Case No.: 911

THE UNIVERSITY TRIBUNAL

THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on January 6, 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 -

Y[redacted] S[redacted]

REASONS FOR DECISION

Hearing Date: August 3, 2017

Members of the Panel:
Mr. Shaun Laubman, Lawyer, Chair
Professor Richard B. Day, Faculty Panel Member
Ms. Sophie Barnett, Student Panel Member

Appearances:
Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland Barristers

In Attendance:
Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Office of the Appeals, Discipline and Faculty Grievances, University of Toronto
Mr. David Jones, Technology Assistant, Information Commons
Professor Esme Fuller-Thomson, Factor-Inwentash, Faculty of Social Work
Professor Luc De Nil, Vice-Dean, Students, School of Graduate Studies

Not in Attendance:
Ms. Y[redacted] S[redacted], the Student

1. The Trial Division of the University Tribunal heard this matter on August 3, 2017.

2. The Student was charged as follows:

    a. In or around August 2015, you knowingly represented as your own an idea or expression of an idea or work of another in a draft introduction that you submitted to Professor Esme Fuller-Thomson, contrary to section B.I.1(d) of the Code.

    b. In the alternative, in or around August 2015, you knowingly obtained unauthorized assistance in connection with a draft introduction that you submitted to Professor Esme Fuller-Thomson, contrary to section B.I.1(b) of the Code.

    c. In the further alternative, in or around August 2015, 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 other academic advantage of any kind in connection with a draft introduction that you submitted to Professor Esme Fuller-Thomson, contrary to section B.I.3(b) of the Code. (collectively the "Charges")

PROCEEDING IN THE STUDENT'S ABSENCE

3. The Student did not attend the proceeding. As a result, as a preliminary matter, the Tribunal had to decide whether to proceed in the Student's absence.

4. The University presented evidence of the considerable efforts that were made to notify the Student of the Charges and the Hearing date and time. The efforts included:

    a. Serving the Charges by email on January 6, 2017 to the email address listed on the Student's ROSI account;

b. Serving a disclosure package and another copy of the Charges on March 2, 2017, by email and by courier to the address listed in the Student's ROSI account;

c. Sending multiple emails to the Student's utoronto email account and two other personal accounts that had been used by the Student and her spouse. The emails were for the purposes of scheduling the Hearing; and

d. Attempting to reach the Student by phone at the number listed in her ROSI account.

5. Notably, the University's evidence showed that a courier package that included the Charges and Notice of Hearing was sent to the Student's address in Israel and signed for by a person with the same first initial and last name as the Student. Also, the University established that the Student's utoronto email account was last accessed on July 16, 2017. This was after numerous emails regarding the Charges and the Hearing had been sent by the University to that email account.

6. The Student elected not to respond to any of these communications.

7. Based on the evidence presented, the Tribunal was satisfied that the University had discharged its obligation to provide proper notice to the Student regarding the Charges against her and the Hearing scheduled for August 3, 2017. Therefore, the Tribunal determined that it would proceed with the Hearing in the Student's absence.

UNIVERSITY'S EVIDENCE ON THE CHARGES

8. The Student enrolled in the University's School of Graduate Studies in the Fall of 2014 to do a Ph.D. focussing on Type One diabetes and mental health risk.

9. The Student asked Professor Fuller-Thomson (the "Professor") to be her thesis supervisor. They knew one another from when the Student was enrolled in the Master's program.

10. Once the Student graduated with a Master's degree in 2005, she and the Professor worked together and published a joint paper on mental health issues and arthritis in 2009.

11. After completing her first year of the Ph.D. program, the Student worked as a research assistant for the Professor. At the time, the Professor was working with another academic on a research paper related to parental incarceration and diabetes. The objective was to ultimately have the paper published.

12. In the summer of 2015, the Professor asked the Student to draft an introduction for the proposed paper. The Student submitted the draft work to the Professor in August 2015.

13. The project then stalled and nothing happened with the draft introduction until early 2016.

14. By February 2016, work on the proposed research paper began again. The Professor submitted the two and a half page draft introduction that the Student had prepared to Turnitin – the program used by the University to check for and prevent plagiarism.

