Case No.: 1035

THE UNIVERSITY TRIBUNAL

THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty filed on February 20, 2019,

AND IN THE MATTER OF the University of Toronto Code of Behaviour on Academic Matters, 1995 ("the Code"),

AND IN THE MATTER OF the *University of Toronto Act, 1971,* S.O. 1971, c. 56 as am. S.O. 1978, c. 88

B E T W E E N:

THE UNIVERSITY OF TORONTO ("the University")

- and -

Y[redacted] S[redacted] ("the Student")

Hearing Date: September 9, 2019

Members of the Panel:
Mr. Bernard Fishbein, Chair
Professor Lynne Howarth, Faculty Panel Member
Mr. Rory Smith, Student Panel Member

Appearances:
Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
Mr. Brian Hauff, Representative for the Student

In Attendance:
The Student

Hearing Secretary:
Ms. Jennifer Dent, Associate Director, Office of the Appeals, Discipline and Faculty Grievances

1. On or about February 20, 2019 the Student was advised that she had been charged under the University of Toronto's *Code of Behaviour on Academic Matters* (the "*Code*") as follows:

> 1. On or about November 29, 2017, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in a written assignment titled "Man Ray's Subversion of the Classical form" ("Assignment 2") that you submitted in partial completion of the requirements for FAH101H5F ("Course") contrary to section B.I.1(d) of the *Code*.
>
> 2. In the alternative to paragraph 1, on or about November 29, 2017, you knowingly used or possessed an unauthorized aid or obtained unauthorized assistance in Assignment 2 that you submitted in partial completion of the requirements for the Course contrary to section B.I.1(b) of the *Code*.
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> 3. In the alternative to paragraphs 1 and 2, on or about November 29, 2017, you engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code* in connection with Assignment 2 submitted in order to obtain academic credit or other academic advantage of any kind in the Course, contrary to section B.I.3(b) of the *Code.*
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> The particulars related to the charges are as follows:
>
> 1. At all material times, you were a registered Student at the University of Toronto Mississauga.
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> 2. In Fall 2017, you registered in the Course, which was taught by Professor Bernice Iarocci.

3. Students in the Course were required to submit a written assignment worth 15% of the final grade in the Course.

4. On or about November 29, 2017, you submitted your Assignment 2, titled “Man Ray’s Subversion of the Classical form” for credit in the Course.

5. You submitted Assignment 2 after knowingly using an unauthorized aid and/or obtaining unauthorized assistance to write it, and knowing that it contained ideas and the expression of ideas, and text from an unnamed source or sources which were not written by you and to which you gave no attribution.

6. You knowingly represented the work of another person, or persons, as your own. You knowingly included in Assignment 2 ideas and expressions that were not your own, but were the ideas and expressions of another person, or persons, which you did not properly acknowledge in your Assignment.

7. You knowingly submitted Assignment 2 with the intention that the University of Toronto rely on it as containing your own ideas, expressions of ideas or work in considering the appropriate academic credit to be assigned to your work.

8. For the purposes of obtaining academic credit and/or other academic advantage, you knowingly committed plagiarism in and used an unauthorized aid and/or obtained unauthorized assistance with your Assignment 2 in the Course.

2. At the hearing, the University advised this panel of the Tribunal that if it was successful in securing a conviction on the first charge (namely plagiarism contrary to section B.1.1(d) of the Code) it would withdraw the two remaining charges.

3. Immediately proceeding the commencement of the hearing, the University and the Student entered into the following agreed statement of facts:

> 1. For the purposes of this hearing under the *Code of Behaviour on Academic Matters* ("*Code*"), the Provost of the University of Toronto (the "Provost" and the "University") and the Student have prepared this Agreed Statement of Facts ("ASF") and a Joint Book of Documents ("JBD"). The Provost and the Student agree that:
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> (a) each document contained in the JBD may be admitted into evidence for all purposes, including for the truth of the document's contents (unless otherwise indicated in this ASF), without further need to prove the document; and
>
> (b) if a document indicates that it was sent or received by someone, that is *prima facie* proof that the document was sent and received as indicated.
>
> ***A. Charges and Guilty Plea***
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> 2. This hearing arises out of charges of academic misconduct filed by the Provost on February 20, 2019. A copy of the charges is included in the JBD at **Tab 1**
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> 3. The Student admits she received a copy of the charges, waives the reading of the charges, and pleads guilty to charges 1, 2 and 3.

