

UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL
TRIAL DIVISION

IN THE MATTER of charges of academic dishonesty made on December 9, 2009;

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;

THE UNIVERSITY OF TORONTO

-AND-

MR. K [REDACTED] X [REDACTED]

Hearing Dates: May 4, 2010, May 10, 2010 & May 20, 2010

Members of the Panel:

Mr. Michael Hines, Barrister and Solicitor, Chair
Dr. Annette Sanger, Faculty of Music, Faculty Panel Member
Mr. Mir Sadek Ali, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistance Discipline Counsel for the University, Paliare Roland Barristers
Ms. Camille Labchuk, Legal Case Worker for Mr. K [REDACTED] X [REDACTED], Downtown Legal Services (*May 20, 2010 – for Sanctioning Phase*)
Ms. Kristi Gourlay, Manager, Office of Academic Integrity, Faculty of Arts and Science (*May 10, 2010 & May 20, 2010*)
Dr. Tamara Jones, Academic Integrity Officer, Faculty of Arts and Science
Mr. Justin Fisher, Academic Integrity Office, Faculty of Arts and Science (*May 4, 2010*)
Professor John Britton, Dean's Designate, Faculty of Arts and Science (*May 4, 2010 & May 10, 2010*)
Professor Joshua Hjartarson, Instructor, Department of Political Science (*May 4, 2010*)

In Attendance:

Mr. K [REDACTED] X [REDACTED], the Student
Mr. Christopher Lang, Director Appeals, Discipline and Faculty Grievances, Office of Governing Council

1. By letter dated December 9, 2009, the Respondent, K X ("X") was advised that he had been charged with three offences concerning two essays that he had submitted in fulfillment of the course requirements of POL103Y1Y. Specifically, he was charged twice with plagiarism under section B.1.1(d) and once with academic dishonesty contrary to section B.1.3(d) of the *Code of Behaviour on Academic Matters, 1995* ("Code").
2. The matter proceeded initially before the Tribunal on May 4, 2010. X represented himself.
3. It quickly became apparent that this case was unusual in at least one respect, namely that the student in question, despite ample evidence that he had copied extensive portions of other works without attribution, nevertheless denied that he had committed plagiarism. Accordingly, it was necessary for the University's Prosecutor to call evidence.
4. The Tribunal then heard from Professor J. Hjartarson, one of the professors responsible for the delivery and evaluation of POL103. Prof. Hjartarson testified as to the requirements for successful completion of the course as well as to the efforts he took to explain to his students the risks associated with plagiarism. These concerns were particularly associated with the requirement to provide a 10 to 12 page essay, worth 30% of the final mark in the course. He introduced in evidence a copy of the Syllabus used in the course. On page 6 of this document, the following appears:

Plagiarism

Plagiarism is a serious academic offence and will be dealt with accordingly. For further clarification and information, please see the University of Toronto's policy on plagiarism at <http://www.utoronto.ca/writing/pagset.html>

Formatting Bibliographies, References (and/or Footnotes)

In completing the written assignments, students must cite all facts and figures that are not common knowledge and must cite all ideas that are borrowed from other authors.

Students must use a recognized standard format correctly when formatting their bibliographies, references and footnotes. *Failure to do so will result in substantial penalty in calculating your assignment grade.* Consult your TA if you have any questions.

[italics in the original]

Prof. Hjartarson also testified briefly as to the instructions given to the class at the commencement of the course. Unfortunately, although understandably, this evidence was somewhat vague, in large part due to the passage of almost two years since the summer course began in 2008. Prof. Hjartarson testified that he told the students that the course evaluators would use turnitin.com in an effort to detect plagiarism. He stated that in addition to bringing page 6 of the Syllabus specifically to the attention of the students, he also followed his standard practice in connection with plagiarism:

"I tell a student sob story. I outline the consequences. I tell them to cite all ideas, facts and figures not your own. Don't quote without quotations. I take about five minutes. Basically I tell them 'don't do it or I'll fry you'."

