

UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL

IN THE MATTER OF charges of academic dishonesty filed on January 18, 2017

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

and

Z [REDACTED] Z [REDACTED]

REASONS FOR DECISION

Hearing Date: March 9, 2017

Members of the Panel:

Mr. Paul Michell, Chair
Dr. Maria Rozakis-Adcock, Faculty Panel Member
Ms. Amanda Nash, Student Panel Member

Appearances:

Mr. Robert A. Centa, Assistant Discipline Counsel for the University, Paliare Roland Barristers
Ms. Lucy Gaspini, Dean's Designate, Manager, Academic Integrity & Affairs, University of Toronto Mississauga
Ms. Elizabeth Kurz, Law Student, Downtown Legal Services, for the Student

In Attendance:

Mr. Z [REDACTED] Z [REDACTED], the Student
Ms. Krista Osbourne, Administrative Clerk & Hearing Secretary, Appeals, Discipline and Faculty Grievances

A. Charges and Hearing

1. This panel of the University Tribunal held a hearing on March 9, 2017 to consider the charges brought by the University of Toronto against Z█████ Z█████ (the “Student”) under the *Code of Behaviour on Academic Matters, 1995*.
2. Those charges were detailed in a letter to the Student dated January 18, 2017, as follows:
 1. On or about March 24, 2016, you knowingly represented the ideas of another, or the expressions of the ideas of another as your own work in a term paper titled Surveillance Technology and the Rise in Cyber Crime (the “Term Paper”) that you submitted in partial completion of the course requirements in CCT110H5S 2016(1) (the “Course”), contrary to section B.I.1(d) of the Code.
 2. On or about March 24, 2016, you knowingly obtained unauthorized assistance in connection with the Term-Paper, which you submitted for academic credit in the Course, contrary to section B.I.1(b) of the Code.
 3. On or about April 7, 2016, you knowingly represented the ideas of another, or the expressions of the ideas of another as your own work in an op-ed titled Donald Trump is Environmental Disaster Personified (the “Op-Ed”) that you submitted in partial completion of the Course requirements, contrary to section B.I.1(d) of the Code.
 4. On or about April 7, 2016, you knowingly obtained unauthorized assistance in connection with the Op-Ed, which you submitted for academic credit in the Course, contrary to section B.I.1(b) of the Code.
 5. In the alternative to the charges above, on or about March 24, 2016, and April 7, 2016, by submitting the Term Paper and the Op-Ed, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the Code to obtain academic credit or other academic advantage of any kind, contrary to section B.I.3(b) of the Code.
3. The Student is an undergraduate at the University of Toronto Mississauga (“UTM”).

4. The Student attended the hearing. He was represented by Elizabeth Kurz of Downtown Legal Services.

B. Agreed Statement of Facts and Guilty Pleas

5. Mr. Centa and Ms. Kurz provided the Tribunal with an agreed statement of facts and a joint book of documents.

6. In the agreed statement of facts, the Student pleaded guilty to charges 1 and 3. The University advised that if the Tribunal were to accept the guilty pleas, it would withdraw the other charges against the Student.

7. The Student was enrolled in the Course, which was taught by Professor Michael Dick. The Student admitted that he purchased two assignments (the Term Paper and the Op-Ed) from a third party and submitted them for academic credit in the Course in March and April 2016.

8. The syllabus for the Course contained a statement concerning academic honesty, and warned students about plagiarism.

9. The Turnitin.com reports for the Term Paper and Op-Ed did not indicate that either piece of academic work included verbatim or nearly verbatim text from unattributed sources. However, when Prof. Dick and his teaching assistant read the two assignments, they doubted that the Student had written either of them. In their view, the quality of the writing and expression in the two submissions significantly exceeded the quality of the Student's participation in tutorials and the in-class assignments that he had previously submitted for the Course.

10. In July 2016, the Student met with Prof. Catherine Seguin, the Dean's Designate for academic integrity at UTM. Prof. Seguin provided the Student with the warning that was

required to be given to him under the Code, and he admitted that he had purchased the Term Paper and Op-Ed.

11. The Student had been struggling to pass the Course. Through a friend at York University, the Student obtained the contact information for the organizer of an essay-writing group who offers its services to Chinese students at UTM. The Student discussed pricing and logistics with the contact person, and he agreed to pay \$300 for the Term Paper and \$130 for the Op-Ed. The Student does not know who wrote the assignments, as he only dealt with the contact person. The Student's dealings with the contact person were through WeChat, a messaging app used predominantly by Chinese speakers.

12. The Student admits that he did no meaningful academic work on the Term Paper or the Op-Ed, and knowingly submitted them in essentially the same form as he received them.

13. The Tribunal reviewed the agreed statement of facts and joint book of documents. After confirming with the Student that he understood the terms of the agreement, the Tribunal deliberated. The Tribunal then advised the parties that it accepted the agreed statement of facts. The Tribunal indicated that based on it, and the admissions it contained, it was satisfied that on a balance of probabilities, the elements of charges 1 and 3 had been proven. The Tribunal accepted the Student's guilty pleas to those two charges.

