



TO: Members of the Academic Board

SPONSOR: Nancy Smart, Judicial Affairs Officer
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DATE: April 30, 2009

AGENDA ITEM: 8(b)

ITEM IDENTIFICATION:

Semi-Annual Report: University Tribunal, Individual Cases, Winter 2009

JURISDICTIONAL INFORMATION:

The University Tribunal hears cases of academic discipline under the *Code of Behaviour on Academic Matters, 1995* (the “Code”) ¹ which are not disposed of under the terms of the *Code* by the Division.

Section 5.2.6 (b) of the Terms of Reference of the Academic Board provides for the Board to receive for information reports, without names, on the disposition of cases in accordance with the *Code*.

RECOMMENDATION:

For information.

¹ <http://www.utoronto.ca/govcncl/pap/policies/behaveac.pdf>

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

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

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters*, 1995;

BETWEEN:

THE UNIVERSITY OF TORONTO

and

M. C.

Members of the Panel:

- Ms. Lisa Brownstone, Chair
- Professor Ikuko Komuro-Lee
- Mr. Adrian Asselin, Student

Appearances:

- Ms. Lily Harmer, Assistant Discipline Counsel
- Dr. Kristy Gourlay, Manager, Office of Student Academic Integrity
- Ms. Sarah Crowder, Student Counsel, Downtown Legal Services
- Ms. M. C., the Student
- Mr. Max Shapiro, Observer, Downtown Legal Services

Preliminary

- [1] The Trial Division of the University Tribunal was convened on May 21, 2008 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters*, 1995 (the *Code*) laid against the Student by letter dated January 22, 2008 from Professor Edith Hillan, Vice-Provost, Academic.

Notice of Hearing and Charges

- [2] The Charges are as follows:

1. On or about November 9, 2007, you did knowingly forge or in any other way alter or falsify any academic record, and/or did utter, circulate or make use of any such forged, altered or falsified record, whether the record be in print or electronic form, in that you forged and/or altered and/or falsified your academic transcript, contrary to section B.I.3.(a) of the Code.
2. In the alternative, on or about November 9, 2007, you did knowingly engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by forging and/or altering and/or falsifying your academic transcript, contrary to section B.I.3.(b) of the Code.
3. On or about November 23, 2007, you did knowingly forge or in any other way alter or falsify any academic record, and/or did utter, circulate or make use of any such forged, altered or falsified record, whether the record be in print or electronic form, in that you forged and/or altered and/or falsified your academic transcript, contrary to section B.I.3.(a) of the Code.
4. In the alternative, on or about November 23, 2007, you did knowingly engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by forging and/or altering and/or falsifying your academic transcript, contrary to section B.I.3.(b) of the Code.

[3] Particulars of the Charges are as follows:

1. At all materials times you were a student at the University of Toronto. In academic term winter 2006 you obtained a mark of 40 and a Grade F in ECO220Y.
2. You petitioned for late withdrawal without academic penalty from ECO220Y, which petition was refused.
3. On or about November 9, 2007, you held an employment position that gave you authorized access to ROSI, you accessed your ROSI record, and changed your status in connection with ECO220Y to a WDR. The record therefore showed after this change that the course had been withdrawn and/or dropped.
4. On November 23, 2007, you again accessed your ROSI record to cancel ECO220Y so that it did not appear on your academic transcript at all.
5. On or about November 23, 2007, you further backdated the cancellation of ECO220Y to February 19, 2007, the last official date to drop a full year course without penalty.

Agreed Statement of Facts

- [4] The Panel was provided with an agreed statement of facts, signed by the Student and counsel for the University. In summary, the Student admitted that, while working part-time in a clerical position that gave her access to ROSI, she, while alone in the office as

other staff were at a meeting, accessed her own ROSI academic record. She initially changed her failing grade of 40 to a "WDR", so that her academic record made it appear that she had withdrawn from the course. Two weeks later, she was again working alone in the office and again, accessed her ROSI academic record. At this time, she cancelled the course from her academic record so that it did not appear at all and back-dated that cancellation to February 19, 2007 which had been the deadline for withdrawing from the course without penalty.

- [5] As a result of cancelling the course and expunging her failing grade from her academic record, the student's sessional GPA increased significantly, as did her cumulative GPA, exceeding the required minimum she needed to achieve to be able to graduate. When confronted with the alterations, the Student admitted that she had altered her ROSI academic record on November 9, 2007 and November 23, 2007.
- [6] The Student pleaded guilty to Charges 1 and 3. The University withdrew Charges 3 and 4.
- [7] Counsel for the University led the Panel through the Agreed Statement of Facts.

Decision of the Tribunal

- [8] Based on the Agreed Statement to Facts and the Student's guilty plea to Charges 1 and 3, the Tribunal found the Student guilty of those charges.

Sanction and Reasons

- [9] The Panel proceeded with a contested hearing into the appropriate sanction. The University filed no evidence for the sanction portion of the hearing. The Student testified on her own behalf, and filed a series of documents, which included her curriculum vitae, reference letters, high school records and awards, OSAP documents, print-outs related to extra-curricular involvement and a portion of a document indicating the Student's admission of her actions when confronted.
- [10] The Student testified about the circumstances that led up to and that were prevailing at the time that the actions occurred. She gave evidence about the difficult adjustment she had when moving here from abroad, the financial stresses that were operating upon her at the time, her extensive involvement in extra-curricular activities and in paid employment.
- [11] The University sought an order asking this Panel to recommend to the President that the student be expelled from the University; that there be a suspension imposed for 5 years while the expulsion recommendations were in process; and that the Panel report this decision to the Provost.
- [12] The Student's representative submitted that the appropriate penalty was a lengthy suspension.

- [13] Both the University and the Student provided the Panel with Books of Authorities so that the Panel might have an opportunity to review several other decisions of the Tribunal in similar cases.
- [14] Counsel were agreed that the criteria to be considered when deciding on the appropriate sanction were those set out in the matter of the appeal of Mr. C (November 5, 1976). Those criteria are:
- (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.
- [15] In its submissions on penalty, the University focussed on the nature of the offence, the detriment to the University and the importance of general deterrence. The Student focussed on the character of the person charged, the likelihood of repetition of the offence, and the extenuating circumstances surrounding the commission of the offence. She acknowledged the need to deter others from committing a similar offence and submitted that this could be accomplished by a lengthy suspension.
- [16] In her submissions, counsel for the University reiterated the purpose of the *Code of Behaviour on Academic Matters* and the centrality of academic honesty to all of the work of the University, as well as to the integrity of the teaching and learning relationship. Counsel submitted that the Panel should take into account the values expressed in the preamble when considering the appropriate sanction.
- [17] In the University's submission, which the Panel accepts, the Student took advantage of a position of trust that she held due to her employment situation with the University. ROSI, the University's electronic record system, was described as the heart of the University. In the University's submission, the fact that the Student had deliberately gone into her own record not once but twice, and had carefully made the date for cancellation of the course the last possible date upon which cancellation was allowed with no penalty, displays a very deliberate course of conduct, twice, to ensure a result that advantaged the Student. The University also submitted that when one student is advantaged by cheating, other students are disadvantaged. The University acknowledged that the Student faced stresses and difficulties, but submitted that these were of no other magnitude or character than those faced by many students at the University, and it is simply not acceptable to choose to cheat in order to deal with these stresses. There are other options open to students, such as getting counselling, or seeking a reduced course load, which are acceptable ways of dealing with these kinds of stresses.

- [18] In the University's submission, the nature of this offence is one of the most egregious that can be committed, and any forgery of an academic record is very, very, serious. Counsel for the University submitted, and the Panel accepts, that an aggravating circumstance in this case is that the Student accessed her academic record at its source, so that no proper record of her academic performance could ever be found or printed, had her actions not been discovered. This, in the University submission, is worse than tampering with a paper record while the electronic record remains intact and can be discovered at a later date. In the University's submission, both the University and others must be able to rely on the integrity of an academic transcript. The detriment to the University in this kind of conduct is enormous, especially when the Student acts from a trusted position. The need to deter others, in the University's submission, is of crucial importance.
- [19] On the Student's behalf, her representative made submissions that the Student was not asking to be excused, that she admitted the conduct right away when confronted and that she understood the gravity of the offence. While the Panel appreciates the submissions made by the Student's representative in this regard, the Panel does pause to note that in her testimony, the Student did not express any remorse or explicit understanding of the gravity of her actions.
- [20] In the Student's submission, the mitigating circumstances were that this was her first offence and that, otherwise, her character was consistent with the core values of the University. In her adjustment to a new country, and to multiple jobs, she performed admirably in ultimately satisfying her degree requirements and improving her GPA. She stressed the leadership positions that she had held, the fact that this offence occurred over a very short period of time and was relatively contained in scope, and that she admitted guilt early and fully co-operated with the University. In her submission, a suspension would be an effective deterrent, given that the Student had already been fired from her job and will undoubtedly have future employment options and continued studies affected by her actions. In her submission, the detriment to the University could be remedied by imposing a lengthy suspension of 4-5 years.
- [21] Following the parties' submissions on penalty, the Panel deliberated. The Panel also reviewed many of the cases supplied to it by both parties, and carefully considered whether a lengthy suspension could achieve the goals required of an appropriate penalty. The following were the aggravating circumstances considered:
- (i) these records are at the heart of the University's system;
 - (ii) the Student occupied a position of trust, and from that position chose a course of conduct to benefit herself and disadvantage others; and
 - (iii) the Student made this change at the source of the record so that the alteration would be permanent.
- [22] The Panel also considered that the University must be in a position to rely on and protect the integrity of its records.

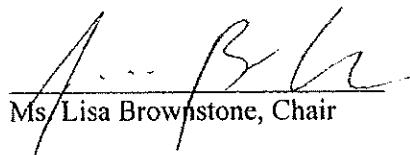
[23] The Panel also considered the mitigating circumstances which it considered to be that the Student was undergoing personal stresses and hardships, as well as that the alterations were relatively contained and made in a short period of time. The Panel was of the unanimous opinion that the aggravating factors were very serious and the conduct in these circumstances warranted the most serious penalty. Accordingly, the Panel unanimously recommends that:

1. The Tribunal recommend to the President of the University of Toronto that he recommend to Governing Council that the Student be expelled from the University;
2. Pending the decision of the Governing Council, the Student be suspended for five years; and
3. A report of the decision be made to the Provost for publication in the University's newspaper with the student's name and identifying features withheld.

[24] The following reasons were read orally at the hearing:

The Student was employed by the University in a position of trust. Due to this position, she had the privilege of access to ROSI, the system described by the University as the heart of its records. The Student misused this trust to her own gain, and therefore to the disadvantage of others. She did so in a way that sought to erase the record from the University computer system forever. The University must take all steps to protect the integrity of its records, so that others within and outside of the University community can rely on them. Although the Panel accepts that the Student had stressors in her life, the Panel does not accept that the choice of dealing with those stressors in this way is excusable.

8 July 2000
Date


Ms. Lisa Brownstone, Chair

UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL – TRIAL DIVISION

IN THE MATTER of charges of academic dishonesty made on
April 21, 2008;

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

AND IN THE MATTER OF the *University of Toronto Code of
Behaviour on Academic Matters*, 1995;

BETWEEN:

UNIVERSITY OF TORONTO

-and-

Mr. S.M.

Members of the panel:

- John A. Keefe, Chair
- Professor Bruno Magliochetti, Faculty Member
- Ms. Marisa Maharaj, Student Panel Member

Appearances:

- Jennifer Murdock and Michael Hamilton from Downtown Legal Services for Mr. S.M., the Student (the Student not in attendance)
- Lily Harmer, Assistant Discipline Counsel for the University of Toronto.

REASONS FOR DECISION

1. The University Tribunal was convened on Wednesday, September 24, 2008 to hear two charges under the *Code of Behaviour on Academic Matters*, 1995 (the "Code") laid against the Student, by letter dated April 21, 2008 from Professor Edith Hillan, Vice-Provost, Academic of the University.

2. At the outset of the hearing, the Tribunal was advised that the matter would proceed on an Agreed Statement of Facts dated September 24, 2008 and on an Agreed Statement of Facts on Sanction dated September 24, 2008.
3. The Student through his representative pleaded guilty to count 1 of the charges. On the basis of the Agreed Statement of Facts, the remaining charge was withdrawn.

The Charge

4. The charge upon which the Student agreed to plead guilty (hereinafter referred to as the "Charge") is the following:

On or about November 8, 2007, you knowingly forged or in any other way altered or falsified a document required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a mid-term exam Scantron answer form, submitted for academic credit in PSYB01, contrary to Section B.i.1.(a) of the Code.

5. The Agreed Statement of Facts was signed by counsel for University and by counsel for the Student with the authority from the Student on September 24, 2008.
6. The Agreed Statement of Facts described the background facts as follows:
 - i. The University of Toronto at Scarborough (the "University") admitted the Student to its Honours Bachelor of Science Program in the fall of 2005. At the time of the Student's admission, the University applied 6.5 transfer credits that he had earned during his previous attendance at Brock University. At the end of the Fall 2007 term the Student had accumulated a total of 11 credits (including the transfer credits).
 - ii. In the Fall 2007 academic term, the Student was enrolled in four half-courses, including PSYB01 H3 - Psychological Research Laboratory.
 - iii. The Student has been charged by the University with an academic offence contrary to the Code of Behaviour on Academic Matters, 1995 ("Code"), in Charges dated April 21, 2008, alleging the alteration or falsification of a mid-term test worth 40%

of final grade and the re-submission of the altered and falsified mid-term test for academic credit in PSYB01.

- iv. Professor Mathias Niemeier was the course instructor in PSYB01. He had two teaching assistants for this course. A detailed course outline was provided to students.
- v. The course requirements consisted of a mid-term test worth 40% of the course mark, and an end of term test worth 60%. It is the mid-term test (the "Mid-Term") that forms the subject matter of the allegations of academic misconduct against the Student.
- vi. On or about October 19, 2007, the Student wrote the Mid-Term which consisted of 100 multiple choice questions. Students were required to mark the answers to these questions in pencil on a scantron sheet. Each question was worth the same.
- vii. The Student attended the Mid-Term on October 19, 2007, filled in a scantron sheet with his name and student number, and recorded his answers to the Mid-Term on the Scantron sheet ("Student's Scantron"). He submitted this scantron sheet at the end of the test.
- viii. All of the scantron answer sheets, including the Student's Scantron, were submitted to IITS, the University scanning service, and an electronic record was made of all the answers given on each of the scantron sheets.
- ix. Professor Niemeier made the Mid-Term scantrons available to students in PSYB01 for viewing at special office hours on several days between October 31 and November 8, 2007. These viewing sessions were supervised by one of the teaching assistants for the course, who returned all of the scantron sheets to Professor Niemeier's office after each session.
- x. On November 8, 2007, Professor Niemeier received an email from the Student. The Student stated that:
 - a. he had just looked over his scantron that day (November 8);
 - b. he now knew why he had not passed the Mid-term;
 - c. he did not have an answer for question 45 or 46, and "I must have skipped that question by accident. So all my answers after 45 or 46 is now the answer for the next question or the answer for the question below", so that some of his answers were wrong;
 - d. he wrote the correct # after 45 or 46 on top of the scantron.
- xi. In this same email the Student asked Professor Niemeier to go through the Student's Scantron, to remark it. He further suggested that he expected his mark to go from a failing grade to around 80%.

- xii. Professor Niemeier reviewed the resubmitted Student's Scantron, and calculated a change in the mark based on the information provided by the Student from an initial score of 41 % to a regraded score of 75%. A comparison of the answers marked on the physical Student's Scantron and the electronic record of the answers scanned by the IITS scanning services after the mid-term showed many differences. In particular, the electronic version did not reflect that the Student had skipped question 46.
 - xiii. Professor Niemeier requested an investigation by IITS. They conducted an investigation, and concluded that:
 - a. there were no problems with the scantron hardware or software;
 - b. more than 50% of the "bubbled answers" on the Student's Scantron did not match the original scantron results, yet comparison of a control student's results were identical to the original scantron; and
 - c. the Student's Scantron does not appear to contain the same answers as the sheet originally scanned for this student.
 - xiv. While viewing his graded Mid-Term, the Student altered and falsified the answers in respect of numerous questions on the Mid-Term. Specifically, the Student enhanced the answers to increase his total grade from 41 to 75.
 - xv. The Student admits that he altered or falsified the Scantron and resubmitted the altered version to Professor Niemeier for academic credit, contrary to Section B.i.1(a) of the Code, and that he did so to improve his grade in the course.
 - xvi. The Student admits that he is guilty of Charge #1 in the charges dated April 21, 2008;
 - xvii. In summary, when the Student appears before the University Tribunal, he will plead guilty to charge #1 of the Charges filed by the University on April 21, 2008.
 - xviii. The Student acknowledges that the University has advised him to obtain independent legal advice before signing the Agreed Statement of Facts and that he has either done so or deliberately waived that right.
7. Counsel for the Student acknowledged on his behalf that the facts set out in the Agreed Statement of Facts were true and that she was authorized by him to sign the Agreed Statement of Facts. On this basis the Tribunal accepted the plea and found that the facts supported the finding of a contravention of the Code as set out in the Charge.