5. Prof. Hjartarson emphasized that he typically told his students that they must be attentive to possibilities of plagiarism "even if it's two sentences".
6. Unfortunately in this case, these cautions appear either to have been not heeded or not understood. In any event, X█ submitted his essay on or about the due date. The report generated by turnitin.com indicated that there was extensive verbatim and nearly verbatim copying from a large number of sources. The "Turnitin Originality Report" indicated an "Overall Similarity Index" of 86%. A visual review of the essay in question makes it very clear that more than half of the material contained therein was taken directly from other sources without attribution. The essay also discloses a number of quotes which were identified as coming from external sources and were footnoted more or less correctly.
7. Prof. Hjartarson testified that upon receiving this report, he and his fellow instructor, Prof. L. Turgeon, sent X█ an email dated July 22, 2008, advising X█:

"Dear Mr. X█,
Luc Turgeon and I, your POL103 instructors, would like you to meet us in the Department of Political Science one week today (Tuesday, July 29) at 5:20 p.m. to discuss your paper. The Department is located on the third floor Sid Smith. Are you able to attend at this time?"

X█ replied by email dated July 24, 2008 as follows:

"Dear all,
Today I submitted my essay of the last version to the Department of Political Science reception. In addition to this essay, I also submitted a medical certificate which attached on the top. Please check it and mark my essay on this version. I also submitted a copy of the essay to the www.turnitin.com. Please tell me if I still need to attend the next Tuesday's meeting. Thanks."

8. As suggested in this email, X█ had, by that point, handed in a second version of his essay which was, in fact, quite different from the first. Although different in content, it was very similar in the sense that it still contained extensive material copied directly from other sources without attribution. Some of the copied material was the same as in the first essay, while much of it was different.
9. Also as suggested, X█ had submitted a medical note which indicated that he had been ill the previous week and had had "difficulty with concentration".
10. In response to X█'s question, Prof. Hjartarson confirmed that a meeting was still necessary. Indeed, Prof. Hjartarson's concerns regarding plagiarism were, if anything, elevated by the submission of the second paper.

11. A meeting took place between the two instructors and X█. While it appears that the professors attempted to bring home to X█ their concerns regarding plagiarism, it appears that X█ was quite adamant that the real issue between them should be whether or not the second essay should be marked instead of the first. The professors were, understandably, not prepared to do this and attempted repeatedly to bring the discussion back to the issue of plagiarism. X█ continued to see the issue as a refusal on the part of his instructors to accept an essay which should be used to replace one which, in his view, was substandard due to medical reasons. He appeared to demonstrate no clear appreciation regarding the issue of plagiarism.
12. X█ also testified at the hearing. He emphasized his background first of all as a student coming from another country and second as a student whose studies had always focused on mathematics and computer sciences. He testified that although he had taken a couple of first year social sciences courses earlier in his academic career, this was the first time he had been required to submit a proper "academic" essay (his expression), complete with the proper citation of sources. He took the position that, because this was the first time in his academic history that he had been asked to write such an essay, he "should be allowed to make mistakes", much as a student driver is allowed to make a mistake while acquiring his or her driver's license. He indicated that documenting sources was a new skill and that he needed practice and correction, rather than punishment. It was clear that he felt that any failings in his ability to properly document his sources was the fault of the University, specifically its failure to take the time to teach students what was expected and required in this regard.
13. With respect to the Syllabus, X█ made the point that the expressed obligation to "cite all ideas that are borrowed from other authors" appeared in the subsection dealing with formatting bibliographies, rather than plagiarism. He noted that although plagiarism was expressly stated to be a "serious academic offence", the failure to "cite all ideas that are borrowed from other authors" was expressly associated with the following:

"Failure to do so will result in substantial penalty in calculating your assignment grade."
14. From this, X█ stated that he drew the conclusion that at worst, failure to cite all ideas correctly would result in a reduced score for his essay, rather than prosecution under the Code. For this reason, he stated that although he was more or less aware of the admonitions concerning the proper citation of sources, he "did not take them very seriously since I thought I would just lose marks".
15. Regarding the second essay, X█ stated that he believed that he was being contacted by his professors because the first essay was substandard (due, in his view, to his illness), and therefore decided to submit a second paper. He stated without contradiction that it was not uncommon in courses for mathematics and computer sciences for students to be permitted to submit successive versions of

pieces of work for evaluation to demonstrate that they were, in fact, learning the material in question.