15. The Turnitin results showed that the introduction was heavily drawn from source material. For the most part, citations were provided to the source material, however, there were two issues with how the work was referenced. First, much of the text was copied verbatim from source material. The source material was properly cited in the draft but quotation marks were not placed around the text to show that it was directly copied. Second, in a number of instances, the Student did not cite the primary source of the material but instead cited the secondary sources that were cited in the primary source. For example, instead of citing the source that the text was copied from, the Student had cited the reference that was provided for that text in the source.

16. The issue, in both the Professor's and the University's views, was that the Student, a Ph.D. candidate, would have known how to properly reference sources given her years of academic training. That the Student failed to use quotation marks and did not cite the primary source in all instances was "disturbing" according to the Professor.

17. Both the Professor and the University also stressed the serious consequences that could have resulted to the Professor's professional reputation had the plagiarism in the draft introduction not been caught.

18. After discovering the plagiarism, the Professor immediately brought it to the Student's attention and expressed her disappointment. In her response, the Student was apologetic and wrote "I obviously have no basic understanding of how to work and what simple matters of plagiarism and copywrite are." [sic] The Student expressed doubts about whether she was qualified to continue in the Ph.D. program.

19. In her evidence at the Hearing, the Professor said she was initially unsure how to deal with the issue. She said she was unsure whether the Student had committed an academic offence since the work was done in Student's capacity as a research assistant and was not submitted for academic credit. However, after giving it some thought, the Professor determined that she was uncomfortable continuing to supervise the Student's work and she wanted to ensure that some form of note or caution was placed in the Student's file about the incident.

20. The Professor informed the School of Graduate Studies ("SGS"), where a decision was made that the Student's work did constitute an academic offence under the *Code of Behaviour on Academic Matters* (the "Code") and the matter should be pursued further.

21. On July 7, 2016, SGS wrote to the Student to schedule a Dean's meeting to discuss the incident.

22. The Student responded and advised that she was dealing with a serious medical issue. She then withdrew from the Ph.D. program, effective August 4, 2016.

23. Despite further attempts by the University to schedule a Dean's meeting, no such meeting occurred.

24. The University now seeks a conviction pursuant to the Code for plagiarism.

JURISDICTION

25. As a preliminary matter, the Tribunal has to decide whether it has jurisdiction to convict the Student. The issue is, plainly, whether the Code applies with respect to a draft introduction submitted by a research assistant for use in a paper being prepared for publication.

26. The University submits that it does. The Tribunal agrees.

27. The first question that must be answered is whether the Code can apply when the work at issue was done by the student in the role of a research assistant.

28. The University relied on the decision of *In the matter of the University of Toronto and A.A.* (Case No. 528, January 14, 2009). That case involved charges against a student who was working as a teaching assistant. While working as a teaching assistant, the student inflated the mark for an exam written by his brother. The student was charged under the Code. He challenged the jurisdiction of the University Tribunal and argued that the impugned conduct should be addressed by a labour arbitrator under the collective agreement that governed his work as a teaching assistant. He argued that the Code did not apply because the charges did not relate to his conduct as a student at the University.

29. The Tribunal in *A.A. supra,* determined that it had jurisdiction over the charges in that case. In analyzing the extent to which the Code applied when the student's conduct did not arise when they were acting *qua* student, the Tribunal held:

> Mr. [A] is a student of the University of Toronto because he is enrolled in a course of study. By enrolling in the university, a student agrees to abide by the rules that apply to members of the university community including the rules about academic integrity found in the *Code.* Mr. [A] is a student of the university whether or not he is actually attending a class or studying for an exam because being a student of the university is his status and is not a position, like teaching assistant, that he fills from time to time. He was therefore still a student even when he was working as a teaching

> assistant. In fact, he could not have worked as a teaching assistant unless he was a student. As a result of Mr. [A]'s status as a student, he is bound to his obligations to the university community at all times including those times when he is working as a teaching assistant. Those obligations include a commitment to academic integrity.

30. The decision in *A.A.*, *supra* is informative for this case. There is no doubt that the Student falls under the definition of "student" in the Code. Moreover, as was the case in *A.A.*, she could not have been a research assistant unless she was a student at the University.

31. The next issue with respect to jurisdiction is whether the draft introduction that the Student prepared is covered by the Code.