8. Although not expressly set out in the Agreed Statement of Facts, it was acknowledged by both parties that the Student acknowledged his wrong-doing at an early opportunity when confronted with the allegation of academic misconduct.

Joint Submission on Sanction

9. The parties submitted a Joint Submission on Penalty dated September 24, 2008. The following sanctions are recommended in the Joint Submission:
 - i. The University of Toronto and the Student submit to the Tribunal that the appropriate penalty in all of the circumstances is:
 - a. assignment of a grade of zero in PSYB01 H3 in the Fall 2007 session;
 - b. the Student be suspended from attendance at the University of Toronto for a period of 3 years, from the date of the hearing;
 - c. a notation be placed on the Student's transcript from the date of this hearing for a period of 4 years or his graduation from the University, whichever occurs first, to the effect that he was sanctioned for academic misconduct.
 - ii. The University of Toronto and the Student submit that the Tribunal should report this case to the Provost who may publish a notice of the decision of the Tribunal and the sanction or sanctions imposed with the Student's name withheld.
 - iii. The University of Toronto states that but for the mitigating circumstances described in paragraphs 11 to 16 of the Agreed Statement of Facts on Sanction it would be seeking a longer period of suspension and a longer notation.
 - iv. The Student acknowledges that the University of Toronto has advised him to retain independent legal counsel before signing this Joint Submission on Penalty and that he has either done so or deliberately waived that right.

Agreed Statement of Facts on Sanction

10. The parties submitted an Agreed Statement of Facts on Sanction dated September 24, 2008 which described the aggravating and mitigating circumstances which were

submitted to the Tribunal to support the Joint Submission on Penalty. These facts are as follows:

First Offence

- i. The Student admitted to committing an academic offence in a dean's meeting on March 29, 2006 in connection with a term test in the 2005 Fall Session in PSYB65H3F. When the Student attended at the course Tutorial Assistant's office to review his test answers he removed his original answer paper and substituted a different answer paper containing more correct answers. He thereby attempted to increase the mark he received on the term test from 20 out of 44 to a grade of 41 out of 44. The term test was worth 50% of the course mark.
- ii. The Student's explanation was that he had experienced a number of incidents of family distress, including his grandmother's death, his sister's suicide in February 2000, and his father's open-heart surgery.
- iii. The Dean's Designate imposed a sanction of a mark of zero on the test with an additional 50% mark reduction, resulting in a mark of zero for the course. She further placed a notation on the Student's transcript for a period of one year from March 31, 2006.
- iv. The Dean's Designate further advised the Student that a second offence would result in a far more severe penalty, and that all acts of academic dishonesty are taken seriously and cannot be tolerated. The Student was admonished not to do anything similar again.

Second Offence

- v. At a meeting on June 26, 2007 with the Dean's Designate, the Student further admitted to having committed an academic offence in connection with a deferred examination written in April, 2007, in PSYB32H3F. In particular, the Student had been permitted to defer his December, 2006 exam in the course until April 24, 2007. The exam the Student submitted in April was not the correct version for April, 2007, but was instead the version set for December, 2006. The Student brought the December examination booklet into the April examination room, having pre-written some answers in advance. He then took apart the April exam booklet, inserted the December booklet that he had brought with him, and submitted this with the April cover on the front to make it appear as if he had written the answers in the exam room.
- vi. The Student explained to the Dean's Designate that he had been under stress, that his sister had committed suicide, and that his father had health problems. He further advised that he was on medication. He offered to bring supporting letters from a physician and a psychologist, but did not follow through.

- vii. Due to administrative oversight, the Dean's Designate was not aware at the time of this meeting that [redacted] had already been sanctioned for the commission of a previous academic offence. She imposed a sanction of a grade of zero in the course, and a six month notation from June 1, 2007. The Dean's Designate also warned that a second offence would automatically result in a far more severe penalty.

Current Academic Status

- viii. The Student has not enrolled in classes at the University since the end of the Fall 2007 session, and has no intention of re-enrolling at this time.

Mitigating Circumstances

- ix. In February of 2000, the Student's sister committed suicide. Following the loss of his sister, the Student began to see a clinical psychologist in 2002 and continued such counseling through 2007. During that time, the Student was diagnosed to be suffering from Chronic Depression and Anxiety due to abnormal grieving. His symptoms included crying spells, low self esteem, loss of interest, poor concentration, social isolation, poor sleep and appetite, lack of motivation, and survivor's guilt.
- x. As a result of his sister's suicide, the Student's family experienced other distress, including the deterioration of his father's health which resulted in open-heart surgery and a continued delicate disposition. The family has continued to struggle and grieve the loss of the Student's sister.
- xi. Due to the Student's psychological condition and family situation, it was difficult for him to cope with stress and his academic commitments. The Student cited both family distress and his psychological condition as reasons for his prior offences. No documentation was supplied by the Student at his Dean's meetings.
- xii. In October and November of 2007, the Student continued to experience a high level of depressed mood and anxiety, and was taking anti-depressant medication prescribed by his medical doctor. The Student was also on academic probation because of his poor academic performance.
- xiii. The Student's prognosis for recovery from his diagnosis is poor given the chronic and severe nature of his problems.
- xiv. A copy of a report from the Student's psychologist, Dr. Godwin Lau, dated August 28, 2008 was provided.
- xv. The Student acknowledges that the University of Toronto has advised him to obtain independent legal advice before signing this Agreed Statement of Facts and that he has done so.

Guidelines on Penalty

11. The Factors to be considered when determining penalty are well established:
 - (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 commission of the offence;
 - (e) the detriment to the University occasioned by the offence;
 - (f) the need to deter others from committing a similar offence.¹

Conclusion on Penalty

12. The Student was not in attendance at the hearing. His counsel advised the Tribunal that he was not able to attend due to the psychological condition described in the Agreed Statement of Facts on Sanction.
13. No witnesses were called to present character evidence.
14. The Tribunal considered the facts set out in the Agreed Statement of Facts on Sanction which indicated that this was not the Student's first offence. In fact, he had been disciplined for committing two prior offences involving similar schemes of academic dishonesty in two prior academic periods. We also took into account the guilty plea and the cooperation demonstrated by the Agreed Statement of Facts and the Student's willingness to acknowledge his wrongdoing and plead guilty.

¹ In the Matter of the University of Toronto Code of Behaviour and an Appeal by Mr. C., November 1976 pg 12.

15. A panel is not obliged to accept a Joint Submission on Penalty. Having said that, we accept the principle set out in the decision of the Ontario Court of Appeal in *R. v. Michael Tsicos*² dated October 6, 2006 that, generally speaking, a joint submission on penalty should be accepted unless it would be contrary to the public interest or bring the administration of justice into disrepute to give effect to the joint submission.
16. It is important to note that, but for the mitigating circumstances described in the Agreed Statement of Facts on Sanction, the penalty would be more severe. This is specifically set out and acknowledged in the Joint Submission on Penalty at paragraph 3. The Tribunal viewed the Student's conduct in question as involving a very serious breach of the University's standards of ethical behaviour which, but for the guilty plea and the other mitigating circumstances, would have called for far more serious sanctions.
17. Overall, the Tribunal was of the view that the agreed sanction was appropriate in the circumstances. We believe it provides a balance between the important interest of the University community in ensuring the highest standards of honesty and integrity while at the same time recognizing the unique circumstances of the Student. We believe the agreed penalty strikes an excellent balance of these interests and we accept the Joint Submissions on Penalty and we so order.

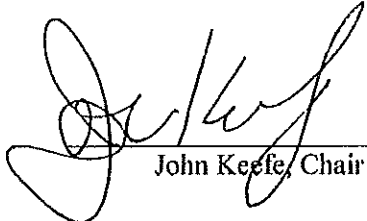
² *Her Majesty the Queen v. Michael Craig Tsicos*, CAO, Oct. 11, 2006, Docket: C45531

ORDER

18. The panel imposes the following penalty:

- (a) Assignment of a grade of zero in PSYBO1H3 in the Fall 2007 session;
- (b) The Student is suspended from attendance at the University of Toronto for a period of three years from the date of the hearing, September 24, 2008;
- (c) A notation is placed on the Student's transcript for the period of four years from the date of this hearing, September 24, 2008 or his graduation from the University, whichever occurs first, to the effect that he was sanctioned for academic misconduct; and
- (d) This case should be reported to the Provost who may publish a notice of the decision of the Tribunal and the sanctions imposed with the Student's name withheld.

October 6/2008
Date


John Keefe, Chair

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL**

IN THE MATTER OF charges of academic dishonesty made on March 26, 2008;

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:

THE UNIVERSITY OF TORONTO

and

██████████ ██████████

REASONS FOR DECISION

Members of the Panel:

Ronald G. Slaght, Q.C.	Chair
Graham Trope	Faculty Panel Member
Melany Bleue	Student Panel Member

Appearances:

Robert A. Centa	Counsel for the University of Toronto
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Zak Muscovitch	Counsel for ██████████ ██████████
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Introduction

[1] The trial division of the University Tribunal held a hearing on Thursday, October 30, 2008 into a series of charges brought by the University against Ms. [REDACTED]. A copy of the Charges is annexed to these Reasons as Appendix "A".

[2] The charges concern allegations that Ms. [REDACTED] had forged and falsified three documents, all dated July 10, 2007, found at Tabs 8, 9 and 10 of the Joint Book of Documents, Exhibit 2, which she had then submitted as part of an application made to obtain Post Admission Transfer Credits (PATC). The documents included what was purported to be a certified transcript of an academic record from Ivan Franko National University in the Ukraine ("IFNU"), what purported to be a certified curriculum for a course, "Cervantes", from IFNU and a document purporting to be a certified syllabus for "Politics and Society in Latin America" also from IFNU, all documents of the nature and kind that are required by the Transfer Credits Section Office of the University of Toronto when considering an application for PATC.

[3] The matter proceeded on a plea of guilty to Charges 1, 4 and 6 and a contested hearing on the sanction to be imposed. Mr. Centa, for the University, reviewed the Agreed Statement of Facts, which had been signed by Ms. [REDACTED] Ms. [REDACTED] acknowledged the truth of the Statement, and the Tribunal accepted the guilty plea and entered a finding of guilty to Charges 1, 4 and 6. The University then withdrew the other charges.

[4] The matter then continued with a hearing into the appropriate sanction. The University advised the Panel it was seeking the ultimate penalty, expulsion from the University. The University called no evidence but relied upon the Agreed Statement of Facts.

[5] Mr. Muscovitch for Ms. [REDACTED] advised the Panel that his client would make no attempt to justify her conduct or admit to anything less than the most serious offence but, in all the circumstances, the need to protect the integrity of the academic setting, and satisfy the general principles of sentencing adopted by the Tribunal in other cases, could be satisfied here by a lengthy suspension in the range of four to five years. Mr. Muscovitch argued that Ms. [REDACTED] was but one credit from obtaining her degree, and having regard to the evidence that the Panel would hear, expulsion was not a sanction the Tribunal should impose.

[6] Ms. [REDACTED] gave evidence and Mr. Muscovitch filed an outline of her evidence with the Tribunal. As well, three letters were entered on consent, a letter (Exhibit 3) dated October 7, 2008 from [REDACTED], a doctor of naturopathic medicine, a letter (Exhibit 4) dated August 22, 2008 from Dr. [REDACTED], Ms. [REDACTED] family physician, and a character reference (Exhibit 5) dated October 2, 2008 from [REDACTED] who is the superintendent of the building where Ms. [REDACTED] lives.

[7] Following the evidence, the Panel heard comprehensive submissions from Messrs. Centa and Muscovitch and after a period of deliberation advised the parties it was reserving its decision and would release its decision and Reasons as soon as possible.

Background and Agreed Facts

[8] The essential facts of this matter were contained in the Agreed Statement of Facts and can be stated briefly.

[9] [REDACTED] first registered at the University of Toronto in the Faculty of Arts and Science in 2001, planning to complete a Specialist Program in Spanish. The Panel was provided with a copy of Ms. [REDACTED] academic record in the Joint Book of Documents. As at October 30, 2008, the date of the hearing, Ms. [REDACTED] had completed 19 of 20 academic credits needed to graduate in her selected program.

[10] In the course of obtaining her credits, in September 2005, Ms. [REDACTED] had enrolled in POL 305Y – Politics and Society in Latin America. She had obtained a copy of the course outline but subsequently dropped that course after about one month of classes. The course outline was provided to us at Tab 4 of the Joint Book of Documents.

[11] In Winter 2007, Ms. [REDACTED] had registered in SPA 454 HIS – Cervantes and the Golden Age of Narrative, and had obtained a copy of the course outline for that course (available only to those registered in the course). That outline was provided to us at Tab 5 of the Joint Book of Documents.

[12] As emerged as an important fact, Ms. [REDACTED] attended only one class in the Cervantes course. Successful completion of SPA 454 HIS was a prerequisite and compulsory in order to graduate with the specialist designation in Spanish, the program in which she was enrolled.

Post Admission Transfer Credits

[13] Ms. [REDACTED] had come with her family to Saskatchewan from the Ukraine when she was 17. The evidence showed that she has returned to the Ukraine on a number of occasions, and she expressed in her evidence a wish ultimately to live and work in that country. She had studied both at the University of Saskatchewan and at INFU in the Ukraine prior to enrolling at the University of Toronto.

[14] The University of Toronto will, in appropriate circumstances, grant students credit for academic work completed at other institutions. The usual practice is that students will apply for transfer credits when granted admission to the University, but the University will also grant credit, known as a Post Admission Transfer Credits (PATC), after a student has been admitted to the University.

[15] There is an on-line process in place and a Transfer Credit Office to which applications are made. An application for PATC must include a copy of the course description for each course for which the student is seeking credit, an official transcript from the institution where the student took the course, a certification that all the information being provided is true, accurate and complete, and a consent that the University of Toronto may confirm the accuracy of any information with the other institution.

Ms. [REDACTED] applies for PATCs

[16] In August 2007 Ms. [REDACTED] obtained information from the TCS office about how to apply for a PATC. There was email messaging back and forth about the process.

On September 10, 2007 Ms. [REDACTED] made an application for PATC and asked that the University provide her with academic credit for two courses, Cervantes, and Politics and Society in Latin America, courses that she claimed to have taken between May and July 2007 at IFNU in L'viv, Ukraine.

[17] In support of her application, she certified that the information she was providing was true, accurate and complete and consented to the University of Toronto confirming the accuracy of the information. She submitted the three documents, dated July 10, 2007 described in these Reasons at paragraph 2.

[18] Ms. [REDACTED] attempt to deceive the University appears to have quickly unravelled. The TCS Office contacted a Professor, Ana Perez-Leroux, who was the undergraduate coordinator of the Department of Spanish and Portuguese in Toronto, and who identified that the IFNU Cervantes Outline submitted by Ms. [REDACTED] was a verbatim translation of the U of T Cervantes Outline (with a few grammatical errors).

[19] Following this, the University confirmed with the Vice-Rector of Academic Affairs at IFNU that the purported IFNU documents were fraudulent.

Subsequent Events

[20] When first confronted, in December 2007, Ms. [REDACTED] expressed surprise and asserted that she had taken the two courses in the Ukraine.

[21] Ms. [REDACTED] met with Professor Dewees, the Dean's Designate for Academic Integrity in the Faculty in February 2008. She admitted then that the IFNU transcript, the IFNU Cervantes Outline and the IFNU Politics Outline were forged and falsified

documents. She explained in February that she had taken a couple of non-credit, general interest courses in the Ukraine in the summer of 2007 and had asked the instructor to provide her with academic documentation to support a request for PATC. The instructor had initially refused to do so but she had offered a bribe if he would produce the documents. The instructor had then agreed to assist her and had provided the forged and falsified academic records.

[22] That remained the state of matters until not long before this hearing, when the University forwarded a draft Agreed Statement of Facts containing the admissions made in February 2008. Ms. [REDACTED] then stated that she had misled the Dean's Designate during the February 2008 meeting, and in fact she was not in the Ukraine at all during the summer of 2007, took no courses there and that her story about the instructor and the bribe were untrue.

[23] It appears instead, that she had asked a Ukrainian friend to help her by creating the forged documents. She provided her friend with copies of the U of T Cervantes Outline and the U of T Politics Outline and her friend then created the forgeries. No money changed hands.

[24] A copy of the forged and falsified transcript of the academic record (Tab 8 of the Joint Book of Documents) with its false seal is attached to these Reasons at Appendix "B".

Ms. [REDACTED] Evidence

[25] When she enrolled at the University of Toronto in 2001 she had obtained transfer credits for her work at the University of Saskatchewan and at IFNU in the Ukraine. She had been enrolled here since 2001 mostly as a part-time student, working to support herself and enable her attendance at University.