4. The Provost agrees that if the Tribunal makes a finding of academic misconduct with respect to charge 1 the Provost will withdraw charges 2 and 3.

5. The notice of hearing in this matter is included in the JBD at **Tab 2**. The Student acknowledges that she received both the notice of hearing and reasonable notice of this hearing.

6. The Student first registered at the University of Toronto Mississauga ("UTM") in the fall of 2016. As of August 29, 2019, she had earned 5.00 credits, with a cumulative GPA of 1.48. At the end of the 2018 Winter term she was suspended for one year because of her low CGPA. She returned for the 2019 Summer term and is registered in courses for the Fall 2019 and Winter 2020 terms. A copy of the Student's academic record is included in the JBD at **Tab 3**.

7. The Student is an international Student from China, attending the University on a Student visa. English is not her first language.

8. In the Fall 2017 term the Student was enrolled in FAH101H5F: Introduction to Art History (the "Course"), taught by Professor Bernice Iarocci. A copy of the course syllabus for FAH101H5F, which contains a section about academic integrity, and plagiarism in particular, is included in the JBD at **Tab 4**.

9. Students in the Course were required to submit two written assignments worth 8% and 15% respectively.

10. The Student submitted her first assignment titled "Writing Assignment #1: Formal Analysis" ("Assignment 1") on

September 26, 2017. A copy of Assignment 1 is included in the JBD at **Tab 5**.

11. The Student submitted her second assignment titled "Paper2, Man Ray's Subversion of the Classical Form", ("Assignment 2") on November 29, 2017. A copy of Assignment 2 is included in the JBD at **Tab 6**.

12. Professor Iarocci determined that the concepts, vocabulary and grammar in Assignment 2 were significantly more sophisticated than in Assignment 1, and that it was highly unlikely that the Student had written Assignment 2.

13. A copy of the Student's marks for the various evaluation components in the Course is included in the JBD at **Tab 7**.

14. The Student attended a meeting with the dean's designate, Professor Elkabas, on October 24, 2018, to discuss the University's concerns about the authorship of Assignment 2 ("Dean's Meeting"). At the beginning of the meeting Professor Elkabas administered the Dean's Warning from section C.i.(a)6 of the *Code*. During the Dean's Meeting The Student confirmed that Assignment 2 was her own work, and not someone else's work. She explained that her roommate helped her to translate some Chinese words to English, and that he helped her with five sentences, but that she had not received any other assistance with Assignment 2.

15. At the conclusion of the Dean's Meeting the Student signed a standard form indicating that she was not guilty of an academic offence. A copy of the Academic Integrity Student

Form signed by the Student on October 24, 2018 is included in the JBD at **Tab 8**.

B. Admissions and Acknowledgements

16. The Student acknowledges that at all material times she was provided with information about academic integrity, and about plagiarism in particular, and that she had access to sufficient resources to understand how to avoid plagiarism.

17. The Student now admits that:

(a) she hired someone to help her write Assignment 2 for $25 per hour;

(b) while she participated somewhat in the work on the paper, she received such significant help from the person she hired that she was surprised by the high quality of the final product and was not familiar with all of the words and ideas used in it;

(c) she submitted Assignment 2 as if it was her own work, knowing that it was not, for academic credit; and

(d) she intended for the University to rely on Assignment 2 as being her own work, and to give her academic credit for it, despite it not being her own work.

18. The Student admits that she knowingly represented the ideas of another person, the expression of the ideas of another person, and the work of another person as her own, without attribution, and that in doing so she committed plagiarism in her Assignment 2, contrary to section B.i.1(d) of the *Code*.