32. This is not a typical case, where the work at issue was an assignment or exam submitted for academic credit. However, the relevant provisions of the Code also apply to "any other form of academic work". Therefore, for the Code to apply, the Student's draft introduction must fit under the definition of "academic work" in the Code.

33. The Tribunal is satisfied that the Student's draft work does fit within the broad definition of "academic work". The wording of the definition makes clear the intent to cover a broad range of work product.

34. Therefore, since the Student's conduct *qua* research assistant does fall under the Code and the draft introduction does constitute "academic work", the Tribunal does have jurisdiction with respect to the Charges.

DECISION ON THE CHARGES

35. The Tribunal is satisfied on the evidence presented by the University that the Charge of plagiarism pursuant to section B.I.1(d) of the Code was made out. With a conviction on the first Charge, the University did not seek convictions on the remaining two Charges.

36. While there was some evidence, found in her emails to the Professor when the allegation of plagiarism was first raised, that the Student may not have understood that what she submitted was plagiarism, this is no defence.

37. The Code expressly applies an objective standard for offences that depend on the student "knowingly" committing the offence. Therefore, even if the Student did not actually know that she was committing the offence of plagiarism, she ought to have known that her citation style was deficient.

38. The evidence that the Student may not have appreciated that her form of citation was not acceptable is more relevant to the issue of the appropriate penalty than it is to whether she was guilty of the Charges.

39. Similarly, while the University acknowledged that some of the impugned text, in particular where the Student had properly cited a reference but failed to use quotation marks, was a less serious form of plagiarism, this does not impact on the issue of liability. Again, this consideration is more relevant to the issue of the appropriate penalty.

40. For all of these reasons, the Tribunal found that the Student is guilty of the first Charge pursuant to section B.I.1(d) of the Code.

PENALTY

41. The University sought the following sanctions against the Student:

    a. A suspension of 3 years;

    b. A notation on her academic record for 4 years; and

    c. That this case be reported to the Provost, with the Student's name withheld, for publication .

42. In support of its proposed sanctions, the University relied on the following factors:

a. The Student had committed a prior offence in the Fall of 2014. The Tribunal was provided with a letter dated April 1, 2015 from Professor Luc De Nil (who gave evidence at the Hearing) confirming that the Student had admitted to the offence of using an unauthorized aid in the form of unauthorized collaboration on an assignment with two other doctoral students. The sanctions of a grade of zero for the assignment and a written reprimand in the Student's file were imposed;

b. In connection with the prior offence, the Student was warned in writing that "if you commit a second offence while you are a student at the University of Toronto, it will be treated much more severely."

c. Plagiarism must be treated as a serious offence;

d. The plagiarism at issue had the potential to impact on the Professor's reputation and career if it had gone undetected. This was an aggravating factor in the University's submissions; and

e. There was no direct character evidence or evidence of extenuating circumstances due to the Student's lack of participation.

43. The University also submitted that a 3 year suspension had become the standard for a second offence in plagiarism cases. It provided the Tribunal with a number of cases where a suspension of 3 years or more for plagiarism was imposed.

44. The Tribunal accepts that plagiarism is a most serious offence and that general deterrence is one of the criteria that the Tribunal must have in mind when fashioning a sanction that is appropriate and reasonable.

45. It is well-established that the Tribunal must consider a range of factors when fixing the appropriate sanction in a given case. In the case of *Mr. C* (Case No.: 1976/77-3, November 5, 1976), Sopinka Q.C. described the factors that a tribunal must consider when determining the appropriate penalty. These factors have been consistently adopted by tribunals over the years:

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; and

f. The need to deter others from committing a similar offence.

46. The Tribunal is also guided by the language from the decision in *University of Toronto and B.S.* (Case 697, January 17, 2014) in which the tribunal recognized that it was to approach "the issue of an appropriate sanction without fettering its discretion based on any 'starting point' or 'minimum' penalty in such cases and must fashion a sanction based on the individual circumstances of this case." In other words, imposing an appropriate penalty is a matter of exercising discretion and applying the factors from *Mr. C, supra* to the facts of a particular case. As described by the Discipline Appeal Board in *D.S.* (Case 451, August 24, 2007), "[t]here is no matrix, formula, or chart, in which a Tribunal can determine that one particular act, must receive one particular sanction."