14. In light of the Tribunal's findings on charges 1 and 3, the University withdrew the other charges.

C. Sanction

15. The hearing then moved to the sanction phase. Counsel for the Provost and the Student provided the Tribunal with a joint submission on penalty, and made oral submissions. No evidence was led during the sanction phase.

16. The joint recommendation was that the Tribunal should impose the following sanctions on the Student:

- (a) he receive a final grade of zero in course CCT110H5S 2016(1);
- (b) he be suspended from the University for five years commencing May 1, 2017
- (c) the sanction be recorded on his academic record and transcript for five years from the date of the Tribunal's decision; and
- (d) the decision be reported to the Provost, for publication of a notice of the decision of the Tribunal and the sanctions imposed in the University newspapers, with the Student's name withheld.

17. After deliberation, the Tribunal advised that it would reserve its decision on sanction. The Tribunal requested that counsel provide supplementary submissions regarding how the proposed sanction falls within the range of sanctions set out in the case law.

18. Counsel provided us with written joint supplementary submissions after the hearing. They have been of great assistance in determining the appropriate disposition of this matter.

19. For the reasons set out below, we are satisfied that in the circumstances, that the sanction jointly recommended by the Provost and the Student is appropriate here.

20. In his submissions before us, Mr. Centa emphasized two decisions of the Discipline Appeals Board, *M.A.* [Case No. 837; December 22, 2016], and *S.F.* [DAB Case No. 690;

October 20, 2014]. Both decisions confirm the critical role that joint submissions on penalty play in the University's discipline process, and the limited circumstances in which Tribunals may depart from them. Both were appeals in which the Board set aside the panel's decision to reject a joint submission on penalty, concluding that the narrow circumstances in which a joint submission on penalty may be rejected by a panel had not been present, and imposed a penalty in accordance with the joint submission that had originally been made.

21. Those narrow circumstances are said to arise only where:

- to give effect to [the joint submission] would be contrary to the public interest or would bring the administration of justice in disrepute [*M.A.*, para. 24]
- the joint submission is “fundamentally offensive” to the understood and entrenched set of values and behaviours which members of the University community are expected to uphold [*M.A.*, para. 25]
- the joint submission is “truly unreasonable or unconscionable” [*M.A.*, para. 26].

22. This is a stringent test. We view the Tribunal as being obliged to give effect to a joint submission on penalty even if we were to consider it very strict or lenient, unless we were to conclude that it meets the narrow circumstances described above. In our view, although the sanction sought to be imposed here may not have been the one that the Tribunal would have imposed absent a joint submission, it cannot be said to fall within those narrow circumstances.

23. As we explain below, the particular type of offence here is critical to this determination. At the hearing, Mr. Centa relied on the Discipline Appeals Board's decision in *S.C., N.R.H. and M.K.K.* [Case No. 596, 597, 598; November 23, 2011] (“*S.C.*”), which concerned the distinct form of plagiarism that consists of purchasing a paper from a third party and submitting it for

academic credit—so-called “purchased essay cases.” At the Tribunal, the majority had imposed five-year suspensions on multiple students, each of whom had committed at least two previous academic offences. The dissent would have recommended that the students be expelled. The Provost appealed, seeking to have the Board impose a recommendation of expulsion. In the meantime, pending the appeal, other panels of the Tribunal considered the decision in *S.C.*

24. On appeal, the Board in *S.C.* held that purchasing academic work and submitting it for credit “has always been considered among the very most . . . ‘egregious’ offences a student can commit” (para. 104), is “about as serious as can be committed” at the University (para. 136), and “strike[s] deeply at the roots of the institution” (para. 146). The Board identified several reasons for this conclusion: that purchasing academic work for submission provides clear evidence of intention, deliberation, and knowing deception; that it introduces a commercial element which is “very distant” from the core values of the University; and that it is “quite different” and “more severe” from other forms of plagiarism, because it is more difficult for the University to detect.

25. The Board concluded that the presumptive sanction (or “working assumption”) for this form of plagiarism should be a recommendation of expulsion (paras. 109, 136). This presumption may then be adjusted based on recognized factors, although the need for deterrence in purchased essay cases “is very high” in the spectrum of sentencing factors (para. 141). The Board held that “if expulsion is not the result in a particular case then it would be the rarest of alternatives that something less than a five year suspension would be imposed” (para. 143).

26. We also note, as did the Board in *S.C.*, at para. 108, Appendix “C” to the Code, the Provost’s Guidance on Sanctions. It advises that absent exceptional circumstances, where a student has submitted purchased essays, in whole or in part, the Provost will request that the

Tribunal recommend that the student be expelled unless the student has demonstrated through his or her cooperation, or otherwise, that a lesser penalty is appropriate. That guidance is for students, not the Tribunal, but we view it is a factor that may be considered in evaluating the reasonableness of a proposed sanction.

27. We begin at the starting point identified by the Board in *S.C.*: that expulsion should be considered “as a likely, perhaps the most likely” sanction (para. 109), and then seek to balance the various factors identified in *Mr. C* [Case No. 1976/77-3; November 5, 1976] to determine a reasonable sanction. As the discussion in *S.C.* indicates, that starting point already seems to incorporate three of those factors: the nature of the offence, the detriment to the University occasioned by the offence, and the need to deter others. The latter two factors were said in *S.C.* to be “paramount over all others” in purchased essay cases (para. 146).