[26] Ms. [REDACTED] described, supported by the letters from the health practitioners, Exhibits 3 and 4, severe symptoms of depression, and anxiety leading to panic attacks over the period of her University attendances. She described these as triggered by the requirements for class participation, a basic requirement in language classes, and manifested by shortness of breath and, indeed, her having to remove herself from class from time to time. As she approached her tenth year at university, her purpose became to obtain a degree and then return to the Ukraine where, she advised the Panel, a degree was a necessity to obtain any sort of meaningful employment.

[27] In evidence upon which the Tribunal ultimately put great reliance, Ms. [REDACTED] candidly admitted that the course requirements in the Cervantes course were too heavy for her, that she could not meet the demands of the course and for this reason she had attended only one class, and had obtained the syllabus. She did not see how she could pass that course.

[28] She admitted in her evidence she had no excuse for what she has done and feels ashamed and angry at herself. She also clearly admitted that she set about a course of fraudulent conduct over a period of months starting in July 2007, involving her friend in

creating the false documents (on the basis that she thought he would do a better job than she in creating the forged materials).

[29] Ms. [REDACTED] was also forthright in cross-examination. She agreed she had enrolled in "Cervantes" at U of T twice and confirmed that she dropped the course in February 07 because she couldn't handle the material and couldn't keep up. She enrolled again September 2007, that is just at the time she had completed her PATC applications for credit for the fictional Cervantes and Poli Sci courses. She did not follow through on this occasion either. She was hedging her bets.

[30] Ms. [REDACTED] as detailed above, had given much evidence in her direct examination about her health issues, including depression, anxiety and panic attacks, and the letters submitted from her naturopath and family physician recorded these conditions, as well as some apparent physical allergies that she suffered from seasonally.

[31] What emerged from these letters and Ms. [REDACTED] evidence however was that at the material time, July through September 2007, when the false documents were created with the assistance of her friend and submitted to the TCS office for PATC, Ms. [REDACTED] was well, physically and mentally. Speaking to that period the naturopath, Dr. [REDACTED] said "as of now [REDACTED] is in good physical and emotional state".

[32] When questioned about this, Ms. [REDACTED] acknowledged that she was not affected by any physical or mental disorder or her range of symptoms when carrying out her fraudulent plan but rather her motivation was the recognition that because of anxiety, depression and panic attacks that she experienced while attending class and particularly approaching a rigorous course such as Cervantes, she had concluded that she would not

be able to complete her course. This was the reason she entered into the fraudulent and deceptive scheme we have described.

[33] Ms. [REDACTED] also confirmed that, while it had been recommended to her that she seek psychiatric or psychological assistance, as a matter of choice she preferred homeopathic and herbal remedies and had never sought such assistance. Nor had she approached the University in an attempt, on account of her disability, to ameliorate the course requirements including class participation requirements.

Submissions

[34] Mr. Centa, for the University, reiterated the University's position that the facts and circumstances in this matter warranted Ms. [REDACTED] expulsion from the University and a permanent notation on her record. He reviewed the applicable sentencing principles and sought to draw parallels to this case from the facts and language contained in earlier Tribunal Decisions. Falsification of an academic record has always been considered to be the most serious conduct and Tribunals consistently, but not in every case, have decided that expulsion is the appropriate penalty in such cases.

[35] He argued that both the need to protect the integrity of the University setting, where trust must be the hallmark of shared values, and the need for deterrence, mandate the most severe penalty. Mr. Centa reviewed the facts, and the deliberate and intentional scheme conceived by Ms. [REDACTED] and carried out with the assistance of a third party over an extended period. This was not a case of a spontaneous act borne out of desperation or some act of recklessness which could be, if not justified, at least explained in a more general context.

[36] In an effective submission, Mr. Muscovitch challenged the University's approach to this case, emphasizing that the Code provides a range of penalties for every offence and that the Panel should avoid imposing an automatic penalty for fabricating transcripts in this case. Ms. [REDACTED] had obtained 19 credits over a ten year period, mostly as a part-time student while working, striving to get her degree, the best evidence of her good character.

[37] While candidly admitting that her health was not the cause of her actions Mr. Muscovitch submitted that nonetheless she had displayed a period of weakness, an exception to her otherwise good behaviour over a long period, and this should justify a severe but not the ultimate penalty.

[38] Ms. [REDACTED] had admitted the offence, pleaded guilty, made no effort to justify her conduct at this hearing and she should be given the opportunity to complete what she had almost completed. She had expressed remorse, and these factors should justify a lesser sentence.

[39] Mr. Muscovitch also sought to draw a distinction with reference to some of the previous cases, between the fabrication of an entire degree or a full academic record, on the one hand, and the less serious offence, in his submission, of fabricating records with respect to one or two courses.

Decision

[40] After careful consideration, the Tribunal is unable to give effect to Mr. Muscovitch's submissions. In our view, the planned and deliberate nature of this offence,

with its complexities, carried out over a period of months in circumstances where Ms. [REDACTED] could have withdrawn from her plan at any time, involving a third party with a view to maximizing the scheme's chances of success and her continued deceptions when first confronted and again in fabricating her wholly fictitious explanation including the insistence that she had in fact taken the two courses in the Ukraine leave us in the position that expulsion is the only justified response by this Tribunal.

[41] Moreover, there is more to the deliberate nature of this conduct than just the time it took to obtain the materials and put together the fraudulent documents, engage with the TCS office and ultimately submit a false application for a PATC. In this case, we find that Ms. [REDACTED] had reached her own conclusion that she could not successfully complete the requirements of course SPA 454 HIS – Cervantes, at this institution. She thus conceived this plan and carried it out in an effort to obtain the two half credits that she needed and, without the fraudulent PATC, she would never attain.

[42] Thus, in our view, while the falsified transcript was in respect of two courses only and not an entire academic record or multiple falsifications of a transcript, nonetheless the effect of Ms. [REDACTED] actions in this case is the same – this fabrication was in the nature of a fabricated degree or University transcript in that it was designed to accomplish the same purpose, namely, obtaining a degree that otherwise would not be obtained.

[43] For these reasons and particularly to protect the integrity of the University community, the compelling need to signal and to underscore the deterrent effect and reiterate that such conduct will and must meet with the most severe reaction when

uncovered, the Tribunal will recommend to the President that Ms. [REDACTED] be expelled from the institution, and a permanent notation to that effect be made on her academic record.

[44] A word about character. Much was made in argument about this criterion, one of the sentencing principles the Tribunal routinely addresses, arising from C[REDACTED]. We are sympathetic to Ms. [REDACTED] in this sense. As with many students, she was able to muster only modest evidence to put before the Tribunal, in the form of a letter from her building superintendent. She has no access, as Mr. Muscovitch put it, to the titans of corporate Canada or the leaders of the law or other places. She came to the Tribunal and, as we observed her demeanor, honestly admitted her failings and took no efforts to excuse or otherwise justify her conduct. While the medical evidence before us led us to the conclusion that any mental or physical disabilities she suffers were not causative of her conduct but rather a reason for it, nonetheless this Panel believes something must have been going on or is going on with Ms. [REDACTED] because she appeared to us to show some insight into her actions and a genuine remorse for her conduct.

[45] We do hope Ms. [REDACTED] who came here to deal with what she had done in a forthright manner, can go on to a productive life. She has displayed a side of character that should permit this. Nonetheless, on the facts of this matter, we were unable to reach a conclusion other than the one we have expressed in these Reasons.

Conclusion

[46] We therefore recommend to the President that Ms. [REDACTED] be expelled from the University and that a permanent notation of this expulsion be recorded on her academic record.

[47] The Panel thanks counsel for their assistance with this difficult matter.

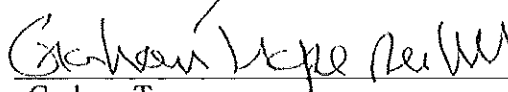
Date:

Nov. 5/08



Ronald G. Slaght, Q.C.

Chair



Graham Trope

Faculty Panel Member



Melany Bleue

Student Panel Member

APPENDIX "A"

UNIVERSITY OF TORONTO

CHARGES

Note: Wherever in the *Code of Behaviour on Academic Matters, 1995* ("Code") an offence is described as depending on "knowing", the offence shall likewise be deemed to have been committed if the person ought reasonably to have known.

1. In August or September 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a document that purported to be a transcript of academic record from Ivan Franko National University of L'viv ("IFNU"), contrary to Section B.I.1(a) of the Code.

2. In the alternative, In August or September 2007, you knowingly forged or in any other way altered or falsified an academic record, or uttered, circulated or made use of any such forged, altered or falsified record, namely, a document that purported to be a transcript of academic record from IFNU, contrary to Section B.I.3(a) of the Code.

3. In the further alternative, in August or September 2007, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by submitting to the University of Toronto a document that purported to be a transcript of academic record from IFNU contrary to Section B.I.3(b) of the Code.

4. In August or September 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a

document that purported to be a "Program of educational course "Cervantes", from IFNU contrary to Section B.I.1(a) of the Code.

5. In the alternative, in August or September 2007, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by submitting to the University of Toronto a document that purported to be a "Program of educational course "Cervantes", from IFNU contrary to Section B.I.3(b) of the Code.

6. In August or September 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a document that purported to be a syllabus for "Politics and Society in Latin America", from IFNU contrary to Section B.I.1(a) of the Code.

7. In the alternative, in August or September 2007, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by submitting to the University of Toronto a document that purported to be a syllabus for "Politics and Society in Latin America", from IFNU contrary to Section B.I.3(b) of the Code.

Particulars

8. Since 2001 you have been enrolled at the University of Toronto.

9. In August 2007 you applied for post-admission transfer credits. You submitted at least three documents in support of your application for post-admission transfer credit:

- a. a document that purported to be a transcript of academic record from IFNU
- b. a document that purported to be a program of educational course "Cervantes" from IFNU; and
- c. a document that purported to be a syllabus for "Politics and Society in Latin America" from IFNU.

10. Each of the documents you submitted to the Faculty of Arts and Science was not an official document from IFNU. You either forged, falsified or altered these three documents or had them forged, falsified or altered at your request.

11. You submitted these forged, falsified or altered documents in support of your request for post-admission transfer credit. You submitted these documents knowing them to be forged, altered or falsified.

APPENDIX "B"

UKRAINE MINISTRY OF EDUCATION

Ivan Franko National University of L'viv



Transcript of the academic record

Transcript No. 000345

Issued to [REDACTED]

From May 22, 2007 through July 10, 2007

This document states that from May 22 to July 2007 [REDACTED] has been a part-time student of the Foreign Languages Department at Lviv State University. During this academic period the above mentioned student has taken the following lessons and lectures as well as written the final examinations for the following courses:

Subject	Hours	Midterms	Final
1. Cervantes	26	Pass	4
2. Politics of Latin America	27	Pass	4

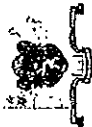
Date of issue July 10, 2007

Secretary of the Foreign Languages Department, Mrs. Doha L.M.

Signature

Seal





ЛЬВІВСЬКИЙ НАЦІОНАЛЬНИЙ УНІВЕРСИТЕТ

ІМЕНІ ІВАНА ФРАНКА

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IVAN FRANKO NATIONAL UNIVERSITY OF LVIV

1 Universitytska str. Lviv 79000 Ukraine

AUG 28 2007

Малайчук Мар'яна

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UNIVERSITY OF TORONTO

UNIVERSITY TRIBUNAL – TRIAL DIVISION

IN THE MATTER OF charges of academic dishonesty made on or about July 4, 2007;

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

AND IN THE MATTER OF the *University of Toronto Code of Behaviour on Academic Matters*, 1995;

BETWEEN:

UNIVERSITY OF TORONTO

-and-

MR. T-F. O. K.

Members of the panel:

- Bernard Fishbein, Chair
- Professor Kristina Dahlin, Faculty Member
- Dr. Joan Saary, Student Panel Member

Appearances:

- Ms. Lily Harmer, Assistant Discipline Counsel for the University of Toronto
- Mr. Max Shapiro, Downtown Legal Services Representative for Mr. K., the Student

REASONS FOR DECISION

Background

1. This Panel of the Trial Division of the University Tribunal convened on May 26 and November 26, 2008, to consider charges brought under the *Code of Behaviour on Academic Matters, 1995* ("the *Code*") against the Student by letter dated July 4, 2007 from the Vice-Provost, Academic, Professor Edith Hillan:
 - (i) Contrary to section B.I.1(d) of the *Code*, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in connection with your paper on Edward Said's "Orientalism", which you submitted on or about November 14, 2006, in partial fulfillment of the course requirements in HIS101H5F.
 - (ii) In the alternative, contrary to section B.I.3(b) of the *Code*, you did knowingly engage 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, by submitting your paper on Edward Said's "Orientalism", which you submitted on or about November 14, 2006, in partial fulfillment of the course requirements in HIS101H5F.
 - (iii) Contrary to section B.I.1(d) of the *Code*, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in connection with your paper on Women in Chinese Buddhism, which you submitted on or about December 4, 2006, in partial fulfillment of the course requirements in RLG372H5F.
 - (iv) In the alternative, contrary to section B.I.3(b) of the *Code*, you did knowingly engage 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, by submitting your paper on Women in Chinese Buddhism, which you submitted on or about

December 4, 2006, in partial fulfillment of the course requirements in RLG372H5F.

Particulars

HIS101H5F

- (v) At all material times you were a student at the University of Toronto. In academic year 2006-2007 you were enrolled in HIS101H5F.
- (vi) On or about November 14, 2006, you submitted a weekly assignment on Edward Said's "Orientalism" in partial fulfillment of the course requirements in HIS101H5F, which was taught by Professor Jens Hanssen.
- (vii) This paper you submitted contained verbatim and nearly verbatim text from another student's paper. You did not properly indicate that your work was taken verbatim or nearly verbatim from other sources. You did not properly acknowledge, cite, or reference the sources from which you obtained this material.

RLG372H5F

- (viii) In academic year 2006-2007 you were enrolled in RLG372H5F.
- (ix) On or about December 4, 2006, you submitted a research paper on Women in Chinese Buddhism in partial fulfillment of the course requirements in RLG372H5F, which was taught by Professor Ihor Pidhainy.
- (x) This paper you submitted contained verbatim and nearly verbatim text from another student's paper. You did not properly indicate that your work was taken verbatim or nearly verbatim from other sources. You did not properly acknowledge, cite, or reference the sources from which you obtained this material.

We note that without objection from any of the parties, Professor Dahlin participated in the November 26, 2008 hearing by way of video tele-conference from France where she was on sabbatical.

2. At the outset of the hearing on May 26, 2008, an Agreed Statement of Facts was filed as follows:

I. Background

1. The University of Toronto admitted the Student in the Fall of 2003. The Student registered in the Social Sciences program at the University of Toronto at Mississauga (UTM), and is pursuing a specialist degree in Religion with a major in Diaspora and Transnational Studies. The Student was placed on academic suspension for one year following the 2005 Winter session due to his low grades. To date, he has earned a total of 16 credits with a cumulative grade point average ("GPA") of 1.77. The Student is currently registered in two full credit courses in the 2008 Summer session.
2. On July 4, 2007 the University of Toronto filed charges against the Student under the *Code of Behaviour on Academic Matters*, 1995 ("Code") alleging that on November 14, 2006 and December 6, 2006, he submitted essays containing plagiarized passages for academic credit in HIS101H5F and RLG372H5F, respectively.
3. When the Student's alleged misconduct in the two courses was discovered, the University placed a Grade Withheld Pending Review notation ("GWR") on his academic record in relation to HIS101H5F and RLG372H5F. In the Summer of 2007, the Student re-registered in and successfully completed HIS101H5, earning a final grade of 68 (C+) in the course. The 16 credits that he has earned to date include this half-credit. Accordingly, regardless of the disposition of the charges in relation to HIS101H5, the Student is not eligible for further academic credit for this course.

II. Facts

4. The Student was registered in the 2006 Fall session of HIS101H5 - Introduction to Historical Studies (the "Course").
5. HIS101H5F is a writing-intensive course. Both the Course website and the Course Outline contained information about plagiarism. The Course Outline stated that "copy pasting and inadequate referencing of sources will be punished in accordance with the University's Rules and Regulations", and indicated that sources were to be referenced in endnotes/footnotes in the Chicago Style. Students were also required to visit the University's Academic Skills Centre at least once. The Course website provided a link to related material about plagiarism.
6. The Course requirements included the submission of 5 one-page position papers ("Position Papers"). In preparing their Position Papers students were required to incorporate themes from at least two of the Course's required readings and to include

a summary, an analysis and a brief critique. Students were also required to submit 5 one-half page bi-weekly responses to their classmates' Position Papers ("Response Papers"). In preparing the Response Papers, students were expected to demonstrate their familiarity with at least two of the Course's required readings and present an original perspective on a Position Paper of their choice. Each of the Position Papers and the Position Responses was worth 5 per cent of the total grade in the Course (for a total of 50% in relation to all 10 papers).