47. That guidance is particularly instructive in this case, which involved unique facts and an act of plagiarism that was not readily comparable to the acts in the cases relied upon by the University.

48. Taking into consideration the direction from cases such as *Mr. C, B.S.* and *D.S.*, as well as the University's submissions and the evidence and circumstances of this case, the Tribunal weighed the following factors:

a. Plagiarism is well-recognized as a serious offence and deserving of a strong sanction. However, this case is not one of the more egregious examples of plagiarism. The evidence was unclear as to whether the Student actually knew that her style of referencing amounted to plagiarism. If she did intend

to plagiarise then it was a particularly poor form of plagiarism given that, for the most part, the Student referenced the source material but failed to include quotation marks or she referenced the underlying source instead of the primary source that she drew from. The University quite rightly acknowledged that the plagiarism in this case was less serious than instances when no source at all is referenced;

b. The Student's immediate reaction when the Professor raised her concerns and accused her of plagiarism was to apologize profusely and admit that she perhaps was not qualified for the Ph.D. program as she did not understand the requirements and expectations;

c. The Student had a prior offence. This is an aggravating factor that the Tribunal took into account but did not find that it tipped the balance significantly. Little evidence regarding the prior offence was presented at the Hearing other than it did not involve plagiarism and the Student apparently admitted to it and was sanctioned at an early stage. She was also warned about the consequences being more serious in the event of a second offence;

d. The University emphasized the fact that the plagiarism at issue could have detrimentally impacted the Professor had it not been identified and had the draft introduction been included in the final paper without editing or reference checking. The Tribunal does consider this an aggravating factor albeit one that is muted somewhat by the fact the evidence was unclear as to whether the Student had actual knowledge and the submission was a first draft so further editing and reference checking would have been expected;

e. The Student withdrew from the Ph.D. program. There was some evidence that she did so due to severe health issues although this evidence was indirect and not subject to testing;

f. The only character evidence that the Tribunal had was the Professor's evidence that she considered the Student to be a "strong student" from the period when she received her Master's degree. This was not a factor in the Tribunal's decision; and

g. The Student's withdrawal from the Ph.D. program would remain on her academic record permanently. In theory, she could re-apply to enter the Ph.D. program but any such application would be treated as a new application. The Tribunal views the likelihood of the Student re-applying for the Ph.D. program as low in the circumstances. Similarly, the likelihood of the Student repeating the offence is low since her studies have been discontinued.

49. Having regard to all of the circumstances, the Tribunal determined that the appropriate sanction is a 2 year suspension, a 3 year notation on the Student's academic record and publication by the Provost.

50. This is a serious penalty that accounts for the fact that the Student has been found guilty of plagiarism and this is her second offence, even though the first one was unrelated. It also represents a significant increase in severity from the sanction imposed on the Student following her first offence.

51. By the same token, the Tribunal did not feel that it would be appropriate to have the sanction match those cases where there was clear evidence of an intention to deceive by a student.

52. Therefore, the Tribunal ordered the following:

a. **THAT** the Student is guilty of one count of knowingly representing as her own an idea or expression of an idea or work of another in any academic examination or term test or in connection with any other form of academic work, contrary to section B.I.1(d) of the *Code*.

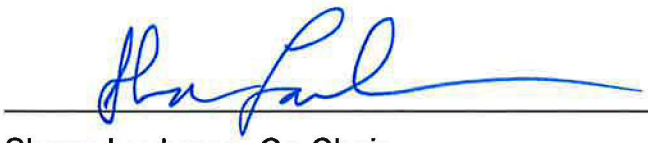
b. **THAT** the following sanctions shall be imposed on the Student:

i. a suspension from the University of Toronto from the day the Tribunal makes its order for two years, from August 3, 2017 to August 2, 2019;

ii. a notation of the sanction on her academic record and transcript from the day the Tribunal makes its order for three years, from August 3, 2017 to August 2, 2020.

c. **THAT** this case be reported to the Provost, with the Student's name withheld, for publication of a notice of the decision of the Tribunal and the sanctions imposed.

Dated at Toronto, this 2 day of November, 2017



Shaun Laubman, Co-Chair