28. The Student here was guilty of two separate offences. He purchased written work for two separate assignments for the Course which were due two weeks apart, relatively close in time.

29. Counsel for both the Provost and the Student identified several mitigating circumstances:

- These were the Student’s first offences.
- The Student admitted the offence promptly when the instructor’s concerns were first raised with him.
- The Student has been cooperative with the University throughout.
- The Student has shown remorse.
- These would have been difficult offences for the University to have proved but for the Student’s prompt confession.

- The Student provided the Provost with the names of those involved in the scheme, which enabled the University to take proactive steps with those individuals.

30. At the hearing, we expressed concern that at first blush, it did not appear that the joint submission reflected the impact of these mitigating factors, which might be expected to move the appropriate sanction down from a five-year suspension. Indeed, the sanction agreed to by the parties seemed to reflect a more severe sanction than the Student would likely have received had the matter gone to a disputed hearing.

31. On reflection, however, the situation seems more complex. In our view, these initial misgivings do not justify the Tribunal rejecting the joint submission. Despite the fact that had it been up to the Tribunal considering this matter without a joint submission on penalty, we may not have imposed as severe a sanction, we cannot say that the strict test that the Board confirmed in *M.A.* for disregarding the joint submission is satisfied here. We were not party to the negotiations between the Provost and the Student, and must be careful about second-guessing decisions made by the parties with the benefit of legal advisors, or creating uncertainty in the legal background against which such negotiations take place.

32. The case law provided by counsel in their joint supplementary submissions illustrates the severity of the offence at issue here. While none of these cases is directly on point, they do show that purchased essay plagiarism is a serious offence that receives strict sanctions:

- If a student has any prior offences, more than one conviction for purchased essay plagiarism will likely lead to a recommendation of expulsion: *V.W.S.L.* [Case No. 440; April 6, 2006]; *D.F.* [Case No. 434; April 6, 2006], and even one conviction may lead to that result: *A.(K.)T.* [Case No. 645; May 20, 2011]

- Recommendation of expulsion may be the appropriate sanction for multiple purchased essay offences even in the absence of prior offences: *A.M.* [Case No. 464; November 6, 2009] (joint submission on penalty recommended expulsion)
- A five-year suspension may be imposed for multiple purchased essay offences where there were no prior offences: *S.H.* [Case No. 539; August 11, 2009] (discipline of a UTM student for the sale rather than the purchase of essays, although there the Provost argued that a more severe sanction was appropriate for sellers than for purchasers, a proposition that the Tribunal did not accept, and where the Tribunal emphasized the student's lack of cooperation).
- A five-year suspension has been imposed even for a single purchased essay offence with no prior offences: *S.-B. P.* [Case No. 601; March 8, 2011] (albeit with limited cooperation from the student, who had engaged in significant deception after the fact); *K.H.* [Case No. 602; May 6, 2011].
- A five-year suspension may be imposed even where there is a joint submission on penalty: *S.H.* [Case No. 574; November 18, 2010] (student admitted guilt and cooperated); *Y. (A.) T.* [Case No. 783; July 21, 2015] (student had prior offence).
- Some cases have imposed more lenient sanctions: *I.J.* [Case No. 573; April 15, 2010] (four-year suspension where there was little apparent cooperation from the student: no joint submission on penalty); *J.H. (L.) Y.* [Case No. 404; May 15, 2009] (three-year suspension even where there had been a prior plagiarism offence: joint submission on penalty).

33. None of these cases directly addresses the circumstances here: a student who commits two purchased essay offences within a short time frame, who has no prior offences, and who cooperates extensively with the Provost. The closest analogue is *S.H.* (Case No. 574), where the Tribunal accepted a joint submission on penalty for a single offence and imposed a five-year suspension, even where there were no prior offences and the student admitted guilt and

cooperated. That said, a lighter sentence would also have been consistent with the case law, as *I.J.* and *J.H. (L.) Y.* (noted above) indicate.

34. In sum, even if we were to view a slightly lighter sentence as being appropriate in the circumstances, the real issue is whether the difference between it and the five-year suspension recommended in the joint submission is sufficient to justify disregarding the joint submission. In light of the principles set out in Board's decision in *M.A.*, we cannot say that it is.

D. Conclusion on Sanction

35. For these reasons, the Tribunal accepts the joint recommendation on sanction, and holds that the following sanction be imposed on the Student:

- (a) he receive a final grade of zero in course CCT110H5S 2016(1);
- (b) he be suspended from the University for five years commencing May 1, 2017;
- (c) the sanction be recorded on his academic record and transcript for five years from the date of the Tribunal's decision; and
- (d) the decision be reported to the Provost, for publication of a notice of the decision of the Tribunal and the sanctions imposed, in the University newspapers, with the Student's name withheld.

36. The Tribunal is grateful to counsel for their assistance in providing the joint supplementary submissions.

Dated at Toronto, this 28th day of March, 2017.



Paul Michell, Chair