19. The Student further admits that she knowingly obtained unauthorized assistance with her Assignment 2 by hiring another person to write Assignment 2 for her, contrary to section B.1.1(b) of the *Code.*

20. The Student acknowledges that:

(a) the Provost has advised her of her right to obtain legal counsel and she has done so; and

(b) she is signing this ASF freely and voluntarily, knowing of the potential consequences she faces.

4. After giving both the University and the Student an opportunity to make any further representations they wished, based on the agreed statement of facts, the admissions of the Student and her guilty plea this panel of the Tribunal unanimously held that the violation of section B.1.1(d) of the Code had been made out. As agreed the University withdrew the other charges.

5. Again immediately prior to this panel of the Tribunal commencing its hearing about sanctions, the Student and the University entered into the following Agreed Statement of Facts on Penalty:

1. This matter arises out of charges of academic misconduct filed on February 20, 2019 by the Provost of the University of Toronto (the "Provost") under the *Code of Behaviour on Academic Matters* ("*Code*"). The Provost and [the Student] have prepared this Agreed Statement of Facts on Penalty ("ASF on Penalty") and a Joint Book of Document on Penalty ("JBD on Penalty"). The Provost and [the Student] agree that:

(a) each document attached to this ASF on Penalty may be admitted into evidence at the Tribunal for all purposes,

including for the truth of the document's contents, without further need to prove the document;

(b) if a document indicates that it was sent or received by someone, that is *prima facie* proof that the document was sent and received as indicated; and

(c) this ASF on Penalty uses the same defined terms as those used in the Agreed Statement of Facts.

2. In the Fall of 2016 [the Student] was enrolled in LIN204H5F: English Grammar I, taught by Professor Michelle Troberg.

3. [The Student] submitted a number of test assignments for credit in LIN204H5F, which she completed electronically. Assignments 3 and 4 were worth a total of 14% of the overall mark in LIN204H5F. At the beginning of each of Assignment 3 and Assignment 4, the first question asked [the Student] to confirm that she was completing the assignment on her own, that the results of the assignment would reflect her own understanding of the course material and not anyone else's, and that she was familiar with the University's policy on academic integrity. Question 1 contained a link to the University's policy on Academic Integrity. A copy of Assignment 3 is included in the JBD on Penalty at **Tab 1**; a copy of Assignment 4 is included in the JBD on Penalty at **Tab 2**.

4. When marking the two assignments Professor Troberg became concerned that each of Assignment 3 and Assignment 4 appeared to contain material reproduced from outside sources without proper acknowledgement.

5. Professor Michael Lettieri, Dean's Designate, sent a letter via email to [the Student] on June 16, 2017 alleging that she obtained unauthorized assistance while completing Assignments 3 and 4. He invited her to consider waiving the right to a dean's meeting to expedite her case by signing a form in which she admitted to the offences and accepted the proposed sanctions of a mark of zero for both assignments and a notation on her transcript for twelve months, to June 23, 2018.

6. [The Student] accepted the offer, and signed the form on June 20, 2017. In signing the form, [the Student] acknowledged that she understood that any subsequent allegations of academic misconduct would be treated as a second offence and sanctioned accordingly. A copy of the Academic Discipline form signed by [the Student] on June 20, 2017 is included in the JBD at **Tab 3**.

Acknowledgments

7. [The Student] acknowledges that:

a. the Provost advised her of her right to obtain legal counsel, and she has done so; and

b. she is signing this ASF on Penalty freely and voluntarily, knowing of the potential consequences she faces.

6. After the panel was presented with the executed Agreed Statement of Facts (and the accompanying Joint Book of Documents on Penalty) counsel for the Student wished to provide the Tribunal with a number of additional documents consisting of:

(a) a letter dated July 25, 2019 from counsel for the Student to Assistant Discipline Counsel for the University;

(b) a document containing various definitions;

(c) a letter dated July 22, 2019 from the Student to her counsel; and

(d) a letter of apology dated July 24, 2019 from the Student.

