THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on July 15, 2013,

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 -

T[redacted] W[redacted]

REASONS FOR DECISION

Hearing Date: Wednesday, June 18, 2014

Members of the Panel:
Ms. Rodica David, Barrister and Solicitor, Chair
Professor Kathi Wilson, Department of Geography, Faculty Panel Member
Mr. Blake Chapman, Student Panel Member

Appearances:
Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland, Barristers
Professor Eleanor Irwin, Dean's Designate, University of Toronto Scarborough
Professor Jayeeta Sharma, Instructor HISB02H: The British Empire: A Short History, University of Toronto Scarborough
Dr. Sonja Nikkila, Instructor: ENB03H: Critical Thinking About Narrative, University of Toronto Scarborough

In Attendance:
Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

1. The Panel has had a chance to deliberate, and our findings are that the student is guilty on counts one and three, and therefore, counts two and four are, as I understand it, withdrawn.

2. The majority of the panel were satisfied that the student had received proper notice of the proceedings. Mr. Chapman dissented on this issue as appears from his dissent below, but nonetheless agreed that the hearing should proceed.

3. The evidence presented by Ms. Lie is clear and convincing on both counts.

4. Professor Sharma gave a very detailed analysis of all the efforts that she made to ensure that the students were aware about the necessity for academic honesty and what constituted academic honesty. Her comparison of the student's make-up test to the TurnItIn.com website makes it clear that by far the majority of this work was – see Exhibits 14, 15 and Exhibit 16. Upon an examination of those three documents, there is little doubt that the essence of this make-up test was plagiarized.

5. Similarly, with respect to the English course referred to in charge number three, Dr. Nikkila gave very clear and convincing evidence about her extensive efforts in ensuring that students are aware of how important it is to present original works, to provide citations for any aspect of an essay that is taken from another source. Her posting, her lectures, her handouts could not possibly leave any doubt in a student's mind. The essay, again, at Exhibit 26, both at tabs 18 and 18A of the Book of -Documents, shows a remarkable similarity to five different websites.

6. What is interesting in Dr. Nikkila's testimony is that the student appears to have attempted to make very minor changes, such as a synonym or a change in a modifier, which, as Dr. Nikkila testified, indicated that the student was deliberately trying to pass off this essay as her own work.

7. We conclude that in both instances the evidence is clear and convincing, and we therefore find the student guilty on charges one and three.

8. Having deliberated, the Tribunal is unanimous that it accepts the University's submissions on sanction and, accordingly, we Order that the student receive a zero in both the History and the English course that she was enrolled in, that she be suspended from the University for a period of three years beginning as of today; there shall be a notation on the student's academic record and transcript to the effect that the student has been sanctioned for academic misconduct for a period of four years; and this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed with the name of the student withheld.

9. We will give brief reasons. We agree with Ms. Lie's submissions that the criteria set out on page 12 of the Decision related to Mr. C (Case No. 1976/77-3; November 5, 1976) at tab 1 of the Book of Authorities is the leading case on the criteria to be considered. With reference to these criteria, we find as follows:

   a. There is really no evidence of the character of the student.

   b. We agree with Ms. Lie's submission that it is significant that the student has not participated in the process although the evidence is quite clear that she knew or ought to have known of the allegations against her.

   c. In our view, not only is there no evidence of remorse, but also one could infer that she was engaged in a pattern of this type of plagiarism. Her first offence appeared to be a copy-and-paste in the History course when she did her make-up test, but when she presented her essay in the English course, after having met with Professor Sharma and having been told of the difficulties with her make-up test, then, instead of copying-and-pasting exactly, it seems that she tried to slightly alter the works from which she plagiarized possibly to make it more difficult to detect. In any event, Dr. Nikkila gave very clear evidence that the work was plagiarized, and it could be inferred that there was an effort to deceive by the manner in which the plagiarism occurred.

   d. With respect to the nature of the offence, the detriment to the University and the need for deterrence, this is the type of offence in respect of which it is absolutely critical for the University to take a very strong position in order to prevent this type of behaviour. This is a well-respected teaching university, we are proud of the students who graduate from this University, and it is important that students be deterred from this type of behaviour and that the reputation of the University be preserved.

10. Had there been only one offence, we would have agreed with a two-year suspension, but because there was almost immediately a second offence a three-year suspension is appropriate.

11. In all the circumstances, we accept the submissions of the University and impose the sanctions as requested:

   1) a final grade of zero in the course HISB02H3;

   2) a final grade of zero in the course ENGB03H3;

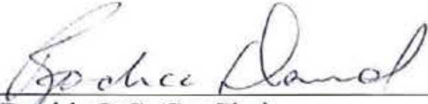
   3) a suspension from the University of Toronto from the date of this order for a period of three years, ending on June 17, 2017; and

   4) a notation of the sanction on her academic record and transcript from the date of this order for a period of four years, ending on June 17, 2018; and

5) 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. W[redacted]'s name withheld.

All of which was ordered on June 18, 2014.