7. To facilitate these interactive assignments and promote the exchange of original ideas, students were required to post their Position Papers and Response Papers on the course website at least 36 hours before the relevant class. These postings were accessible to other students.
8. On November 14, 2006, the Student submitted a Position Paper based on the Course's required readings for that week; namely, Edward Said's "Preface' Orientalism" and Ranajit Guha's "The Prose of Counter-Insurgency" ("Student's Position Paper").
9. Professor Jens Hanssen, the course instructor, reviewed the Student's Position Paper and determined that it contained multiple passages that were identical to passages in a Position Paper that had been posted on the Course website by another student in the Course ("Source Paper"). Professor Hanssen documented his comparative review in a side-by-side analysis of the Source Paper with the Student's Position Paper, highlighted to identify the passages that were identical.
10. The Student attended a meeting with Dr. Roger Beck, Dean's Designate, on December 18, 2006. At that meeting the Student admitted to plagiarizing the work of one of his classmates. In particular, he admitted that he had copied passages from another student's Source Paper into his Position Paper.

III. Conclusion

11. The Student accepts responsibility for submitting the plagiarized Position Paper in HIS101H5 for academic credit.
 12. He admits that he knowingly represented as his own an idea or expression of an idea, and/or the work of another in connection with the Position Paper he submitted on November 14, 2006, in partial fulfillment of the Course requirements, contrary to section B.I.1.(d) of the Code.
 13. The Student hereby pleads guilty to charge 1 filed by the University of Toronto.
 14. The Student acknowledges that he has been advised to obtain independent legal advice before signing this Agreed Statement of Facts.
3. As a result, the Student pleaded guilty to those charges with respect to HIS101H5F ("the History Course") but disputed the charges with respect to RLG372H5F ("the Religion course").

4. This Panel then heard evidence from a number of witnesses with respect to the charges in the Religion course. In particular, the University called Professor Pidhainy, the instructor of the Religion course, Ms. A. B. ("Ms. B") another student in the Religion course, and Professor Cary Shinji Takagaki, the instructor in RLG206, a summer course ("the Summer Religion course") taken both by the Student and Ms. B, prior to their taking the Religion course. The Student testified on his own behalf. The University then called in reply (without objection) Leonard Paris, the Manager of Campus Police at UTM, Terry Johnston, a counselor in the Department of Historical Studies at UTM at the material times with respect to these charges, Professor Roger Beck, the Dean's designate with respect to these charges, and Lucy Gaspini, the Academic Affairs Officer at UTM at the material times with respect to these charges.

What is Not in Dispute

5. Both the Student and Ms. B were registered students of UTM. Both were enrolled in the Summer Religion course. They did not and do not know each other.
6. As part of the requirement of the Summer Religion course, Ms. B submitted a paper entitled "Women in Buddhism – Buddhism Gives Women a Choice". The Student submitted a different paper on a different subject.
7. In the fall of 2006, both the Student and Ms. B. were enrolled in the Religion course. This religion course also had an essay requirement. To fulfill this essay requirement in the Religion course, Ms. B again submitted her essay "Women in Buddhism – Buddhism Gives Women a Choice" with approximately one to two pages of revisions to fit the different topic of the Religion course and with some of the errors noted on the essay when it was first submitted to the Summer Religion course, corrected.
8. In order to meet the essay requirement in the Religion course, the Student submitted an essay entitled "Chinese Buddhism – Women in Chinese Buddhism" which was virtually identical to the essay that Ms. B had submitted in the Summer Religion course. It had virtually all of the same errors as in the original essay (without the corrections having been made).

9. Professor Pidhainy observed the similarities between the two essays and initiated the investigation of possible academic misconduct.
10. The Student denied any wrongdoing with respect to the Religion course.
11. Ultimately, Ms. B, in the investigation stage prior to charges under the *Code* being filed against her, confessed to altering her essay for the Summer Religion course and re-submitting this essay with the alterations in the Religion course. Ms. B received academic sanction for this misconduct. Ms. B could offer no explanation for how the Student could have obtained a copy of her essay that was submitted in the Summer Religion course.

What was in Dispute and Our Findings

12. Although the University could offer no explanation of how the Student obtained a copy of the essay Ms. B submitted in the Summer Religion course, it asked us to conclude in these circumstances (including the fact that the essay the Student submitted in the Religion course had virtually the same errors as Ms. B's essay when it was submitted in the Summer Religion course) that the Student had filed Ms. B's essay in fulfillment of his essay requirements in the Religion course contrary to the *Code*.
13. The Student's explanation of these circumstances was ultimately not particularly credible. He asserted that he had written the essay for the Summer Religion course initially (although he had not asserted this during the investigation) on his computer but that his USB key had gone missing from the computer lab while he had briefly left the computer lab. During the investigation, the Student asserted that the USB key was stolen; however, during his testimony he was less clear whether it was stolen or lost. In any event, he stated that he reported this to the UTM Police. The essay being irretrievable without the USB key, the Student asserted that he then chose to start another essay which he ultimately submitted to fulfill the essay requirement in the Summer Religion course.
14. According to the Student, in the fall of 2006, while he was taking the Religion course, he discovered his draft of that essay on his sister's laptop (which he said he had borrowed in the summer to conduct some research for that essay). The essay now being "found", he therefore submitted it to fulfill the essay requirement in the Religion course.

15. Leaving aside how incredible the story was generally, the University called several witnesses in response to specifically rebut elements of the Student's testimony. In particular, the Manager of the UTM police testified that if the Student had reported the USB key stolen (as he originally asserted in the investigation according to various witnesses), a report would have been filed (since this would involve possible criminal conduct) and no such report was ever filed. As well, the University called various participants in the investigation process to assert that contrary to the Student's evidence in chief, during the investigation, not only did he never assert that the USB key could have been lost as opposed to stolen, he never asserted that the essay was prepared in the summer of 2006 (for the Summer Religion course and not prepared for the Religion course in the fall) and had never asserted he had fortuitously found the essay on his sister's laptop. As well, the University called extensive evidence to demonstrate that much of the reference material footnoted in the original Ms. B essay and in the essay that the Student submitted in the Religion course was not available from the Metropolitan Toronto Reference Library where the Student asserted he had done the research. As well, the documents that the Student provided during the investigation to substantiate that he had performed the research himself on the essay were not only not available in the Metropolitan Toronto Reference Library but, although available through the University library system, did not even match the footnotes or quotes actually contained in the paper. In contrast, the library records at the University in the summer of 2006, showed that Ms. B had borrowed the relevant books footnoted in the essay at the relevant time.
16. As a result, it appeared clear to us, that however the Student obtained a copy of the Ms. B essay, he clearly did not write it and his explanation was not true. In argument, counsel for the Student suggested that somehow Ms. B had obtained a copy of the essay from the Student and submitted it as her work in both the Summer Religion course and later in the fall Religion course with some alterations. Other than counsel's conjecture, there appeared to be absolutely no evidence to support any such inference or conclusion.
17. As a result, we concluded that the University, even in the absence of any direct evidence of how the Student had obtained the Ms. B essay, on the balance of probabilities, had established that contrary Section B.I.1(d) of the *Code*, he had knowingly represented as his

own the work of another. As a result, it was not necessary to make any finding with respect to the charge under Section B.I.1(d) of the *Code* ("cheating").

Penalty

18. After announcing our findings, the parties met briefly and then made a joint submission with respect to penalty. In view of the Student's prior plagiarism offence a number of years before, they submitted that:
 - (i) The Student be given zero (0) credit for both the History and Religion courses for the Fall 2006 term;
 - (ii) he be given a suspension of three (3) years
 - (iii) this be noted on his file for a period of four (4) years; and
 - (iv) this result be published with the name withheld.
19. However, the parties did not agree and left for us to determine the effective date of that three (3) year suspension.
20. The difficulty was that the Student was currently enrolled at the University at the time of the hearing. He was completing a number of half courses which would conclude at the end of the fall term of 2008 and a number of full year courses which would not conclude until spring of 2009. Recognizing that the Student ought not to lose the work in the half courses which were virtually completed at the date of the second hearing (November 26, 2008) the University proposed that the date of suspension commence January 1, 2009.
21. However, the Student opposed that proposal since it would also mean the loss of his work in the full year courses (which would not conclude until the end of the spring semester in 2009). The Student argued that this essentially turned the three (3) year suspension into a *de facto* greater suspension because he would not be able to conclude the courses required to complete his degree when the suspension ended in January 2012 (if the University's position was accepted.) More significantly, the Student argued that if the tribunal deliberations had concluded earlier (the first hearing was on May 26, 2008), he would not have enrolled in all of these courses in the fall of 2008. In other words, the Student argued that the delay in the

tribunal process worked to make the impact of the penalty the University sought to impose more severe than it appears at first blush.

22. This Panel of the Tribunal was troubled by the Student's argument. In fact, but for the agreement of the parties that a three (3) year suspension was appropriate, the Panel would have been inclined to a suspension of greater duration. This was not the Student's first offence with respect to similar misconduct. Moreover, he not only displayed little significant remorse or contrition over his academic misconduct, but vigorously resisted any admission of his academic misconduct throughout the hearing until the sentencing portion. However, the Panel was equally troubled with the prospect that, having accepted the agreed upon suspension, the actual impact of the suspension would work to an even greater effect because of the delay in the Tribunal process. The delay in the Tribunal process could not be attributed to the Student in any way and, as a result, the Panel unanimously was of the view that it ought to accept his position (and reject the position of the University about the date the suspension would be effective). In other words, the suspension is to commence on May 1, 2009.

DATED at Toronto this _____ day of _____, 2009.

Bernard Fishbein, Chair

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL – TRIAL DIVISION**

IN THE MATTER of the *University of Toronto Act*, 1971, S.O. 1971, c. 56 as amended S.O. 1978, c. 88;

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters*, 1995;

BETWEEN:

THE UNIVERSITY OF TORONTO

and

Mr. O.M.

Members of the panel:

- John A. Keefe, Chair
- Professor William Weiss, Faculty Panel Member
- Ms. Sujata Pokhrel, Student Panel Member

Appearances:

- Ms. Lily Harmer, Counsel for the University of Toronto
- Mr. Maurice Vaturi, Counsel for the Student

1. The Trial Division of the University Tribunal was convened for a hearing on Thursday, May 29, 2008 to consider two charges under the *Code of Behaviour on Academic Matters*, 1995 (“Code”) brought against the Student on August 15, 2007. A copy of the charges is attached as Appendix A.
2. There were two charges, but it was acknowledged by counsel for the University that if there was a conviction on count one it would not be necessary to proceed on count two.
3. The charges relate to course WDW360H: Law and Psychiatry taught at the downtown campus in the Fall of 2006.
4. The allegation relates to an in-class term test held on Tuesday December 5, 2006. This was the third in-class term test in this course worth 25% of the course mark.
5. The allegation is that the Student brought a completed test booklet to the examination room and substituted this test booklet for the blank test booklet that was handed out by the professor at the beginning of the test.

6. The Student denied that this occurred.
7. The issue at the hearing was a factual issue and, specifically, whether or not the University was able to prove that the Student substituted the completed test booklet for the blank test booklet distributed by the professor.
8. The course was taught by Professor William Watson. The course aims to describe the history and current forms of the involvement of mental health professionals with the criminal justice system. It is an upper year course.
9. At the beginning of the term, Professor Watson distributed an outline of the course to the students. This outline contained a description of the course and it also provided a very detailed description of the method of evaluation.
10. There were three scheduled term tests: Test 1, held on Tuesday October 17, 2006, was worth 5% of the course mark; Test 2, held on Tuesday November 14, 2006, was worth 25% of the course mark; Test 3, held on Tuesday December 5, 2006, was worth 25% of the course mark.
11. In the course outline, the students were advised that for each term test they would be permitted to choose one question from 4 possible topics. The topics that would be on each test were described in the course outline and there was a specimen question under each topic heading. Based on the course outline, students preparing for the test would know well in advance that they could focus on one of the listed topics and they could prepare for the test by preparing an answer to this specimen question.
12. In the first two tests, the questions were similar to the specimen questions in the course outline. The questions on the tests were different, but Professor Watson in his evidence testified that if a student prepared an answer to a specimen question they would be able to pass the test. The difference between a "passing" mark and an "A" paper was in recognizing the subtleties in the test question versus the specimen question.
13. Professor Watson taught the same course in a separate session during the same fall term of 2006. He had been teaching this course for some time and had been using this method of evaluation for some years.
14. In the winter term of 2006, in this course, Professor Watson had an incident with another student who had cheated on one of these in-class tests by bringing a completed test booklet into the test room and substituting it for the blank test booklet distributed at the test. As a result of this incident, Professor Watson had modified his practice and he became very diligent in the way he distributed the booklets during the test.
15. Professor Watson described in great detail his practice in the administering of the tests in this course following this incident. His practice was as follows:
 - (a) The normal class size for a test is approximately 50.

- (b) He attended at an office in the Woodsworth College building where the blank test booklets are stored.
 - (c) Professor Watson would take a bundle of test booklets from the storage area. The bundles were in batches of 125.
 - (d) The test booklets come in two different colours: one is pure white; the other is off-white with a shade of green.
 - (e) Professor Watson would take the bundle of 125 booklets and place it on his desk which was cleared for this exercise. He would remove 25 booklets from the pile of 125 booklets and put the 25 booklets in his desk drawer, leaving 100 booklets on his desk.
 - (f) He would then count out 60 booklets.
 - (g) He would then apply the same random stamp number to each of the 60 booklets. The random stamp number was different for each test.
 - (h) As he was stamping each booklet, he would count the booklets again. After the 60 booklets were stamped and counted, he would put the 60 booklets into a bag which he described as a plastic shopping bag. He would then place the remaining 40 unstamped booklets in a separate plastic bag and he would put the stamp marker in the same bag as the 40 unstamped booklets.
16. Professor Watson described that he was meticulous in the way in which he counted the booklets because he acknowledged that it would be extremely unfair to falsely accuse a student of bringing a completed test booklet into the test.
 17. Professor Watson did not always retrieve a batch of 125 bound booklets for each test. On occasion, he would have enough booklets from his desk drawer so that it would not be necessary for him to attend at the storage room. Professor Watson acknowledged that sometimes the booklets in his drawer were not all from the same batch and may not all have been of the same colour.
 18. Professor Watson testified that, with respect to the test in question, he recalls going to the storage room and obtaining a new batch of pure white booklets. He said that he did not retrieve the booklets from his bottom drawer for this test.
 19. The test in question was held on Tuesday December 5, 2006. Professor Watson was teaching the same course during the same term on Wednesdays. Test 3 for the Wednesday class was being held on Wednesday December 6, 2006. Professor Watson had no specific recollection of the practice he followed with respect to the retrieval or numbering of the test booklets for the Wednesday test.
 20. Professor Watson described in detail what happened on December 5, 2006:
 - (a) The test is conducted in a classroom at Woodsworth College.
 - (b) The class room has long tables.
 - (c) The Student was seated in the back row at the right corner of the classroom immediately adjacent to an aisle. There are three aisles – two at each end and one in the middle.
 - (d) At the beginning of the test, the stamped test booklets were distributed by Professor Watson and a teaching assistant. They gave the booklets to the students

on the end of the aisles and the students then hand them to the other students along the same table.

- (e) The teaching assistant was present throughout the test.
- (f) Students from the Wednesday class were able to take the test with the Tuesday class. The Wednesday class students were instructed to write "Wednesday" on their test booklets.
- (g) Professor Watson did not count the total number of Tuesday students taking the test, but he testified that it was approximately 50.
- (h) Professor Watson did not count the Wednesday students that were taking the test on Tuesday.
- (i) Professor Watson did not count the number of stamped booklets that were initially distributed to the students at the beginning of the test.
- (j) Students wanting a second booklet during the test would put up their hand and a second booklet would be distributed to them out of the booklets remaining from the stamped 60 booklets.
- (k) During the test, Professor Watson would take unstamped booklets from the plastic bag where the 40 booklets were placed and he would stamp them at the front desk. He did not count the number of the booklets that he stamped during the test.
- (l) Professor Watson did not count the number of books that were distributed after the initial 60 booklets were distributed. He did not count the total number of booklets that were distributed or the total number of unstamped booklets remaining in the bag.
- (m) Professor Watson did not count the total number of test booklets that were returned at the end of the test. He did not count the number of Tuesday and Wednesday test booklets that were returned at the end of the test.
- (n) At the end of the test, the Wednesday test booklets were separated from the Tuesday booklets.
- (o) When the test booklets were returned to Professor Watson, he noted that one test booklet had a slightly different coloration. It was off-white with the green tint. He then noticed that it did not have a number stamp on it. All of the other booklets were stamped. The one test booklet in question was the one submitted by the Student.
- (p) Professor Watson also noted that the ink and penmanship on page 1 of the Student's test booklet was different from the remaining pages of the test. Page 1 of the Student's test booklet was written with a ballpoint pen in cursive penmanship. The remaining pages of the booklet were written with a black felt-tipped pen and the penmanship was in a print form. This corroborated Professor Watson's belief that the Student's test booklet had been brought into the test by the Student.
- (q) Professor Watson also noted that there were pencil marks on parts of the Student's test booklet that had been written over in black felt tipped ink pen. Professor Watson inferred from this that the Student had written the answers to the specimen question in the test booklet in pencil and that he had used the black felt-tipped marker pen to write over the pencil marks during the test.
- (r) During the test, Professor Watson noted that the Student had placed a coat on the desk. Prior to the commencement of the test, the Student was asked to remove the coat from the desk. He placed it on the chair beside him. Otherwise, Professor Watson did not notice any unusual behaviour by the Student during the test.