After some discussion about this unusual method of procedure (the parties having already agreed to statement of facts on penalty and a joint book of documents), the University did not object to the admission of any of the documents other than the third document, the letter dated July 22, 2019 from the Student to her counsel which purported to elaborate or explain further what was in the Agreed Statement of Facts on Penalty. In the view of the University, that would be hearsay and could not be accepted for the truth of its contents because it had not been subjected to cross-examination. In these circumstances, counsel for the Student agreed that the Student could be cross-examined. This was acceptable to the University.

7. Accordingly, the Student affirmed and was cross-examined by counsel for the University. Most of the cross-examination (as well on the additional documents) do not significantly add to what was already in the Agreed Statement of Facts on Penalty. To the extent that there is some material evidence that arises from that cross-examination, it will be specifically referred to in these reasons.

8. The University and the Student were then given opportunity to make submissions on sanction. The University sought the following sanctions:

(a) a final grade of zero in the course FAH101H5F for 2017 Fall;

(b) a five year suspension from the University of Toronto commencing on the date of the Tribunal's order and ending August 31,2024;

(c) a notation of this sanction on her academic record and transcript from the date of the Tribunal's order for six years; and

(d) that 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 Student's name withheld.

The only issue really in dispute was the length of the suspension that the University sought.

9. The University reviewed in some detail the authorities in the book of authorities it provided to the panel:

i. *The University of Toronto andS.C, N.R.H and M.K.K*, Case Nos. 596, 597 and 598, November 23, 2011 ("*S.C.*");

ii. *The University of Toronto and A.K.T.*, Case No. 645, May 20, 2011;

iii. *The University of Toronto and J.W.*, Case No. 1082, August 23, 2019;

iv. *The University of Toronto and P.H.Q.*, Case No. 982, May 8, 2019;

v. *University of Toronto and A.A.D.*, Case No. 972, September 26, 2018;

vi. *The University of Toronto and Y.T.*, Case No. 783, July 21, 2015; and

vii. *The University of Toronto and K.H.*, Case No. 602, May 6, 2011.

10. In particular, the University relied upon and extensively referred to the decision of the Discipline Appeals Board of the Tribunal in *S.C., et al case, supra,* which established the general framework for how this type of academic misconduct ought to be dealt with by the Tribunal. In that case all of the students charged pleaded guilty to having committed plagiarism, contrary to section B.1.1(d) of the Code, like here. The Tribunal however split on sanction. The majority imposed, *inter alia,* a five year suspension. The Chair of the panel, in dissent, would have recommended expulsion of the student to the Governing Council of the University. The focus of the lengthy decision of the Discipline Appeals Board was on this difference in sanction and what the appropriate sanction should be in the circumstances. Since the parties here also disagreed on sanction it is useful to review in some length portions of the decision of the Appeals Board in *S.C..* Again in that case, the three students pleaded guilty to a violation of the *Code* in that they purchased an essay and submitted it as their own work for an assignment worth 30% of the final grade of the particular course. The purchased papers were all different and purported to be "custom essays". Each of the students had committed at least two prior offences of academic misconduct. Moreover, there was no dispute, at least in the view of the majority, of the "clear and unwavering of expression of remorse by each of the students". The Appeal Board described that as follows at para 69:

> "The majority found that each of the students were well and truly afraid and panicked by the thought of being expelled and afraid for the reactions of their parents. They were appalled by their own actions and by their fundamental failure to heed the prior warnings of the Dean when they were caught cheating on two previous occasions. It appeared to the majority these students were deeply shamed and profoundly

ashamed of what they had done. The majority found that it was this process of trial that had brought home for the students the need for change."

11. The Appeal Board began its analysis by "explaining" the nature of the offence (a violation of section B.i.1(d) of the *Code*) at paras 104 - 109:

> 104. As previous decisions of this Board make clear, purchasing academic work for a fee and then submitting that work with a view to securing academic credit, has always been considered among the very most, to use the majority's description, "egregious" offences a student can commit in the University environment. There are a number of reasons for this. First, in taking these steps, there is clear evidence of intention, deliberation and knowing deception, both in the planning, managing and completion of the offence, all of which occurs over a period of time, as in this case. As well, the act of paying for the services of another in this context, introduces a commercial element into the relationship of a student with the University, a factor very distant from the core values of an academic institution, where individual effort, intellectual thought and hard work are the hallmarks.
>
> 105. Moreover, this particular variety of plagiarism is quite different and more severe than the usual appropriation of the work of another through internet sources or the many ways that existing work can be commandeered. With purchased work, as the advertising of The Essay Place [from where the accused students had purchased the essays] makes clear, the Student buys an original work, tailored to the specific subject and which will not be found through the increasing