16. The foregoing is a very general outline of the positions of the University and the student, respectively. Ms. Harmer, on behalf of the University, submitted that the evidence showed that X████ knew that what he was doing was wrong. She characterized the second essay as an unsuccessful attempt to cover up or correct the plagiarism that X████ had knowingly committed in submitting the first paper. Alternatively, Ms. Harmer submitted that X████ was certainly in possession of all of the information he needed in order to ensure that the University's Code was followed. She emphasized the introductory paragraph under Part B of the Code which states:

"Wherever in this Code an offence is described as depending on "knowing", the offence shall likewise be deemed to have been committed if the person ought reasonably to have known."

17. X████, for his part, maintained his position that he did not know enough about the process of citing sources for an "academic" paper. He also stressed, with respect to the University's alternative argument, that more should have been done to bring home to him what was expected.
18. We would note, parenthetically, that although X████ spoke with a heavy accent and frequently had to be asked to repeat himself, it was evident that his understanding of the English language was, without doubt, sufficiently sophisticated to understand all of the instructions that were provided to him both verbally and in writing.
19. Following the receipt of evidence, the Panel adjourned the hearing to assess the issue of liability. With respect to the critical evidentiary points noted above, the Panel was not comfortable accepting Ms. Harmer's characterization of the second essay as an attempt to cover up the plagiarism inherent in the first essay. As stated, the second essay contained essentially as much plagiarism as the first, although in respect of different sources. This supports, rather than refutes, X████'s contention that he did not know the rules. If, as the University contends, the second essay was written out of concern that earlier plagiarism had been detected, surely X████ would have taken efforts to avoid such plagiarism in this second attempt. The submission of the second essay, in the opinion of the Panel, supports rather than refutes X████'s position that he did not know the rules.
20. The Panel also took note of the evidence of Prof. Hjartarson. It was, as stated above, understandably vague in some respects. This was a first year Social Sciences course. It is delivered to students who come to the University from all over the world. While professors and certainly virtually all students involved in such a course are highly sensitized to issues of plagiarism, this will (as we believe the present case demonstrates) not necessarily be a universal condition. It would have been helpful, we suggest, if Prof. Hjartarson had been able to

describe with more detail, perhaps from a handout distributed to students at the start of the class, *precisely* what information in addition to the Syllabus was provided to them regarding plagiarism. Moreover, the unfortunate placement of the expressed obligation to “cite all ideas that are borrowed from other authors” in the Syllabus section on formatting rather than its section on plagiarism, may have given X [REDACTED] a mistaken understanding as to the importance attached to that process.

21. Following brief deliberations, the Panel issued the following oral decision:

[1] The panel is unanimously of the view that the Student ought to have known that his actions were in violation of section B.I.1(d) of the Code. While the evidence was not at all times consistent on this point, overall we are satisfied that the Student was aware of the significance of the issues concerning the proper attribution of quotes and ideas to their proper sources.

[2] He is a student at the university level. Whether or not he actually understood the rules, he ought to have had a reasonable familiarity in respect of his responsibilities in this regard. The University has a policy on plagiarism that was accessible to him and more concretely, he had access to his professors and teaching assistants. Whether he actually realized it or not, he ought to have recognized, at very least, that inserting verbatim word-for-word quotes extending over many lines of text, was problematic. He, at a minimum, ought to have clarified his responsibilities. Had he done so, his mistakes would have been explained to him as he was drafting his essay, rather than after it was submitted. The information that he needed was available to him and so he ought to have known that his actions constituted plagiarism.

[3] The panel is also unanimously of the view that it cannot reliably conclude on a balance of probabilities that the student knowingly engaged in plagiarism. Once again, the evidence on this issue points in different directions. To the extent that it may make a difference to sanction, it cannot be said that the evidence clearly and convincingly supports the conclusion that the student was guilty of deliberate plagiarism.