21. There was no direct evidence that the Student brought a completed test booklet into the test. No one observed the Student switching the test booklet. No one found the blank test booklet that was allegedly handed to the Student at the beginning of the test.
22. The teaching assistant was present throughout the test. The teaching assistant did not testify at the hearing.
23. The Student testified. He denied that he had brought a completed test booklet into the classroom. He testified that he prepared for the test and then wrote his answers during the test period. He testified that he did the readings. He submitted the readings with his highlighting and margin notes. He could not explain why the test booklet he submitted was of a slightly different colour and did not have a stamp on it.
24. He explained the difference in ink and penmanship in the test booklet. While the change in ink and penmanship at first looked very unusual, the panel was presented with tests completed by the Student in this and other courses. We noted that in many cases the Student frequently switched his penmanship. In some cases he did so even in the course of a single sentence. We find the Student's explanation credible and we accepted his evidence on this point.
25. He explained the pencil marks in the test booklet. He stated that he had a practice of writing certain important portions of the test in pencil in order to get it right, after which he would write over the pencil in ink. We looked at other tests submitted by the Student in other courses and noticed that he engaged in this practice in other completely unrelated test booklets. We concluded that no inference could be drawn from the pencil marks on the test booklet. We found the Student's explanation credible and we accepted his evidence on this point.
26. No inference could be drawn from the substance of the test answer in the test booklet that he was responding to the specimen question versus the test question. In fact, it is arguable that the answer to the question in the test booklet is more responsive to the test question than to the specimen question. Professor Watson acknowledged that he could not draw an inference from the substance of the answer.
27. Overall, there is no direct evidence that the Student brought a completed test booklet into the test and switched it for the blank test booklet that was distributed during the test. No one observed him switching the booklet. No one observed any unusual behaviour during the course of the test.
28. The issue for the panel was whether, taking all the evidence into consideration, the fact that the Student submitted an unstamped booklet of a slightly different colour was sufficient to warrant a conviction. These facts are circumstantial evidence that would permit an inference to be drawn that he did bring a completed test booklet into the test. The question was whether this circumstantial evidence is sufficient to satisfy the onus of proof on the University. We were called upon to examine the evidence very carefully, including all the inferences that could be drawn from the surrounding circumstances, to

determine if we were satisfied that the University had established sufficient proof that the Student had cheated in this way.

29. The onus of proof on the University is set out in the *Code of Behaviour* at paragraph C.ii.(a).9:

“The onus of proof shall be on the prosecutor, who must show on clear and convincing evidence that the accused has committed the alleged offence.”

30. We recognize that these are serious allegations which have serious implications for the Student.
31. The Student is a student in criminology. The course in question is an upper-year course. The Student had achieved reasonably good grades in the prior tests in this course. He had also achieved good grades in his other courses. There were no other academic offences in his academic career. There is no indication of anything improper or unusual in his other academic activities.
32. The Student testified that he intends to apply to law school and that a conviction for this academic offence would have a significant impact on his future.
33. Having considered all the evidence and weighed all the available inferences from the circumstantial evidence, the panel concluded that the University had not satisfied the onus of proof in this case.
34. Although Professor Watson was meticulous in counting and stamping the 60 booklets, he did not count the total number of booklets that were distributed and returned. Without such a count being done it cannot be determined conclusively or by necessary inference that the booklet submitted by the Student had not been handed out by Professor Watson during the test.
35. Professor Watson testified in a clear manner and we do not question his credibility. However, there is no independent corroboration of his evidence.
36. Without all the booklets distributed and returned being counted, there are many possibilities that are inconsistent with an inference of guilt.
37. In the circumstances, we concluded that the Student should be found not guilty.

DATED this 11th day of August, 2008


John Keefe, Chair

**DISCIPLINE APPEAL BOARD
THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

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

AND IN THE MATTER of the *University of Toronto Code of Behaviour on Academic Matters*, 1995

B E T W E E N:

UNIVERSITY OF TORONTO

Appellant

- and -



Respondent

Members of the Discipline Appeal Board Panel:

- Patricia D.S. Jackson
- Aaron Christoff
- Professor Wendy Duff
- Jemy Joseph

Appearances:

- Linda Rothstein; Lily Harmer for the Appellant
- Maurice Vaturi for the Respondent

REASONS FOR DECISION

1. The University of Toronto (the "University") appeals from the August 11, 2008 decision of a Tribunal of the Trial Division of the University Tribunal (the "Tribunal") in which the Tribunal found the respondent not guilty of two charges under the *Code of Behaviour on*

Academic Matters, 1995 (the "Code"). For the reasons which follow we allow the appeal and send the matter back to the Trial Division for a new hearing.

2. Mr. [REDACTED] was charged with submitting an answer booklet during a term test that was written prior to rather than during the test. It was alleged that his conduct was contrary to section B.I.1(b), or alternatively section B.I.3(b) of the Code.

3. A summary of the Tribunal's factual findings follows.

4. The term test in question was worth 25% of the final mark in Law and Psychiatry. The course was taught by Professor William Watson, who testified at the hearing.

5. In the winter of 2006, a student in the same Law and Psychiatry course had brought a completed test booklet into the test room and substituted it for a blank test booklet distributed at the test.¹ As a result of this, Professor Watson testified that he modified his practice and employed particular diligence in the method used for distributing booklets during the test.

6. In particular, the Tribunal noted the practice used by Professor Watson for the administration of tests as follows:

- (a) To prepare he would retrieve a bundle of test booklets from the storage area in the college building. The bundles were in batches of 125 booklets. (The normal class size for a test was approximately 50.) The booklets came in two different colours: one was pure white and the other off-white with a shade of green.
- (b) He would take the bundle of 125 booklets and place it on his desk, cleared for the exercise. He would remove 25 booklets from the pile and put those in a desk drawer, leaving a hundred booklets on his desk.
- (c) He would then count out 60 booklets.

¹ Leading to earlier proceedings before the University Tribunal: *University of Toronto v. Brian Kim*, October 10, 2007.

- (d) He would then apply the same random stamp number to each of the 60 booklets. The random stamp number was different for each test. As he stamped the booklets, he recounted them. After 60 booklets were stamped and counted, he put them into a plastic bag, placing the remaining 40 unstamped booklets in a separate plastic bag together with the stamp marker.
- (e) On this occasion he recalled going to the storage room and obtaining a new batch of pure white booklets.

7. As described by the Tribunal, Professor Watson further testified that on the occasion in issue the stamped booklets were distributed to the students taking the test by himself and a teaching assistant. Although he did not count the number of students taking the test, there were approximately 50 from the Tuesday class as well as some students from the Wednesday class who although scheduled to take the test the following date attended the Tuesday test. He did not count the number of stamped booklets that were initially distributed to the students. Students wanting a second booklet during the test would put up their hand and a second booklet was distributed to them from the remaining stamped 60 booklets. After the 60 booklets were distributed, he took unstamped booklets from the plastic bag where the 40 booklets had been placed and stamped them. He did not count the number of books that were distributed or the total number of unstamped booklets remaining in the bag at the end of the test. Nor did he count the number of test booklets that were returned at the end of the test.

8. The Tribunal further described Professor Watson's evidence that when the test booklets were returned, he noted one test booklet with a slightly different coloration. It was off-white with a green tint. It did not have a number stamp on it. The ink and the penmanship on page 1 of the booklet were different from the remaining pages. Page 1 was written with a ballpoint pen and cursive penmanship and the remaining pages of the booklet were written with black felt-tipped pen and the penmanship was in print form. There were also pencil marks on parts of the student's test booklet that had been written over in black felt-tipped ink and Professor Watson inferred that the student had written the answers to the specimen question in the test booklet in pencil and had used the black felt-tipped marker to write over the pencil marks during the test.

9. Professor Watson noticed that the Student had placed a coat on the desk and prior to the test commencement asked the Student to remove it. The Student then placed it on the chair beside him. The Tribunal noted that apart from that, Professor Watson did not notice any unusual behaviour by the Student. Nor was there any direct evidence that the Student brought a completed test booklet into the test. No one observed the Student switching the test booklet. And no one found the blank test booklet allegedly handed to the Student at the beginning of the test.

10. The Tribunal also noted the testimony of the Student. He denied bringing a completed test book into the classroom. He testified that he prepared for the test and wrote the answers during the test period. He testified that he did the appropriate readings, and submitted the readings with his highlighting and margin notes in evidence. He could not explain why the test booklet he submitted was of a slightly different colour and did not have a stamp on it.

11. The Tribunal noted his explanation of the difference in ink and penmanship. He presented in evidence many examples of other tests which demonstrated that he frequently switched his penmanship sometimes in the course of a single sentence. The Tribunal found this explanation credible and accepted his evidence.

12. He explained the pencil marks, stating he had a practice of writing certain portions of the test in pencil in order to get it right, after which he would write over the pencil in ink. He submitted other tests as examples of this practice. The Tribunal found the Student's explanation on this point credible and accepted his evidence.

13. On the basis of this evidence, the Tribunal concluded that the Student should be found not guilty.

14. The Tribunal noted the onus of proof in section E.4(b) of the *Code*:

The onus of proof shall be on the prosecutor, who must show on clear and convincing evidence that the accused has committed the alleged offence.

15. The Tribunal observed the serious nature of the allegations and the serious implications for the Student, including in his intended application to law school. It concluded that in the

circumstances, the University had not satisfied the onus of proof. It provided the following explanation:

34. Although Professor Watson was meticulous in counting and stamping the 60 booklets, he did not count the total number of booklets that were distributed and returned. Without such a count being done, it cannot be determined conclusively or by necessary inference that the booklet submitted by the Student had not been handed out by Professor Watson during the test.

35. Professor Watson testified in a clear manner and we do not question his credibility. However, there is no independent corroboration of his evidence.

36. Without all the booklets distributed and returned being counted, there are many possibilities that are inconsistent with an inference of guilt.

16. The University submits that the Tribunal erred in three respects:

- (a) by applying a standard of proof which required the University to prove its charges "conclusively or by necessary inference" and to disprove all possibilities inconsistent with guilt, rather than prove its case on a balance of probabilities;
- (b) requiring "independent corroboration" of evidence from the University's witness, Professor Watson, notwithstanding the Tribunal's finding that his evidence was credible; and
- (c) placing significant reliance on an irrelevant consideration - whether or not the number of test booklets distributed matched the number returned - in determining that there were many possibilities inconsistent with guilt.

17. We do not think there is any question that the applicable standard of proof for proceedings under the Code is according to a civil standard - on a balance of probabilities. Unlike in criminal cases, there is no presumption of innocence.² However, the requirement to prove the case on the balance of probabilities does not detract from the requirement found in the

² *F.H. v. McDougall*, 2008 S.C.C. 53, para. 40 and 42.

Code and in the common law that the standard must be met by evidence that is clear, convincing and cogent.³

18. The respondent has drawn our attention to cases in which, in the context of proceedings before this and other tribunals, the issue of whether a defendant has acted “knowingly” and how that issue is to be addressed has been assessed.⁴ While those cases have found criminal jurisprudence helpful in determining what is meant by the requirement that an action be engaged in “knowingly”, they neither address nor detract from the clear statement of the applicable burden of proof in civil cases set forth above.

19. The Tribunal noted the general burden of proof imposed on the University of Toronto in the *Code*, and, while it did not expressly refer to the standard of a balance of probabilities, it would be presumed to apply the correct standard unless it could be demonstrated by analysis that the incorrect standard was applied.⁵ One of the issues raised by this appeal is whether analysis demonstrates the application of an incorrect standard.

20. The case before the Tribunal involved a conflict between the evidence of the only two witnesses. Professor Watson’s evidence was that the only test booklets that were handed out were white and stamped. The Student’s evidence is that the unstamped green-tinted test booklet on which he submitted his answers was handed out to him during the test. It is not possible that the evidence of both witnesses was correct, and the task before the Tribunal was to choose one over the other, on a balance of probabilities.

21. However, as noted above, the Tribunal both accepted the Student’s evidence and did not question the credibility of the Professor’s evidence.

22. While not questioning the credibility of the Professor’s evidence, the Tribunal concluded that that evidence did not establish the offence because the offence was not “determined conclusively or by necessary inference”, was not accompanied by “independent corroboration”

³ *Code*, section E.4(b); *F.H. v. McDougall*, *supra*, at para. 45, 46; *Stetler v. Ontario* [2004], 200 O.A.C. 209 at 79-80.

⁴ *Shank v. The University of Toronto*, [2002] O.J. No. 50 (Div. Ct.); *R. v. Zanzibar*, [2007] O.J. No. 3381 (O.C.J.)

⁵ *F.H. v. McDougall*, *supra*, para. 53.

and that the evidence had not eliminated the “many possibilities that are inconsistent with an inference of guilt”. These requirements strongly suggest that the Tribunal was requiring the University to prove the case to a standard higher than a balance of probabilities.

23. However, we are more troubled by the suggestion that the question of whether the evidence of the Professor or the evidence of the Student was correct would be resolved by counting the booklets distributed and returned. The Tribunal did not explain how it considered that a count would resolve the disputed issue, nor was the respondent able to do so on appeal.

24. If the offence was committed, the Student either switched the prepared test booklet he brought into the exam with a blank one handed out to him, or he returned the prepared booklet with the blank one. If the Professor brought 100 booklets into the test room, the former methodology would yield a count of 100 and the latter methodology a count of 101. In other words, neither count eliminates the possibility of the Student’s evidence being in error.

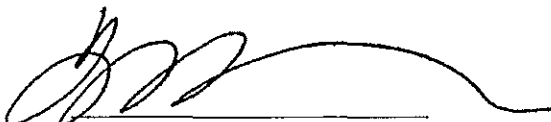
25. Equally, a count of 100 or 101 could be consistent with the Professor’s evidence being wrong. A count of 100 could be consistent with an error in the evidence that only white booklets were brought into the examination room and that no unstamped booklets were distributed to students. A count of 101 could be consistent with an error in the evidence that only white booklets came into the examination room, that only unstamped booklets were distributed to students, and that the booklets had been accurately counted before being brought into the test room. Neither count eliminates the possibility of the Professor’s evidence being in error.

26. A count of the booklets distributed and returned would therefore not resolve the question of whether the Professor’s evidence or the Student’s evidence was correct. In focusing on the failure to count, the Tribunal focused on an issue which we conclude was an irrelevant consideration. It would not have resolved the conflict in the evidence. That conflict fell to be resolved by the application of the standard of balance of probabilities, and this the Tribunal did not do. Moreover, a finding of fact based on an irrelevant consideration is in these circumstances an error of law.⁶

⁶ *R. v. Coyl*, [2007] O.N.C.A. 728 at para. 1.

27. For the reasons expressed above, we consider the error material. We accordingly would allow the appeal and direct a new hearing on the charges.

Date: March 25, 2009

A handwritten signature in black ink, appearing to be 'Patricia D. S. Jackson', written over a horizontal line.

Patricia D. S. Jackson

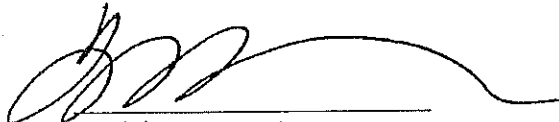
Aaron Christoff

Professor Wendy Duff

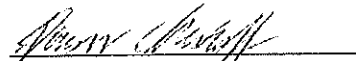
Jemy Joseph

27. For the reasons expressed above, we consider the error material. We accordingly would allow the appeal and direct a new hearing on the charges.

Date: March ²⁵, 2009



Patricia D. S. Jackson



Aaron Christoff

Professor Wendy Duff

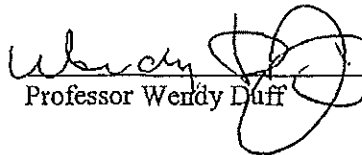
Jcmy Joseph

27. For the reasons expressed above, we consider the error material. We accordingly would allow the appeal and direct a new hearing on the charges.

Date: March , 2009

Patricia D. S. Jackson

Aaron Christoff

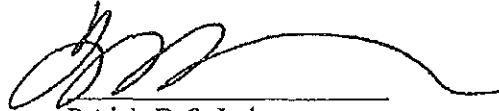


Professor Wendy Duff

Jemy Joseph

27. For the reasons expressed above, we consider the error material. We accordingly would allow the appeal and direct a new hearing on the charges.