> sophisticated antennae of Professors and their electronic helpers.
>
> 106. But for the trail of metadata left in this case, these frauds may well have gone undetected, or come up short against student denials…
>
> …
>
> 109. This Appeals Board panel then starts its consideration from this assumption – **expulsion should be considered as a likely, perhaps the most likely, sanction in cases of students purchasing and submitting purchased essays as their own work, for academic credit.**
>
> [emphasis added]

12. The Appeal Board then reviewed the principles of the *C* case, (Case # 1976/77-3, November 5, 1976), also a decision of the Appeal Boards in 1976, and long recognized as the leading decision on sentencing principles for the Tribunal. Those factors are:

> (a) the character of the person charged;
>
> (b) the likelihood of repetition of the offence;
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> (c) the nature of the offence committed;
>
> (d) any extenuating circumstances surrounding the commission of the offence;
>
> (e) the detriment to the University by the offence; and
>
> (f) the need to deter others from committing a similar offence.

13. These sentencing principles have been adopted in numerous cases by the Tribunal (too numerous to list). As described in *A.K.T.*, *supra*, a decision also referred to us by the University, at paragraph 21:

> These sentencing principles have been adopted in numerous cases by the University Tribunal. The Tribunal believes that, in addition to these basic principles, there should be some measure of uniformity or proportionality in the sentencing process so that there should be similar sentences imposed for offences committed in similar circumstances. Penalties imposed on students at the University should preserve and ensure fairness by avoiding disproportionate sentences so there are not wide swings or inconsistencies between like offences and like offenders, recognizing there is never a like offence or a like offender. Having said that, there should not be rigid rules or formulas applied in the sentencing process.

14. Although this panel of the Tribunal certainly recognizes that each case is its own and must be assessed on its own facts, the guidance of the Appeals Board, particularly in lengthy reasoned decisions, intended to provide a framework for Tribunal panels, should not be lightly disregarded. In reviewing the factors in the *C* case, *supra*, outlined in *S.C,.*the Appeal Board said the following:

> 131. The issue for us however is what effect should be given to these findings, of which they are really two. The first being the demeanour and manner in which the students actually appeared during the hearing and the second being their expressions of shame, regret and remorse. The majority took

both these into account in ameliorating the penalty and imposing a five year suspension rather than expulsion.

132. In our view, these findings, in this case, cannot be elevated to that degree of significance when measured against other principles of sentencing laid down *C*. In our view while such evidence is always of importance, it cannot stand equally or take on more significance than that of deterrence. In our view with the seriousness of the offences at issue, the majority erred in placing the emphasis it did on this subjective component and we would not do so.

…

134. In approaching that issue it might be helpful in light of our function to decide appeals in a manner that will assist in ensuring consistency and the fair application of principles to matters like this coming before trial panels of the University Tribunal, to set out what we consider to be the appropriate approach to sentencing in purchased essay cases.

135. While we can accept the general point that Ms. Cohen and Mr. Trotter's submissions that each case needs to be decided on its own particular set of facts and that there should be no absolute rule, contended for by the Provost, that every case of a purchased essay should result in expulsion, we believe that there should be at least a broad set of factors for panels to make reference to for guidance.

136. As we stated in paragraph 108 above, and for the reasons we have expressed, in our view purchased essay offences are about as serious as can be committed in a University setting. **The Tribunal should therefore approach**

sentencing in such cases with the working assumption that expulsion from the institution is the sanction that is best commensurate with the gravity of the offence. There is no absolute rule, however, and whether or not expulsion results will depend upon many factors, as revealed in the particular case. Prime among those these will be to analyze and understand the facts of that particular case. Under what circumstances was the essay purchased and submitted. What degree of intent and deliberation was involved. What recognition that the conduct was grave and wrong can be seen in the Student. Was anyone else involved. Were there influences that can legitimately influence the penalty. What were the subsequent events - did the student admit guilt or attempt to continue the fraud. Is there anything particularly egregious or saving about the case or are there other factors that may ameliorate what is otherwise conduct to be condemned.

