusation. She noted that one of the elements of the sanction now sought by the University - the suspension for a year - had it been imposed would have prevented THE STUDENT from graduating, thereby illustrating both the inconsistency of the University's position and one of the reasons for the provisions of section C.I.(a)12.

The panel has concluded that as a result of THE STUDENT's graduation and the provisions of section C.I.(a)12 it lacks jurisdiction to entertain this appeal. The language of that section is both mandatory and unambiguous. Indeed, we arrive at that conclusion for the same reason that we would have held in favour of the University's first ground of appeal, had we had jurisdiction to entertain it. Just as the *Code* is precise and comprehensive as to the penalties which can be imposed by a Tribunal upon conviction, it is equally precise and comprehensive about the circumstances in which student has been accused of a violation of the *Code* may graduate:

> "*No* degree...shall be conferred or awarded...until the *final disposition* of the accusation..." (Emphasis added.)

We do not find that the provisions of section B.I.4 of the *Code* detracts from this conclusion. Rather, we agree with counsel for THE STUDENT that on its face this provision clearly applies in circumstances in which the offence is not detected until after the student has graduated.

The facts of this case assist in illustrating why the provisions of section C.I.(a) 12 are appropriate. In effect, in seeking a one-year suspension, the University is seeking the imposition of a penalty which is inconsistent with having allowed THE STUDENT to graduate, and in any event moot in light of that graduation. Moreover, even if there were policy reasons which would justify allowing the University to permit a student to graduate without precluding an appeal with respect to conviction - and we do not say that there are - the appropriate method to address those policy concerns is by an amendment to the *Code* which would permit an appeal in such circumstances. The current *Code* does not.

While we have concluded we do not have jurisdiction to alter the sanctions imposed by the trial division, we consider that it is appropriate to observe that we are in general agreement with the University's position on the seriousness of the offence of plagiarism. As the *Code* itself notes, plagiarism is both a perversion of the academic experience, and one of the most elusive of academic infractions. Plagiarism seriously undermines the academic principles which are the foundation of the university experience. That is why the *Code* penalizes not just intentional plagiarism, but also plagiarism which results from unreasonable ignorance. Plagiarism has always been difficult to detect, and with the widespread use of internet sources has become more so. The difficulty of identifying plagiarism when it occurs is one of the

reasons why it is important that the sanctions imposed when it has been identified reflect the seriousness of the offence and operate as a deterrent, both to intentional plagiarism, as well as plagiarism resulting from reckless indifference to accepted citation standards. It is important to note and to reflect in sanctions that the offence occurs not only when the student knows, but also when the student "ought reasonably to have known" that he or she has plagiarized.

If we possessed the jurisdiction to do so, we would have allowed the appeal and imposed a more serious sanction drawn from the provisions of section C.ii(b) of the *Code*.

However, THE STUDENT has graduated and this case was therefore finally disposed of by the trial division. We have no power to change the sanctions it imposed. We therefore quash the appeal.

We express our thanks to counsel for THE STUDENT and for the University for their extremely helpful oral and written submissions.

Patricia D.S. Jackson

Cheryl Shook

Jorge Sousa

Lorraine Weinrib