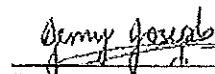
Date: March ²⁵, 2009



Patricia D. S. Jackson

Aaron Christoff

Professor Wendy Duff



Jemy Joseph

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on September 6, 2007 and July 8, 2008;

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:

THE UNIVERSITY OF TORONTO

- and -

Mr. M. H. H.

REASONS FOR DECISION

Members of the Panel:

Mr. Clifford Lax, Chair

Professor Ron Smyth, Faculty Panel Member

Ms. Melany Bleue, Student Panel Member

Appearances:

Ms. Lily Harner, Assistant Discipline Counsel, Paliare Roland

Ms. Betty-Ann Campbell, Law Clerk, Paliare Roland

Professor Eleanor Irwin, Dean's Designate

Mr. M. H. H., the Student, did not attend

Preliminary

- [1] The Trial Division of the University Tribunal was convened on December 9, 2008 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "Code") laid against the Student by letters dated September 6, 2007 and July 8, 2008 from Professor Edith Hillan, Vice-Provost, Academic.
- [2] Thirty minutes after the time at which the hearing was scheduled to begin, the Student had not appeared. Discipline counsel for the University proposed to proceed in the Student's absence.
- [3] The Tribunal heard submissions with respect to the University's request to proceed in the absence of the Student.
- [4] The affidavit of Betty-Ann Campbell (Exhibit 2) sets out in great detail the efforts made by the University Discipline Council to provide notice to the Student of the charges, the particulars of the charges and the hearing date.
- [5] In June, 2007 the Student met with Professor Eleanor Irwin acting as the Dean's designate with respect to the University's concerns regarding alleged acts of plagiarism contained in his essay "The Electoral System and Democracy in Canada". The Student did not admit to having engaged in plagiarism at that meeting but was aware that the University's concerns were not answered by the explanation he offered.
- [6] Professor Irwin's attempts to schedule a second meeting concerning allegations of plagiarism in a subsequent essay entitled "Democratic Deficit in Contemporary Canadian Politics: Evidences on Consultation, Deliberation and Decision Making of the Government" were unsuccessful. The Student did not respond to her request for a meeting.
- [7] The Tribunal is satisfied that the Student received notice of this hearing for the following reasons:
 - (a) The evidence that mail sent to the address listed in the Student's ROSI record was collected and forwarded on to the Student by the then residents;
 - (b) The evidence that the Student's hotmail account was current and active throughout the period from September 6, 2007 until the hearing date on December 9, 2008.
 - (c) The evidence that delivery by courier was accepted by the Student who signed the delivery manifest after identifying himself to the courier as "H".
- [8] As indicated above, the Tribunal delayed commencement of the proceeding on December 9, 2008 for approximately 30 minutes. When the Student failed to appear, the proceedings commenced at approximately 6:00 p.m. that evening. The Tribunal was

unaware that at 5:47 p.m. that evening, the Student had sent Nancy Smart, the Judicial Affairs Officer the following email:

"Hi Nancy, I have received your letter which was couriered to my place. Unfortunately I am sorry to say that I will not be attending the hearing as this was the first time I heard from you. I also saw the copies of the mails attached, which were sent to my old address but I had updated all my information on Rosi when my parents moved back to Pakistan and I moved to Scarborough. It will be very difficult for me to get any representation in such short notice as it is advised to have one. I alone will not be able to take pressure nor be able to represent my self properly and everything I had to say I had told my professors when I had the meetings (which were recorded). I am again really sorry and please let me know if there is anything I can still do?"

Neither the panel nor Ms. Smart was aware of the existence of this email until after the panel had concluded its deliberations.

- [9] In any event, the email confirms that the Student had in fact received notice of these proceedings as a result of the courier delivery referred to above. It was therefore, not by happenstance, that the Student waited until the hearing was in progress before sending his email requesting an adjournment.
- [10] If the Student had attended and requested an adjournment, such a request would have been considered and ruled upon by the Tribunal. He chose, however, neither to appear nor to make his request in writing or by email at any time following December 2, 2008 and prior to the commencement of the hearing.
- [11] Based upon the evidence adduced at the hearing, the panel concluded that the Student did in fact receive reasonable notice of the hearing and in accordance with the provisions of the *Code* and of the *Statutory Powers Procedure Act*. Furthermore, the panel concludes that it was appropriate for the Tribunal to proceed in the absence of the Student without further notice of the proceeding.

Hearing on the Facts

- [13] The charges dated September 6, 2007 are as follows:
 - 1. On or about March 15, 2007, you knowingly represented as your own an idea or expression of an idea or work of another in connection with your essay entitled "The Electoral System and Democracy in Canada", submitted for academic credit in POLA51A3, contrary to Section B.I.1.(d) of the *Code*.
 - 2. In the alternative, on or about March 15, 2007, 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 your essay entitled "The Electoral System and Democracy in Canada", submitted for academic credit in POLA51A3, contrary to Section B.I.3.(b) of the *Code*.

[14] Particulars of the charges dated September 6, 2007 are as follows:

3. You were, at all material times, a student in POLA51A3 taught by Professor Joerg Wittenbrinck.
4. On or about March 15, 2007, you submitted an essay entitled "The Electoral System and Democracy in Canada" that contained excerpts and passages that were not written by you, but were copied without attribution from the work of another student, Mr. M.

[15] The charges dated July 8, 2008 are as follows:

1. On or about June 19, 2007, you knowingly represented as your own an idea or expression of an idea or work of another in connection with your essay entitled "Democratic Deficit in Contemporary Canadian Politics: Evidences from Consultation, Deliberation and Decision-making of the Government", submitted for academic credit in POL214, contrary to Section B.I.1.(d) of the *Code*.
2. In the alternative, on or about June 19, 2007, 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 your essay entitled "Democratic Deficit in Contemporary Canadian Politics: Evidences from Consultation, Deliberation and Decision-making of the Government", submitted for academic credit in POL214, contrary to Section B.I.3.(b) of the *Code*.

[16] Particulars of the charges dated July 8, 2008 are as follows:

3. You were, at all material times, a student in POL214 taught by Professor Tone Careless.
4. On or about June 19, 2007, you submitted an essay entitled "Democratic Deficit in Contemporary Canadian Politics: Evidences from Consultation, Deliberation and Decision-making of the Government" that contained excerpts and passages that were not written by you, but were copied without attribution, or without quotation marks, from other sources.

The Essay Submitted March 15, 2007

[17] With respect to the essay submitted on March 15, 2007 entitled "The Electoral System and Democracy in Canada", the University called as its witness Professor Joerg Wittenbrinck. He reviewed the impugned essay (Exhibit 7) in detail and noted the

similarities between it and another essay previously submitted by another student. Professor Wittenbrinck's testimony concerning Exhibits 8, 9, 10(a) and 10(b) clearly established that significant portions of the Student's essay were not in fact written by the Student but were copied from the work of another student. Indeed, those portions copied retained precisely the same spelling, grammatical and punctuation errors found in the original essay. Furthermore, many of the references cited in the original essay were simply repeated in the Student's version.

- [18] Professor Wittenbrinck confirmed that the written materials he handed out to students warned of the danger of dishonest academic practices including plagiarism (see Exhibit 5). His teaching assistants conducted seminars to assist the students to better understand issues of academic dishonesty and it would appear that the Student attended one of these seminars on January 25, 2007.
- [19] The panel is satisfied that the extent of the plagiarism found in the Student's essay precluded any possibility that this dishonest practice was the result of error or a simple lack of proper attribution. Rather, the panel is satisfied that the Student had made obvious use of another student's paper and submitted the other student's ideas and text as though they were his own. Therefore, the University has proven count #1 of the charges dated September 6, 2007.

The Essay submitted on June 19, 2007

- [20] With respect to the charges dated July 8, 2008, the panel heard evidence from Professor Tone Careless. The outline for that course (Exhibit 12) explicitly indicates that course essays will be reviewed for the detection of possible plagiarism and warned the students of the consequences of such a serious academic offence, should they be found to have engaged in plagiarism.
- [21] The alleged examples of plagiarized content in this essay exhibit somewhat different characteristics from those in the first essay submitted. In the former case, the copied portions were extensive and obvious. In this essay (Democratic Deficit in Contemporary Canadian Politics: Evidences from Consultation, Deliberation Decision Making of the Government), the panel is satisfied that the portions of the Student's essay (Exhibit 13) which appear in bold type, were not the Student's work but were taken from another source.

An example of this can be found on page 2 of the impugned essay. The second to last paragraph (commencing "Canadians generally ...") appears to be the Student's work, while the last paragraph on page 2 (continued at the top of page 3) is both by tone and content obviously an academic work, properly referenced and lucidly written. The contrast between these two paragraphs alone, leads to no other conclusion but that of plagiarism.

- [22] The essay contains references to the work of Cross and Cody, but they are not simply references to research sources, but in fact reflect the actual text or a slightly paraphrased version of those texts. Notwithstanding the fact that the Student actually quoted from

these texts, quotation marks were not used to delineate the words of the source materials from those of his own.

- [23] Professor Careless in his testimony drew the panel's attention to portions of this paper (other than the highlighted portions) which in style and analysis display a measure of sophistication, suggesting that they were in fact written by someone else. While the Tribunal shares Professor Careless' doubts regarding the originality of the essay as a whole, the decision to find the Student guilty is based not on scepticism but on the evidence of Professor Careless which clearly establishes at least three sources from which the Student essentially copied the words of others. The similarity between the essay as submitted and the actual texts of Cross, Cody and co-authors Johnston, Krahm and Harrison leads to no other conclusion but that count #1 of the charges dated July 8, 2008 has been proven overwhelmingly.

Decision of the Tribunal

- [24] The Student is guilty on Charge #1 dated September 6, 2007 and Charge #1 dated July 8, 2008.

Sanction

- [25] Once the panel concluded that the Student was guilty on the first count of both sets of charges, it received submissions on the appropriate penalty to be imposed.
- [26] The University filed a Book of Authorities to assist the panel in determining what other panels of this Tribunal had decided in similar cases of plagiarism.
- [27] Without the evidence of the Student, this panel was unable to consider relevant factors which might influence the appropriate sanction including the character of the person charged, any extenuating circumstances surrounding the commission of the offence and the likelihood of repetition of this offence.
- [28] This panel therefore had to consider the following factors:
- (a) that the Student had been convicted of not one, but two counts of plagiarism;
 - (b) that the Student had shown no remorse nor any acceptance of responsibility when he met with the Dean's designate;
 - (c) the detriment to the University occasioned by the offence; and
 - (d) the need to deter others from committing a similar offence.
- [29] Other panels have noted that the seriousness of the offence of plagiarism is that it undermines the relationship of trust which must exist between the University and its students. As was stated in the *University of Toronto and S.B.* (November 14, 2007) "It hardly needs to be said that the credibility and academic mission of the University, and

the degrees which it awards to students, can be gravely harmed by the commission of offences such as plagiarism and concoction.”

- [30] As stated in *Re: University of Toronto and A.K.* (November 9, 2007) “... it appears in the modern era, particularly as plagiarism has increasingly become the bread and butter of this Tribunal, the Tribunal through a number of cases has established virtually a threshold penalty for those convicted of plagiarism – the two year suspension. The suspension may increase, depending on particular factors and particular cases, including the nature of the plagiarism, the response of the student to the allegations, the conduct of the student throughout the proceeding, whether the charges represented a first or repeated offence, the passage of time since the incident occurred and who contributed to any delay, the expression of remorse, a plea of guilty, or not, any specific extenuating circumstances and other factors. But the consistent minimum penalty appears to be a two year suspension”.
- [31] We agree that a two year suspension appears to be the threshold for a first time offence but in this particular instance, we have concluded that a three year suspension is warranted having regard to the Student having been found guilty of a second count of plagiarism.
- [32] Further, the Student should not be entitled to a grade other than zero in the two courses in which acts of academic misconduct were committed, viz., POLA51A3 and POL214.
- [33] Additionally, there should be a notation of this penalty on the Student’s academic record and on his transcript for a period of four years (or until graduation, whichever occurs first) starting on January 1, 2009.
- [34] Finally, this panel refers this decision to the Provost with the recommendation that the Provost publish the outcome of our decision with The Student’s name withheld.

Date: January 12, 2009



Clifford Lax, Chair

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on July 14, 2008;

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:

THE UNIVERSITY OF TORONTO

- and -

MS. A. K.

REASONS FOR DECISION

Members of the Panel:

Mr. Andrew Pinto, Chair

Professor Marc Lewis, Faculty Panel Member

Ms. Elena Kuzmin, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel

Ms. Tina Lee, Associate to Mr. Centa

Professor Donald Dewees, Dean's Designate, Faculty of Arts and Science

Mr. Isaac Tang, Student Representative, Downtown Legal Services

Ms. A. K., the Student (present)

Preliminary

- [1] The Trial Division of the University Tribunal was convened on November 11, 2008 and December 2, 2008 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "Code") laid against the Student by letter dated July 14, 2008 from Professor Edith Hillan, Vice-Provost, Academic.

Hearing on the Facts

- [2] The charges are as follows:

Charges arising from the application to the Woodsworth College Academic Bridging Program

1. On or about October 3, 2003, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, an application form submitted to the Academic Bridging Program at Woodsworth College, University of Toronto, which failed to disclose that you had previously attended a post-secondary institution, contrary to Section B.I.1(a) of the Code.
2. In the alternative, on or about October 3, 2003, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by submitting an application form to the Academic Bridging Program at Woodsworth College, University of Toronto, which failed to disclose that you had previously attended a post-secondary institution, contrary to Section B.I.3(b) of the Code.

Charges related to the 2007 application for post-admission transfer credits

3. On or about August 31, 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a letter dated April 16, 2007, which purported to be a request to the Kocaeli University for a transcript of your academic record contrary to Section B.I.1(a) of the Code.
4. On or about August 31, 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a document that purported to be an official document from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University contrary to Section B.I.1(a) of the Code.

5. On or about August 31, 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a document that purported to be an official transcript of academic study from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University contrary to Section B.I.1(a) of the Code.
6. In the alternative, in August or September 2007, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by submitting to the University of Toronto:
 - i. a letter dated April 16, 2007, which purported to be a request to the Kocaeli University for a transcript of your academic record;
 - ii. a document that purported to be an official document from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University; and
 - iii. a document that purported to be an official transcript of academic study from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University.

[3] Particulars of the charges are as follows:

7. On October 3, 2003 you signed an application for admission into the Woodsworth College Academic Bridging Program. You were required to list all post-secondary institutions that you had attended in Canada and abroad. By signing the application form, you certified that all statements in the form were true, correct and complete and that you had disclosed all material information.
8. You indicated on the form that you had not attended any post-secondary institutions. This statement was not true. You had studied in the department of photography at Kocaeli Vocational School in Turkey. You knowingly withheld this information from your application, which the University relied upon in reaching its decision to admit you to the program.
9. You registered for a course in the Academic Bridging Program in 2003 Winter term, and thereafter remained registered at the University of Toronto.
10. In August 2007 you applied to the University to obtain post-admission transfer credits. You submitted at least three documents in support of your application for post-admission transfer credits:
 - i. a letter dated April 16, 2007, which purported to be a request to the Kocaeli University for a transcript of your academic record;

- ii. a document that purported to be an official document from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University; and
 - iii. a document that purported to be an official transcript of academic study from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University.
 - 11. Each of the documents you submitted contained false information. None of the documents was an official document from Kocaeli University. These documents were required by the University of Toronto to support your request for post-admission transfer credits. You either forged, falsified or altered these three documents or had them forged, falsified or altered at your request.
 - 12. You submitted these forged, falsified or altered documents in support of your request for post-admission transfer credit. You submitted these documents knowing them to be forged, altered or falsified.
- [4] The Student entered a guilty plea to Charges 1, 3, 4, and 5.
- [5] Discipline counsel for the University introduced the *Agreed Statement of Facts*, which was entered as Exhibit 1.
- [6] Discipline counsel provided an overview of Exhibit 1:
- i. The Academic Bridging Program (ABP) at Woodsworth College at the University of Toronto is designed for individuals who are at least 20 years old, have been away from formal education for some time and do not meet the University's established requirement for direct entry admissions. The ABP is intended to bridge the gap between a student's prior secondary education and the requirements of first-year university courses. Students who successfully complete the ABP are admitted to degree studies in the Faculty of Arts and Science and receive one full credit towards their degree.
 - ii. Applicants to the ABP are required to list their educational background and are directed that "all studies in Canada and abroad must be listed", including secondary and post-secondary institutions.
 - iii. Applicants are required to sign the following certification as part of the application form:

I hereby certify that all statements on the application and in any material filed in support hereof are true, correct, and complete and all material information has been disclosed. I understand that if the University finds to the contrary, my association with, admission to or registration in the University may be rescinded and cancelled after notice in writing to me at my home address as shown hereon. If I am withdrawn from the Academic Bridging Program for not disclosing all the required information

regarding my educational background, I understand that a tuition refund, if any, will be based on the fees scheduled. In addition, other Canadian universities may be contacted.