137. Has the student learned anything from the entire matter. **Are there true expressions of remorse, regret and apology, although these even if accepted, will rarely blunt the force of the offence itself.** Are there extenuating circumstances and can these be seen to be relevant to the ultimate sanction.

138. The answers to these questions, even if positive in many respects, may not blunt the presumption of expulsion, but they may, and each review will produce its own result.

139. Of course there is the issue of previous academic offences. If there is none, and an otherwise positive record, perhaps expulsion will not be the result, as it was not in *P.H.*

If there are one or more, then, whatever their nature, this is a powerful indication that expulsion may well be warranted. If the offence in issue, purchasing and submitting a bought essay, has been the subject of a previous discipline process, then it would be most unusual for that Student to escape expulsion for a second such offence.

140. But previous academic offences do not have to be identical or similar to have that same result. Previous offences are indications of continuing dishonest motive and a failure to recognize and adhere to core University values, particularly if remorse and regret were pleaded earlier in mitigation. All this will be important when measuring the degree of sanction in such a setting.

141. Finally, a balancing of all the factors involved in sentencing must occur and be seen to occur as the Tribunal reaches an ultimate conclusion. In our view, the need for deterrence in respect of purchased essay cases is very high in the spectrum of those factors.

…

143. **It should also be said that if expulsion is not to result in a particular case then it would be the rarest of alternatives that something less than a five year suspension would be imposed.**

[emphasis added]

15. In the end, the Appeal Board in *S.C.* while "sympathiz[ing] with the students in this case and, again, tak[ing] no issue with the findings made by the Tribunal about their

states of mind and their expressions of regret" overruled the decision of the majority and replaced the suspension with the recommendation of expulsion.

16. The University also referred us to a number of cases where expulsion was also the sanction imposed; *A.K.T.*, *supra* (where the purchase of the essay was also from a commercial enterprise and notwithstanding that the student admitted guilt at the Tribunal after having initially attempted to deceive the Professor and the Dean's designate); *J.W.*, *supra* (where there were prior offences and the student did not attend the Tribunal hearing). The University also pointed us to cases where although not expulsion a five year suspension was the sanction imposed by the Tribunal; *P.H.Q. No.982*, *supra,* (in view of the extent of cooperation, remorse and the difficult personal circumstances of the student); *A.D.*, *supra* (notwithstanding a purchased essay but in view of the mitigating factors, cooperation, medical challenges and difficult personal circumstances); *Y.T. supra*, (where the student admitted that she copied four full paragraphs directly from a purchased essay) and *K.H.H., supra*.

17. Given the framework established in the Appeal Board decision in *S.C.*, and the subsequent cases, the University sought only a five year suspension and not a recommendation for expulsion. The University did so notwithstanding that this was the second offence of academic misconduct (also involving obtaining unauthorized assistance in completing assignments) and for which the Student had been explicitly warned that any future allegations of misconduct would be treated as a second offence and sanctioned accordingly) and notwithstanding the violation involved a commercial transaction with respect to the assistance - all of which are usually exacerbating factors in terms of a sanction warranting expulsion. The University was prepared to do so because the Student had entered into a remedial undertaking to complete six courses within eight months of her return to the University and the fulfillment of the undertaking would be a requirement before she could graduate. The University was prepared to accept this further corroborated the Student's expressed remorse and apology as well as demonstrating that at least to some extent, the Student learned from the prior experiences and would not commit such academic offences in the future. However the University said these mitigating factors, although compelling enough not to seek expulsion, were not

sufficiently compelling in the circumstances to warrant a sanction any less than a five year suspension, given the seriousness of the offence and the pressing need for good deterrence in these kind of cases.