Dated at Toronto, this 9th day of October, 2014



Rodica David, Q.C. Co-Chair,
Professor Kathi Wilson,
Mr. Blake Chapman (dissenting on issue of Notice only)

Dissent of Mr. Blake Chapman, Student Panel Member (solely in respect of Notice)

1. I respectfully dissent with regards to the panel's finding that reasonable notice has been provided to the student. I believe this issue to be one of mixed law and fact.

2. Numerous attempts were made by the University to notify the student of the misconduct relevant to this hearing.

3. In July 2013, Discipline Counsel's office mailed a package to the student at one of the addresses the student had listed on ROSI ("Avalon"), however it was not the student's current ROSI address ("Military Trail") as correspondence to the latter had previously proved undeliverable, and the address was likely stale-dated.

4. Likewise, in August 2013 staff for University Counsel unsuccessfully attempted to deliver disclosure to the student at the Avalon address. Again, this was not the student's current address on ROSI.

5. It is important to note that here we are solely interested with whether the Notice of Hearing was provided to the student. It is this hearing that decides the student's fate. As outlined by the evidence, while the University attempted several means of communication with the student regarding academic misconduct matters, the Notice of Hearing was only emailed to the student's latest email address as listed on ROSI according to the affidavit of Ms. Ramtahal. No reply was received, nor was a bounce back message indicating non-delivery. Furthermore, no read receipt was requested.

6. While these emails appear to meet the standard set out in section 9(c) of the Rules, neither these minimal steps nor a strict interpretation of that section furthers the interests of justice

and may not conform with the notification requirements in section 6(1) of the Statutory Powers Procedure Act.

7. Counsel for the University submitted that the 2006 Policy on Official Correspondence with Students ("Correspondence Policy) applies here. Pursuant to that policy, students have a responsibility to maintain current contact information in ROSI. However, the Correspondence Policy is ambiguous as to what definition of "student" it employs.

8. The Communication Policy is not explicitly incorporated into the Code of Behaviour on Academic Matters (the "Code") nor The University Tribunal Rules of Practice and Procedure ("Rules of Practice").

9. University Counsel submits that section 3 of the Rules incorporates the definition of "student" provided in Appendix A of the Code. That definition includes past students. But the Code is intended to apply only to student conduct while they are a student, not to the present conduct of past students.

10. Counsel further submits that the Correspondence Policy adopts the definitions of the Code by means of reference in section 9(d) of the Rules. However, that section refers only to the means of communication included in the Correspondence Policy, not to student obligations or the policy as a whole.

11. I interpret the Correspondence Policy to apply only to current students. Surely the University could not have intended to create a lifelong positive obligation on every past student to maintain current contact information in ROSI where failure to do so may result in trial in absentia and without notice.

12. University Counsel submitted that because the student was aware that she had been accused of academic misconduct she should have maintained current contact information, and at the least checked her email. However, nowhere in the Code, the Rules, or the Correspondence Policy does it provide that students notified that proceedings have begun against them have a positive obligation to maintain current contact information. Instead, the onus is on the University to take reasonable steps to notify the student throughout the process, particularly with regards to the Hearing. In this case, I conclude that such steps were not sufficient.

13. As noted above, the Notice of Hearing was never mailed to the student's current ROSI address (itself potentially stale-dated).

14. To accept email to the ROSI address as sufficient evidence of service would require us to infer or deem that the student read the email. I do not believe this to be sufficient in a case where the accused has not been a registered student for over two years and there is no indication that the student is reading the emails.

15. Furthermore, as there is no positive obligation on the student to maintain or check that address (unless one accepts that the Correspondence Policy creates a blanket, lifelong obligation), such a conclusion is simply unfair to the student and not in the interests of justice.

16. In the interests of justice and to comply with the spirit and letter of section 6 of the Statutory Powers Procedure Act, I believe the University must take reasonable steps to notify the student of the hearing. Mailing correspondence to known addresses, calling known telephone numbers, and emailing the student's official email address are important steps (though only the latter was completed with regards to the Notice of Hearing). But when those steps fail and no evidence is submitted that the student has actually received notice, additional steps must be taken to satisfy the requirement for reasonableness.

17. In this case, the University easily could have performed other reasonable steps.

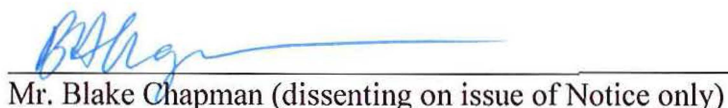
18. The University could have re-sent the Notice of Hearing to the student's ROSI email address and Gmail address requesting read receipts.

19. The University could also have performed a simple Google or Canada 411 search to attempt to locate the student and follow-up with her.

20. These are not onerous steps, particularly when weighed against the injustice of trying a student in absentia without notice.

21. At a minimum, the Hearing should have been postponed to allow the University time to attempt these additional steps.

22. This dissent is only with respect to the issue of notice. The hearing proceeded as per the Majority's decision, and I agree with the Majority's opinion as to guilt notwithstanding this dissent.



Mr. Blake Chapman (dissenting on issue of Notice only)