[4] To summarize we accept the University's alternative submission that the student ought to have known that he was in violation of the Code, but we do not accept its primary submission that he engaged in deliberate wrongdoing.

22. Upon issuing its oral decision set out above, the Panel then adjourned the proceedings. It recommended to X [REDACTED] that he obtain legal representation of some kind.

23. The hearing resumed on May 20, 2010. By this point in time, Ms. Camille Labchuk of Downtown Legal Services had been engaged by X [REDACTED] as his representative. The Panel was advised that the parties had not reached any agreement on sanction.

24. Ms. Kristi Gourlay, Manager, Office of Student Academic Integrity, testified on behalf of the University. She introduced in evidence a Letter of Reprimand dated April 29, 2008 that had been issued to X [REDACTED] for taking a cell phone into a computer sciences exam. This letter of reprimand was issued pursuant to an acknowledgement by X [REDACTED] that by having brought the cell phone into the examination room, he had committed an academic offence.
25. X [REDACTED] testified briefly as to his personal circumstances. He told the Panel that he was a single parent and did not have any job presently, that he was continuing to work towards obtaining his degree so that he could support himself and his son. He stated that he was only one full course shy of obtaining his degree. He advised the Panel that he was willing to take a workshop on essay writing and wished that he could have learned more in terms of how to correctly document his sources. He did not, however, demonstrate an appreciation that, even unknowingly, he had committed plagiarism, nor did he indicate any remorse or even take any responsibility for the manner in which events had unfolded.
26. With respect to the Letter of Reprimand, he advised the Panel that he was unaware that he could not bring a cell phone into the exam room, so long as he did not make any use of it. He signed the acknowledgement since that was the only way he had of regaining possession of his cell phone. During a brief cross-examination concerning the Letter of Reprimand, X [REDACTED] confirmed that he had probably received an email outlining the rules associated with the taking of exams. However, he indicated that he did not pay very close attention to those rules since he believed that he needed only to avoid cheating in order to comply. As with his testimony regarding plagiarism, X [REDACTED] did not demonstrate any clear appreciation for the fact that the University has its own rules that have to be followed under such circumstances.
27. The Panel acknowledges the obvious importance of plagiarism in the academic community. It also acknowledges what appears to be an increasing incidence of plagiarism despite the well-publicized use of such detective mechanisms as turnitin.com. The following paragraphs from the Tribunal's Decision in J [REDACTED] (April 15, 2010, Case #573) speak to these issues:

[7] The offence of plagiarism has been commented upon by other panels hearing discipline matters. We note the comments of Chair Lax in the *University of Toronto vs. M.H.H.* (January 12, 2009, Case No. 521) I am quoting from paragraph 29:

"Other panels have noted that the seriousness of the offence of plagiarism is that it undermines the relationship of trust which must exist between the University and its students."

[8] That Panel referred to the *University of Toronto vs. S.B.* (November 24, 2007, Case No. 488) and quotes:

"It hardly needs to be said that the credibility and academic mission of the University and the degrees it awards students can be greatly harmed by the commission of offences such as plagiarism and concoction."

[9] Likewise, the Panel referred to the *University of Toronto and A.K.* (October 12, 2007, Case No. 481), noting among other things that in recent years plagiarism has been a particular problem for the University and Tribunals.

...

[11] We also note the description of plagiarism in the Code of Behaviour on Academic Matters. The description of plagiarism is at once a perversion of originality and the denial of the interdependence and mutuality which are at the heart of scholarship itself and hence of the academic experience.