18. Counsel for the Student opposed this sanction. Essentially, the Student argued that the sanction was too severe. The Student attempted in argument to minimize her conduct to such an extent that the panel repeatedly questioned whether the Student was repudiating both agreed statements of fact that she had signed before and during the proceedings. Counsel for the Student confirmed that she was not resiling from the agreed statement of fact or the admissions or her guilty plea contained therein.

19. Notwithstanding that confirmation, the Student still attempted to argue that she had not really committed plagiarism but rather had only hired a tutor without the knowledge or obtaining prior permission of her instructor. The Student further argued that she had language difficulties, and did not understand that she had committed an academic offence within the concept of "knowingly" in the *Code*.

20. Essentially the Student's argument was that the sanctions ought to be "more reasonable". The Student argued that effectively a five year suspension would mean that the Student was "lost" to the University and (in fact her visa would expire – and she would be "gone" - long before the suspension ended) and that really nothing was accomplished by such a severe sanction.

21. When pressed for what would be the appropriate sanction in this set of circumstances, counsel for the Student argued that the loss of her previous credits and compelling her to start her University education over again at the present time (having been away from the University now for two years entering the course of these proceedings) would be sufficient. Counsel for the Student presented no precedent or jurisprudence to support these submissions.

After deliberating, this panel unanimously accepted the University's recommendation for sanction and in particular for a five year suspension**.**

22. This panel accepts that the proper framework for assessing this type of misconduct, a violation of section B.1(1)(d) of the *Code* is set out in *S.C.*. In other words, for all the reasons set out in *S.C.*, and adopted in subsequent decisions of the Tribunal, the ordinary and general sanction for violations of section B.I.1(d) of the *Code* should be expulsion unless moderated or modified by convincing and persuasive mitigating factors in which case a five year suspension could be substituted. Of course each case must be decided on its own facts and there may be unique circumstances in the particular case which justify and warrant departure from this general statement. However this case is not one of them.

23. In seeking only a five year suspension, the University, perhaps to its credit, overlooked what would otherwise clearly be exacerbating circumstances. This was not the first incident of academic misconduct and particularly not a first incident with respect to a violation with respect to providing unauthorized assistance with the preparation of her own work. Although the Student ultimately did cooperate and admit wrongdoing, it was only prior to the hearing when the agreed statements were executed and the admissions and guilty pleas made (after initially denying the allegations at the meeting with the Professor and the Dean's representative). Although counsel sought to explain that by the fact that the Student had previously obtained "bad advice" and which changed when counsel who attended at the hearing was retained or consulted, it does not alter the fact that the Student on her own was not initially prepared to admit or "own up" to her misconduct. However, the University was prepared to overlook these exacerbating factors in its recommendation for sanction, and, although we certainly have the authority to do so and are not bound by the University's recommendation, we are not prepared to impose a sanction even greater than the University sought in these circumstances.

24. The Student however sought to minimize her misconduct by characterizing it as only mistakenly hiring a tutor without the knowledge or permission of her Professor. That is not credible and this panel rejects such an explanation for a number of reasons. First, in the Agreed Statement of Facts, the Student, explicitly admitted that "she knowingly represented the ideas of another person, the expression of the ideas of another person, and the work of another person as her own without attribution, and in doing so she

committed plagiarism in her assignment, contrary to section B.1.1(d) of the *Code*". This is to say nothing of her admission also in the Agreed Statement of Facts that "she knowingly obtained unauthorized assistance with her Assignment 2 by **hiring another person to write Assignment 2 for her** contrary to section B.1.2(b) of the *Code*" which charge the University ultimately withdrew. All of this was done with and after the assistance of counsel. Secondly, in the Agreed Statement of Facts, the Student explicitly conceded "while she participated somewhat in the work on the paper, she received such significant help from the person she hired that she was surprised by the high quality of the final product and was not familiar with all of the words and ideas used in it." This is much more than merely the improper hiring of a tutor.