The Student's 2003 Application to the ABP

- iv. On October 3, 2003, the Student applied for admission to the ABP. On the form she declared that:
 - a. she had attended one secondary school in Turkey from 1989 to 1995;
 - b. she had not attended any post-secondary institutions and wrote "N/A" in that part of the application form;
 - c. between September 1996 and May 1997, she worked for Berlitz in London;
 - d. between August 1997 and August 2000, she worked for Superonline in Turkey;
 - e. all information included in the application was correct and complete and that she had disclosed all relevant information.
- v. The Student admits that from 1996 to 1998 she was enrolled in a 2-year associate degree program at the Kocaeli Vocational School ("KVS"), which is associated with Kocaeli University ("KU"), during which time she studied in the department of photography.
- vi. The Student admits that she did not list her studies at KVS on her ABP application nor did she submit her transcript from KVS as part of the application package.
- vii. The Student agrees that information related to her studies at KVS and KU was material and relevant to the University's consideration of her application to the ABP, and that the terms of the application form required her to provide that information to the University as part of her application
- viii. The Student admits that, contrary to Section B.1.1.(a) of the *Code*, she ought to have known that she had falsified her ABP application form and had circulated that falsified ABP application, which the University required as part of her application to the ABP.
- ix. The Student admits that, contrary to Section B.1.3.(b) of the *Code*, she ought to have known that, by omission, she had misrepresented her academic background on her ABP application form in order to obtain an academic advantage of any kind.

Applications for post-admission transfer credits

- x. Sometimes the University will grant students credit for academic work done at other institutions after they have been enrolled at the University. This is known as a post-admission transfer credit ("PATC").

- xi. Arts and Science students who wish to apply for PATC do so through the Transfer Credit Section ("TCS") of the Office of the Faculty Registrar. As part of the application for PATCs, students must:
- a. provide a paper copy of, or the website address for, the course description for each course for which credit is sought;
 - b. provide an official transcript from the institution where the credit was earned
 - c. certify that all information provided is true, accurate, and complete
 - d. consent to having the University of Toronto confirm with the other post-secondary institution the accuracy of any information submitted by the student.

The Student's application for PATC

- xii. In late August 2007, the Student applied for PATC. She requested that the University grant her credit for five courses that she claimed to have completed at KU between 1996 and 1998, specifically ENF141Y2, *Introduction to Computer Science*; ENF211Y2, *Introduction to Computer Programming*; *Aegean and East Mediterranean Art and Archaeology*; *Later Medieval Art and Architecture*; and *The Archaeology of the Ancient Near East*.
- xiii. On August 31, 2007, the TSC received the following documents via courier:
- a. a letter dated April 16, 2007, which the Student states was written in August, which purported to be from the Student to unnamed officials at KU requesting her official transcript and course descriptions for the five courses.
 - b. a document that purported to be an official academic transcript for the Student from the KU Faculty of Arts and Science.
 - c. a document that purported to be official and certified course descriptions for the five courses.
- xiv. On September 4 and 5, 2007, the Student contacted Ms. Tracy Wood of the TCS to inquire why she was unable to complete the PATC application form on-line.
- xv. Ms. Wood replied that the Student's failure to disclose her prior studies at the time of her application to the ABP was a problem. The Student responded that she had just realized that she could apply for transfer credits, even though she had not completed her prior degree.
- xvi. On November 1, 2007, the Student and Ms. Wood met to discuss the PATC application. The Student indicated that she had sent descriptions of KU courses to KU for approval. During this meeting, the Student did not volunteer that the KU documents were not official.

- xvii. The TCS attempted to contact officials at KU to authenticate the documents in support of the Student's PATC request. On January 29, 2008, Professor Arif Demir, Vice-Rector of Kocaeli University, replied that the Student had studied at KVS between 1996 and 1998, but that the transcript provided by the Student was a fake.
- xviii. On February 29, 2008, Ms. Wood informed the Student that KU had reported the transcript submitted in support of the PATC request was fraudulent. The Student expressed surprise, assured Ms. Wood that there must be a mistake and that she would follow-up with KU.
- xix. On June 16, 2008, the Student met with Professor Don Dewees, the Dean's Designate for Academic Integrity in the Faculty of Arts and Science. During the meeting, the Student admitted that she had paid \$250 to a person in Turkey to forge the KU transcript and the KU course descriptions for her and that the person did forge those documents for her contrary to Section B.I.1.(a) of the *Code*.
- xx. The Student admits that she knowingly uttered, circulated and made use of the KU transcript and KU course descriptions as part of her application for PATC, knowing that the documents were forged and/or contained falsified information, contrary to Section B.I.1.(a) of the *Code*.
- xxi. The Student admits that she knowingly uttered, circulated to the University, and made use of the Letter as part of her application for PATC knowing that it contained false and falsified information about her academic record at KU, contrary to section B.I.1.(a) of the *Code*.
- xxii. The Student admits that she intended the University to rely on the KU documents in order for her to obtain an academic advantage, namely PATC.

Decision of the Tribunal on Charges

- [7] Following deliberation, the Tribunal accepted the Student's guilty plea on Charges 1, 3, 4, and 5. Consequently, the University withdrew Charges 2 and 6.
- [8] The matter then continued with a hearing into the appropriate sanction. The University advised the Tribunal that it was seeking the ultimate penalty, recommendation for expulsion from the University, pursuant to section C.II.(b)(1)(i) of the *Code*. The University called no evidence but relied upon the Agreed Statement of Facts.
- [9] The Student's representative, Mr. Tang, submitted that there were mitigating factors and that the appropriate sanction was suspension from the University for 5 years and recording of the sanction on the Student's academic record for a period of 5 years from the date of suspension.

- [10] The only witness at the hearing was the Student herself.

The Student's Evidence on Sanction

- [11] At the outset of the Student's evidence, Mr. Tang provided the University and the Tribunal with a Student's Book of Documents (Penalty Phase). Mr. Centa, on behalf of the University, reserved the right to contest the admissibility or weight of the documents which were being disclosed for the first time.
- [12] The Student testified in respect of the penalty phase. She is now 30 years old and married. She stated that she grew up and finished her high school education in Turkey. In terms of post-secondary education, she was enrolled in a degree program at KU in the department of photography and paid tuition for 2 years between 1996 and 1998, but only attended for one year.
- [13] The Student produced a document which she identified as her true transcript from KU. The transcript, in the Turkish language, shows course enrollments in respect of the 4 half-year terms from 1996 to 1998. The transcript shows that the Student participated in 20 courses in 1996-97 and obtained marks ranging from 52% to 98%. In 1997-98, the transcript shows the Student enrolled in 12 courses, 7 of which have a grade indication of "Basarisiz", and 5 of which show "Devamsiz". One of the documents in the Student's productions indicates that, in Turkish, "Basarisiz" has two meanings: 1) a course in which one is registered and earns a grade less than 50%; and 2) a course for which one pays tuition (i.e., registers), but does not participate. The Student indicated that the second meaning accurately reflects her situation. She then explained that "Deramsiz" indicates that one neither paid course fees nor participated in the courses in which one enrolled. The Student testified that she did not participate in these 12 courses because her parents' marriage broke up and she had to support her two younger sisters.
- [14] The Student immigrated to Canada in September 2002 at the age of 24. She followed her husband who obtained employment in Canada. The Student's entire family remained in Turkey. Her husband and members of his family are in Canada. In 2003, the Student and her husband faced financial hardship and borrowed \$35,000 from her husband's family.
- [15] In October 2003, the Student successfully applied for entry to the University of Toronto through the Academic Bridging Program at Woodsworth College. The Student testified that she did not at the time list her post-secondary attendance at KU in Part D of the ABP Application Form because (i) she did not understand the proper meaning of "abroad"; and (ii) she did not complete a degree at KU.
- [16] The Student commenced regular undergraduate studies at the University of Toronto in September 2004. She was pregnant at the time and gave birth to a daughter in April 2005. She testified that she struggled as a new mother as her daughter suffered with colic for more than 10 months and slept poorly. After

giving birth, she developed post-partum anxiety. Previously, the Student had miscarriages in 2000 and 2003.

- [17] The Student testified that her financial difficulties continued and that by the end of 2006, tension with her husband's family became unbearable. The family wanted her to graduate from university as soon as possible and start earning a living. In early 2007, she decided that if she could obtain credit for 2 courses she would save \$1200 in tuition obligations and would graduate sooner. She testified that she tried to obtain her transcript from KU through a friend in Turkey but was unsuccessful. In the summer of 2007, she enrolled in 6 half-courses at the University. During this time, she could not afford proper daycare for her daughter. She was also diagnosed with Graves disease and her anxiety level was very high. She had difficulty sleeping.
- [18] On August 21, 2007 she received a long distance call from an individual in Turkey who identified himself as a legal counselor. Apparently, the Student's friend in Turkey arranged this call. The individual advised the Student that for \$250 (CAD) he would prepare and provide her with documentation showing that she had taken various university courses in Turkey. She could then obtain transfer credits for these courses from the University of Toronto. The Student testified that she did not know what documentation this individual was going to produce, although she did understand that it was going to be fraudulent. On August 23, 2007, the Student participated in a second call with this individual and discussed course names and descriptions. The individual provided her with the text of a cover letter which she signed and sent back to the individual with the \$250 payment. She testified that the two long distance telephone calls and chatting on MSN (Microsoft Network) were the only communications she had with this individual.
- [19] In late August 2007, the Student applied for Post-Admission Transfer Credits (PATC) on the basis of the fraudulent documentation that the individual in Turkey sent to the University. The Student testified that the first time she actually saw the fraudulent documentation was when the University disclosed its documentation to her in the context of this academic discipline hearing.
- [20] In any event, in September 2007, the Student attempted to determine from the University why she could not complete her online transfer credit application. She was advised by Tracy Wood, the University's employee responsible for credit transfers, that there was a problem because the Student had not disclosed her post-secondary attendance at the time of her admission to the University. Ultimately, this led the University to obtain confirmation from KU that the Student's PATC documentation was fraudulent, and the University charged the Student with academic misconduct.
- [21] The Student testified that she felt shame and remorse at her conduct and that she was deeply sorry for her actions. Her dream was to complete a Master's Degree in Fine Arts in the area of Gallery Studies. She stated that if she was

expelled from the University there would be no future for her in Canada and that she would have to consider returning to Turkey.

[22] The Student produced a number of relevant documents in the course of her evidence. Of particular relevance are:

- a recommendation letter dated September 10, 2002 purportedly signed by the Dean of KU. The letter states that "the Student was one of the most successful students in the Photographic and Graphic Arts section."
- a document confirming that the Student obtained her Canadian citizenship in December 2006.
- a medical report dated November 14, 2007 from an endocrinologist who examined the Student. The report is directed to another physician and appears to have been issued in respect of the Student's thyroid problem, among other medical issues. The endocrinologist did not testify at the hearing. The University contested the admissibility of the medical report and, in the alternative, suggested that the Tribunal assign it little weight. The Tribunal permitted the admission of the report into evidence subject to the Tribunal's own determination on weight. The Student highlighted the fact that the Report referred to her as being diagnosed with Graves disease, a thyroid disorder.
- a psychological report dated June 10, 2008 concerning the Student. The author of the report has a Masters degree in Psychology and issued the report at the Student's request. Once again, the University contested the admissibility of the psychological report since its author did not testify at the hearing. The Tribunal allowed this report to be entered into evidence subject to determination regarding weight. The bulk of the psychological report conveys what the Student advised the psychological consultant about her challenges as a new mother and immigrant. The report includes a paragraph that states, "[The Student], a mother of a newborn baby and a full time university student who lacks enough social and financial support probably went through a psychological burnout period. Her poor psychological and physical health (thyroid dysfunction) all combined might have caused her an impaired judgment."
- the Student's University of Toronto transcript as of November 6, 2008 showing her course enrollments, grades, sessional and cumulative grade point averages (GPAs) from September 2003 up to and including Summer 2008. The Student testified, and the transcript confirms, that she has completed 18 course credits. She would need 20 credits to graduate with a Bachelor of Arts degree from the University.

[23] Mr. Centa, on behalf of the University, cross-examined the Student. He directed her to her October 2003 application for the Academic Bridging Program (ABP). In her evidence-in-chief, the Student had indicated that one of the reasons she did

not indicate her post-secondary attendance at KU was that she didn't understand the word "abroad." However, when confronted with the fact that she had nevertheless listed her high school in Turkey in an earlier section of the ABP Application that required the "name of secondary schools attended in Canada and abroad", the Student stated that she focused on the "secondary schools" aspect. In respect of the Student's other reason for not including her studies at KU - because she did not complete a degree - Mr. Centa drew the Student's attention to the fact that the Application had separate columns for "Degree/Diploma Sought" and "Check if conferred", but the Student had simply written "N/A". There also appeared to be a contradiction between the Student's evidence that, in reality, she was enrolled at KU between 1996 and 1998, and her ABP application which indicated that she was employed at Berlitz in London. The Student responded that that her command of English was considerably worse in 2003.

- [24] Turning to the Student's financial circumstances, the Student confirmed that she did not make a loan application to the Ontario Student Assistance Program (OSAP) which would have provided her with financial assistance. She also conceded that the \$35,000 loan from her husband's family did not contain any interest or fixed repayment obligations.

Submissions

- [25] Mr. Centa, for the University, submitted that the appropriate sanction was recommendation for expulsion and a permanent notation on the Student's record. He suggested that while Tribunal panels are not bound by precedent in the strict legal sense, consistency with earlier Tribunal decisions is to be encouraged. Submission of false transcripts and documentation has been considered one of the most serious forms of academic misconduct. Tribunals have consistently, but not in every case, recommended expulsion.
- [26] Mr. Centa suggested that a recent case, *Ms. K. (November 5, 2008)*, was remarkably similar to the facts of this case and merited particular attention. The Tribunal in *Ms. K.* ultimately recommended expulsion. *Ms. K.*, like the present Student, pleaded guilty to submitting 3 fraudulent documents including a falsified transcript to obtain Post Admission Transfer Credits (PATC). *Ms. K.* involved a third party in her fraudulent scheme, but in her case no money changed hands. *Ms. K.* had obtained 19 credits over a 10 year period, mostly as a part-time student while working. She was just one credit short of being eligible to graduate. The Tribunal determined that, while *Ms. K.* had health problems, including depression, anxiety and panic attacks, *at the material time*, namely when the false documents were created, she was physically and mentally well. As well, although *Ms. K.* pleaded guilty at the discipline hearing stage, she was not forthright when first confronted with the misconduct allegations. Ultimately, the Tribunal recommended expulsion for *Ms. K.* because of the planned and deliberate nature of her offence, which involved a third party with a view to maximizing the scheme's chance of deception. Mr. Centa submitted that, given

the strong similarities between the facts in *Ms. K.* and the present case, the Tribunal should also recommend expulsion.

- [27] Mr. Centa emphasized that the Student's actions were planned and deliberate. The scheme involved a third party (the contact in Turkey), and featured a commercial element (the \$250 payment). The misconduct was not occasioned in a momentary lapse but executed over several months. The omission of post-secondary studies from the Student's ABP in October 2003 appeared deliberate rather than as a result of her misunderstanding the word "abroad" or based on the non-completion of a degree in Turkey. The Student also failed to include as part of her ABP application the recommendation letter that the KU Dean had purportedly provided to her in 2002 which clearly referenced her post-secondary studies in Turkey.
- [28] Mr. Centa submitted that the impact of transcript and academic documentation fraud on the University is grave. He emphasized the importance of general deterrence since the incidence of transcript fraud is on the rise, in part, due to the advance of technology. He suggested that the fact that the *Ms. K.* case and the present case occurred in the recent past provided some evidence justifying the University's growing concern. The aggravating circumstances, which involved a planned and deliberate deception, far outweighed the mitigating factors. The medical evidence concerning the Student's health challenges was weak; and the mitigating circumstances such as the Student's financial and child care stresses were not sufficiently causally connected to her offence.
- [29] In conclusion, Mr. Centa submitted that recommendation for expulsion and permanent notation was the only appropriate penalty. He conceded that an expulsion from the University of Toronto would be a relevant consideration and potential barrier if the Student applied for admission to another university. However, the expulsion should not automatically preclude the Student from completing her Arts degree. Her 18 course credits and related grades from the University remained intact. She may obtain credit for some of these courses and, subject to residency and other requirements, graduate from another institution.
- [30] Mr. Tang, on behalf of the Student, conceded that the Student's misconduct called for a serious sanction but that recommendation for expulsion would be an excessive penalty. He sought a five year suspension and notation on the Student's academic record and argued that this would represent a better balancing and resolution of the *Code's* sanctioning objectives. Mr. Tang suggested that his client, a relatively new mother, struggling with her family to find her footing in Canada, had already learned a harsh lesson. She had admitted guilt at the Dean's Designate meeting in June 2008 and was honest and forthright about the nature of her misconduct at the hearing.
- [31] Mr. Tang disagreed that the Student's misconduct was planned and deliberate and suggested that the fraudulent arrangement came into being over a mere 3 day period in August 2007, during a time of great stress for the Student. He

reminded the Tribunal that the Student testified that in early September 2007 she attempted to cancel the PATC process but this failed when Tracy Wood was not able to meet with her. Mr. Tang disagreed that the October 2003 ABP was a deliberate concealment of the Student's post-secondary studies at KU. The consequences of expulsion, he suggested, would be extremely grave for the Student as she would effectively lose 3 years of labour and seriously jeopardize the likelihood of her ever attaining her degree. He pointed to the mitigating factors operating at the material time such as the medical issues cited in the endocrinologist's and psychological consultant's reports. To this extent, the Student's case was distinguishable from the case of *Ms. K*. Ultimately, a suspension of 5 years would accomplish many of the same deterrence objectives as expulsion, except suspension would provide the Student with some possibility of academic rehabilitation.