28. The Panel was provided with a number of other decisions of the Tribunal regarding plagiarism. The University submitted, and it was not seriously contested by the student, that presumptively a two-year suspension has been regarded as the appropriate penalty for a first conviction on a charge of plagiarism.
29. This case, however, appears to be unusual if not unique, in the sense that it concerns a conviction of a student who, the Panel has found, did not actually know but rather ought to have known that his actions were inconsistent with the Code. The first question before us, then, is the extent to which (if at all) the presumptive two-year penalty for a first conviction on plagiarism should be modified in a case involving academic irresponsibility as compared to academic dishonesty.
30. As stated, this particular issue does not appear to have been addressed by the Tribunal previously, certainly not in the cases that were presented to us. We are of the view that academic irresponsibility is, in itself, an extremely serious matter. Students attending at the University level must take a high degree of responsibility for understanding the rules of the institution. Students at this level cannot be expected to be spoon-fed by their instructors, but rather must demonstrate a high degree of academic integrity and responsibility of their own.
31. In this case, X [REDACTED] certainly was aware of the existence of some rules regarding plagiarism and the citation of sources. However clear or unclear the Syllabus warnings were, they were followed by the clear direction "consult your TA if you have any questions". If X [REDACTED] actually believed that his understanding of plagiarism was potentially compromised by the fact that this was his first "academic" essay, he should have recognized the seriousness of the issue and spoken with one of his teaching assistants or with one of his professors. *Ex post facto* protestations of ignorance are all too easily made and can be very difficult to disprove. To the extent that this Decision can be used to convey a message to other students, it is that students are held to an extremely high standard when

it comes to understanding the rules of the institution within which they are enrolled.

32. At the same time, the Panel, evidently speaking on behalf of the Tribunal for the first time on this issue, does not regard the offence of academic irresponsibility as at the same level of culpability as the offence of a student who knows the rules and knowingly disregards them. Both matters are serious, but we believe that a case of deliberate academic dishonesty strikes even more centrally at the core values of the University. For this reason, although X█'s named offence remains "plagiarism", we are of the view that the presumptive "two-year suspension rule" should be modified where deliberate plagiarism has neither been admitted to, or established.
33. In our view, in a case such as this, where the student should have known but did not know that what he was doing was wrong, the appropriate penalty is an 18-month suspension. To the extent that any of X█'s personal circumstances might have been relied upon in mitigation of this penalty, we are of the view that any such considerations are totally offset by the cumulative evidence of X█'s attitude towards the charge of which he has been convicted as well as his attitude to the events that led to his Letter of Reprimand. While the offences are different in nature, in both cases, X█ demonstrated a cavalier attitude towards the rules of the University. In both cases, the rules of the University were readily accessible to him, yet he chose to rely upon his own assessment of what was right and wrong. X█ cannot expect to be a member of the University community while remaining oblivious to the rules by which its students must conduct themselves.
34. In terms of personal deterrence, the Panel remains concerned that X█, even at this stage of the proceedings, has no higher appreciation of the importance of the rules of the University than he had before the hearing began. We doubt very much that he will engage in plagiarism again, particularly given the short period of time he needs in order to complete his degree. At the same time, the Panel is concerned that there will be other rules of the University which have not been "internalized" by X█. He needs to understand the grave importance of these rules.
35. Additionally, and as stated above, to the extent that this decision may have some general deterrent value, it will be useful in emphasizing to students their responsibility in familiarizing themselves with and obeying such rules.
36. In conclusion, the Panel imposes the following sanctions:
 - (a) That the student receive a grade of zero in POL103Y1Y;
 - (b) A suspension from the University for a period of 18 months, commencing May 4, 2010;

- (c) A notation on his transcript for a period of 3 years or until he graduates, whichever is shorter; and
 - (d) This matter shall be reported to the Provost for publication in the University newspapers with the name of the student withheld.
37. With respect to this last point, during its deliberations the Panel was concerned that the deterrent value of this decision (and indeed others like it) may not be most effectively achieved solely through such publication. It seems to us that the most effective moment in time for the delivery of such information occurs at the start of each course. Obviously, it serves the purposes of both the University and its students for those students to understand clearly the University's rules concerning plagiarism. In this case, Prof. Hjartarson obviously attempted to achieve this. If students were aware that they could receive a substantial (e.g. 18 month) suspension simply for failing to follow rules of which they were ignorant, we believe this might incline students such as X [REDACTED] to take more seriously their responsibilities in terms of becoming familiar with the details and application of such rules.

I certify that this is the decision of the Panel.

May 31, 2010



Michael A. Hines, Co-Chair