25. Moreover, if the admissions in the Agreed Statement of Facts were not enough (and they are), the additional evidence that the Student gave including the additional documents that the Student sought to have admitted goes even further in corroborating this. In the document which the Student wrote to counsel, and which was admitted (and which she was subject to cross-examination) the Student wrote:

> "My friends saw I was very down and my roommate said, you should hire someone to help you write this paper. I agreed and they called someone who could help me write this kind of paper as I was in desperate need of help. He was a Masters' Student who was very helpful. We did the research together, **but he supplied most of the research himself as his time was limited.**
>
> …
>
> **I did receive complete help from my tutor through this essay and he did help me completely through to the final essay. I was really surprised at the final essay and how well it read. Some of the words and ideas I was not sure about and did not have time to research their meaning.**

> Although I had total assistance throughout the preparation of this assignment, I did learn a lot about preparing a paper."
>
> [emphasis added]

26. Additionally, at both the meeting with the Professor and at the subsequent Dean's meeting the Student admits that she "did not tell truth". The explanation that she had hired a tutor to help her (and certainly far too much) was not proffered at that time. In fact, during cross-examination when asked the name of the "tutor" the Student refused to identify him, even when directed by the panel that she must answer – although immediately prior to argument about sanction, the Student did proffer the name. To the panel all of this belies the more innocent characterization or gloss of hiring of a tutor without permission that the Student sought to put on her conduct. It all suggests that it was deliberate misconduct and if not recognized as such from the outset, was so recognized very soon afterward. In fact, this attempted gloss on the Student's conduct cannot help but undercut the remorse and apology which was professed.

27. There really are no exceptional mitigating factors here. Whatever her language difficulties, not only did the Student register to attend the University, she testified before us in English with apparent adequate understanding, and conceded in cross-examination that she did not avail herself of any language assistance proffered by the University and disclosed in the course materials. Moreover, even assuming some connection to that and the use of "knowingly" in the *Code* as suggested by counsel for the Student (and we are not necessarily agreeing there is such a connection), "knowingly" is explicitly defined in the *Code* to include those items that one ought to reasonably have known. There is nothing in the Student's conduct or the proffered explanations, that did suggest that she did not reasonably know that she was engaging in misconduct. In fact her prior offence and its warning strongly suggest otherwise.

28. The Student argued that the effect of the sanction the University sought would result in her effectively being "lost" to the University or never completing her education at the University. To understate it, even if true, that is regrettable. We do not question the shame and humiliation that the Student feels about her conduct having been detected

and this resulting disciplinary process. Even if we were to accept the Student's complete remorse and regret over this misconduct (and ignore our previous remarks about the failed attempt to mischaracterize or put a gloss on it), without sounding overly harsh, this is the result of choices (albeit poor ones) and conduct that the Student voluntarily made and undertook.

29. Again, without wishing to appear overly harsh, the University's *Code of Behaviour on Academic Matters* and, in particular with respect to the submission of work to the University, is not only to instruct individual students, not only to protect the interests of the University, but to protect the interests of all students of the University, to say nothing of all of those outside of the University community who rely on the imprimatur of the University. The value of all students' work that students actually perform themselves cannot be diminished or cheapened by tolerating or not appropriately punishing those that seek to obtain credit by work other than their own work. We take the directions of the Appeal Board in *S.C.* to tell us the gravity of this type of misconduct and the value of general deterrence ought to have a greater weight than (but do not eliminate) our own compassion or the remorse or the serious consequences that inevitably fall on the Student.

30. Not surprisingly, counsel for the Student offered this panel of the Tribunal no Tribunal jurisprudence (or any jurisprudence for that matter) to support as lenient treatment of this academic misconduct as counsel advocated.

31. For all the foregoing reasons, this panel of the Tribunal unanimously accepted the recommendation of sanction made by the University and imposes the following sanction:

> (a) a final grade of zero in the course FAH101H5F for 2017 Fall;
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> (b) a five year suspension from the University of Toronto commencing on the date of the Tribunal's Order and ending August 31,2024;

(c) a notation of this sanction on her academic record and transcript from the date of the Tribunal's Order for six years; and

(d) that 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 Student's name withheld.

All of which is ordered on October 30, 2019.

Mr. Bernard Fishbein, Chair