- [32] Mr. Centa and Mr. Tang also referred to previous decisions of the Tribunal which appeared to support the sanction they proposed.

Decision of the Tribunal on Sanction

- [33] The Tribunal has carefully reviewed the evidence and the submissions made on behalf of the University and the Student. We have considered the classic factors identified in the *Mr. C*. decision (November 5, 1976):

- 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.

- [34] In our view, the Student's actions in this case merit a recommendation for expulsion and a permanent notation on her academic record. The Tribunal notes that the Student's misconduct occurred during two different time periods, in 2003 and 2007. This significantly undermines the Student's argument that her financial, health and child-care challenges were relevant factors that should mitigate the most serious sanction.

- [35] With respect to Charge # 1, although the Student suggested that her omission of post-secondary studies was the result of her simply misinterpreting the application form, the Tribunal finds that the evidence is more consistent with her deliberately omitting her studies at KU to enhance her eligibility for entrance into the ABP. The Student's explanation that she misunderstood the meaning of "abroad" is contradicted by her apparent understanding of the term in a different part of the application where she listed her secondary schooling in Turkey. Although the Student's first language is not English, the possibility that she

misinterpreted the term "abroad" is also diminished by the fact that the relevant part of the ABP form contains the instruction "If Abroad State Country", in reference to the requirement to list "Post-Secondary Institutions Attended". The Student indicated "N/A" (not applicable) directly below this instruction. The bottom of the ABP application form states "Transcripts from post-secondary institutions must be mailed directly from the institution to us", without referring to the term "abroad", yet the Student did not arrange for her KU transcript to be sent to the University. The Student also did not forward to the University the recommendation letter that the Dean of KU had supposedly prepared for her in September 2002 describing her as "one of the most successful students in the Photograph and Graphic Art section."

- [36] The Student's alternative explanation that she didn't list her KU post-secondary studies because she did not complete her degree is undermined by the fact that the ABP application clearly provides an opportunity for applicants to distinguish between post-secondary degrees sought and those actually conferred. On her ABP application, under "Activities", the Student indicated that she was employed by Berlitz in London at or around the same time that, in reality, she was enrolled at KU. Together these factors make it difficult for the Tribunal to conclude that the Student was merely careless when she omitted her post-secondary studies on her ABP application. The Tribunal finds that the Student falsified her ABP application to obtain academic advantage for admission to the University.
- [37] Unfortunately, four years later in September 2007, the Student's misrepresentation from 2003 revisited her when she attempted to obtain Post-Admission Transfer Credits (PATC) for courses that she claimed to have taken at KU in Turkey. The Student had provided the University with contradictory information. To obtain entry into the ABP in 2003 she claimed that she had no prior post-secondary education, but in 2007 to obtain PATC she claimed that she did. The University made inquiries and, consequently, the Student's misconduct in both instances was exposed.
- [38] The Tribunal finds that the Student also engaged in a planned and deliberate scheme to mislead the University in 2007. In her evidence before the Tribunal concerning sanction, the Student attempted to minimize her involvement concerning the fraudulent cover letter, transcript and course descriptions (which relate to Charges 3, 4 and 5). She suggested that an unscrupulous individual in Turkey contacted her at a time of great stress in her life and, in desperation, she agreed to whatever he suggested. Within a few days, arrangements were in place to obtain the PATC that would allow the Student to graduate sooner and with less financial debt. The Student testified that, with the exception of the cover letter, she did not even know what false documentation had been sent to the University on her behalf. The Tribunal is skeptical of the Student's explanation but more to the point, the Tribunal is not persuaded that a material distinction should be made in sanction between a student who directly perpetrates a fraud and one who contracts out the fraudulent activity to a third party and claims ignorance. Here the Student clearly knew that a fraud was

being perpetrated on the University. The fact that she supposedly didn't know or didn't inquire into the precise details is not going to ameliorate the sanction.

- [39] The Tribunal also finds that the Student did not disclose her misconduct at the first opportunity or even early in the discipline process. Assuming, without agreeing, that the misconduct began in August 2007, the Agreed Statement of Facts discloses that the Student continued to mislead the University about the true nature of her KU studies at meetings in September and November 2007 and February 2008. At the February meeting, the Student contacted Ms. Wood and expressed surprise to hear of the allegations of fraud and assured Ms. Wood that there must be a mistake. It was not until June 16, 2008, during the Dean's meeting, that the Student admitted that she paid \$250 to an individual in Turkey to perpetrate the fraud.
- [40] The commercial aspect of the fraud is an aggravating factor that supports the most serious sanction since it relates to the unfortunate institutionalization or professionalization of the academic forgery business. Generally, the University cannot sanction these fraud artists directly but it can strongly sanction the students who unwisely use their services.
- [41] The Tribunal was concerned that the Student was near to the completion of her degree and questioned to what extent this should affect the appropriate sanction. We concluded that the nearness of completion of a degree is a relevant but not determinative factor in respect of sanction. We find support for our decision based on the reasoning of the Tribunal in *The University of Toronto v. Student*, Case No. 499 (2008-2009), which held:

[73] The University argues that in the Mr. P. decision, the Tribunal said at paragraph 13 that while the student's circumstances - "he is very close to obtaining his degree from this University and that, should he be expelled, he may have difficulty in securing a place at another university" - were "perhaps unfortunate, we are not persuaded that this is a relevant factor for us to consider". We note, however, that in the next paragraph, the Tribunal did in fact consider and reject the argument that this detriment should result in mitigation of the expulsion penalty. In this sense, the Mr. P. decision again supports the proposition that consequences for the student - as for the University - are relevant but not determinative considerations in weighing the various factors in Mr. C.

- [42] The student in *Ms. K.* was only one credit away from meeting her graduation requirements when the Tribunal recommended her expulsion. Viewed in isolation, imposing a sanction leading to expulsion on a student who is one or two credits short of graduation may appear unduly harsh. However, these students have likely been part of the university community for a number of years and ought to understand better than most that serious misconduct at any stage in their academic career may result in the ultimate sanction. We advocate an approach that does not view the nearness of completion of a degree in isolation; but rather one that neither penalizes nor rewards a student for this fact in terms of sanction. We suggest that the better approach is for the Tribunal to have greater information on the actual consequences of the proposed sanction. Is the

student unlikely to ever graduate? What kind of courses would the student still have to fulfill? Of course, as in the present case, the answers to these questions may not ultimately result in the Student receiving less than the ultimate sanction, primarily due to the serious nature of the offence involved.

- [43] The Student did provide a letter from an endocrinologist and a psychological consultant. Notice of these documents was given to the University at the last minute and neither witness was called upon to testify. The Tribunal is entitled to permit hearsay evidence subject to a determination of what weight should be attributed to the evidence. With respect to the endocrinologist's letter, while it clearly states that the Student has a thyroid-related medical problem including Graves' disease, the letter does not indicate how, when, and to what extent the problem manifested itself. The letter states that a "scan of the thyroid was done on May 24 [2007] and showed a very elevated radioactive iodine uptake at 58% which is twice normal with a diffuse picture in keeping with Graves' disease." But the endocrinologist's letter, dated November 14, 2007, concludes, "[H]owever, it is very hard to know where she is in terms of the state of the Graves' disease." The letter provides little evidence that the Student's thyroid-related disorder manifested itself in August 2007 in a way that would impair her judgment or provide a sufficient nexus to her misconduct.
- [44] The psychological consultant's report, unlike the endocrinologist's, was clearly written in contemplation of the Student's discipline hearing. The report contains much of the same information as the Student provided in her own evidence; therefore the Tribunal prefers to receive the Student's evidence directly, particularly as the witness was not present to be cross-examined. In any event, the Tribunal finds that this report does not particularly assist the Student as it concludes that, "Her poor psychological and physical health (thyroid dysfunction) all combined *might* have caused her an impaired judgment." [emphasis added]. In the Tribunal's view, the report's tentative conclusion minimizes the Tribunal's reliance on it as evidence of mitigation in respect of the Student's psychological frame of mind at the material time.
- [45] The Student did not provide additional witnesses or documentation that could have spoken to her character or the apparent challenges she was facing in 2007. It is unclear what difference this would have made in light of the evidence that was in fact presented and the serious nature of her misconduct. But the Tribunal was unable to have a greater appreciation of any mitigating factors, assuming they existed, without this evidence. It was also unclear to the Tribunal why the Student would necessarily be forced to return to Turkey if the sanction of recommendation for expulsion was imposed. The Student is a Canadian citizen and she has a husband and young child in Canada. The Tribunal is obliged to be mindful of the potential implications of the penalty it imposes; however, the drastic outcome suggested by the Student appears to be based on a mix of personal and other factors that were not disclosed to the Tribunal at the hearing.
- [46] The Student has shown insight into her regrettable actions. Clearly, she had to juggle some very challenging financial, academic and family responsibilities

shortly after arriving in Canada in 2002. However, the Tribunal is faced with a situation where it was not presented with sufficient evidence of a nexus between the adverse circumstances apparently facing the Student and her impugned conduct. The Tribunal's reasoning in *University of Toronto v. Student*, Case No. 440 (2006-7) seem appropriate:

[26] The Tribunal was not unmoved by the sad circumstances of the Student's life with her parents, her significant others, and her motor vehicle accident. There is no question but that such events presented difficulties for the Student and compromised her happiness and equanimity. Finally, it is clear that she suffered some ill health as a result of being in a motor vehicle accident and the Tribunal accepts that she suffered some pain and that she was obliged to undergo rehabilitative treatments for the effects of the motor vehicle accident. As a consequence, it is clear that these circumstances created adversity for the Student when she was confronted by the rigors of the academic environment in which she enrolled.

[27] The Student explained the decision to purchase essays by reference to these adverse circumstances. The question that arises is whether these adverse circumstances should operate to mitigate the punishment for the offence that occurred. The Tribunal was presented with argument about the causal connection that existed (or, in the argument of the Discipline Counsel, did not exist) between the offence and the adverse circumstances.

[28] Adversity alone is not sufficient to mitigate the punishment for the offences under the Code. If adversity alone could excuse cheating, then the essence of the Code would be demeaned, because it would suggest that the Code requires adherence to a standard of conduct that can only occur where adversity does not exist. This cannot possibly be true. Virtually every student experiences adversity of one kind or another while in the University environment. Whether that adversity is emotional, economic, or physical, it cannot but affect a student negatively. Adversity is part of the human condition. As such, we are entitled to expect that fundamental values survive those aspects of everyday life, one of which is adversity. The ability to persevere and overcome adversity is fundamental to any endeavour and is equally critical to academic success as it is to success in any other field of human endeavour. Adversity itself cannot become an excuse and mitigator of the commission of an offence. The academic environment at the University rewards perseverance in the face of adversity; the Code - which supports the academic environment - does not contemplate adversity as an excuse and mitigator for offences that threaten the integrity of the community.

[29] Of course, there may well be adverse circumstances that give rise to the commission of an offence, and such adverse circumstances might be seen as so clearly causally connected to the offence that they alter the judgment and ability of the student to elect between right and wrong, and therefore those circumstances would operate to mitigate the punishment. The Tribunal did not regard those circumstances offered by the Student as either causally connected to the offence, or as so clearly connected that they had the effect of preventing the Student from knowing or electing between right and wrong.

[47] The Tribunal recognizes that the Student appears to be genuinely remorseful for her conduct. The fact that she eventually admitted to the charges in the Notice speaks positively to her character. The Tribunal also believes that she is unlikely to repeat this offence. However, the oral and written evidence presented by the

Student did not provide a sufficient nexus to the circumstances surrounding the commission of the offence to persuade the Tribunal that a lesser sanction was appropriate.

- [48] We therefore recommend to the President that he recommend to Governing Council that the Student be expelled from the University and that a permanent notation of this expulsion be recorded on the Student's academic record. We further instruct that this case be reported to the Provost, so that a notice of these proceedings may be printed in the University's newspaper with the Student's name withheld.

January 14, 2009

Date

Andrew Pinto

Mr. Andrew Pinto, Chair

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL – TRIAL DIVISION**

IN THE MATTER of charges of academic dishonesty made on July 25, 2008;

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

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters, 1995*;

BETWEEN:

UNIVERSITY OF TORONTO

-and-

[REDACTED] [REDACTED]

Members of the panel:

- Mr. Ronald Slaght, Chair
- Professor James Rini, Faculty Member
- Ms. Melany Bleue, Student Panel Member

Appearances:

- Mr. Robert Centa, Assistant Discipline Counsel for the University of Toronto
- Professor Eleanor Irwin, Dean's Designate, University of Toronto at Scarborough
- Ms. Sarah Crowder, Student Legal Representative, Downtown Legal Services
- Ms. [REDACTED] [REDACTED] Student

REASONS FOR DECISION

1. The Trial Division of the University Tribunal was convened on September 8, 2008 to consider charges brought under the *Code of Behaviour on Academic Matters, 1995* ("Code") and laid against the Student by letter dated July 25, 2008 from the Vice-Provost, Academic, Professor Edith Hillan.

Hearing on the Facts

The charges are as follows:

- (i) On or about May 28, 2008, you knowingly used or possessed an unauthorized aid or aids or obtained unauthorized assistance in an academic examination or term test, namely the mid term examination in FREA96H3, contrary to Section B.I.1(b) of the *Code*.
- (ii) In the alternative, on or about May 28, 2008, 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 during the mid term examination in FREA96H3, contrary to Section B.I.3.(b) of the *Code*.

2. At the outset of the hearing, the Tribunal was informed that matter would proceed as a plea of guilty based upon an Agreed Statement of Facts, dated September 9, 2008, and a Joint Submission on Penalty, dated September 8, 2008. The details of the Agreed Statement of Facts are summarized here:

- In the 2005 Fall, the Student was admitted to the University of Toronto at Scarborough.
- In 2008 Summer, the Student enrolled in FREA96H3, *Introductory French I*, taught by Rostyslav (Ross) Bilous. As part of the course requirements, students were required to write a mid-term test worth 25% of the final grade. Students were not permitted to use any aids during the writing of the mid-term.
- On May 28, 2008, during the writing of the mid-term, Mr. Bilous and the presiding invigilator discovered the Student in possession of, and copying from, pieces of paper that contained both typed and handwritten text relevant to the subject matter of the mid-term. The papers were confiscated from the Student, but she was permitted to continue writing the mid-term.
- The Student admits that she knowingly used and possessed unauthorized aids and obtained unauthorized assistance in the mid-term, contrary to Section B.i.1.(b) of the *Code*. The Student admits that she is guilty of charge #1 of the charges filed by the University.

3. The Student pleaded guilty to count 1 of the charges. On the basis of the ASF, the Tribunal accepted the plea and made a finding that the Student was guilty of Count 1. The remaining charge was withdrawn.

Decision

4. The panel accepts the Student's plea and enters a verdict of guilty on charge 1. The University withdraws the remaining charge.

Penalty

5. In an Agreed Statement of Facts pertaining to sanction, the panel was informed of prior academic offences committed by the Student as well as mitigating factors that were taken into consideration when preparing the Joint Submission on Penalty. Briefly, the Student had been sanctioned at the divisional level on two prior occasions, April 27, 2006 and November 16, 2006, for acts contrary to the *Code*. However, in the weeks prior to the instant offence, the Student's family, and the home where she lived, were threatened and harassed by individuals seeking to collect on gambling debts owed by a member of the Student's family. To her credit, the Student immediately admitted to committing the current offence; within days of committing the offence, the Student withdrew from all other courses in which she was enrolled, effectively placing herself on a voluntary suspension; and, finally, the Student enrolled in a counselling program focussed on exploring and correcting the underlying causes and motivations that led her to commit these academic offences.

6. The Joint Submission on Penalty recommended the following sanctions:

- (i) the University Tribunal impose a grade of zero in the course FREA96H3;

- (ii) that the Student be suspended from the University of Toronto until April 30, 2011;
- (iii) that the Student's academic record and transcript bear a notation until April 30, 2011, indicating that she has been found guilty of an academic offence;

7. The parties submit that the University Tribunal should report this case to the Provost who may publish a notice of the decision of the University Tribunal and the sanctions imposed with the Student's name withheld.

8. In support of the recommended sanction, counsel for the University reviewed for the panel previous decisions of the Ontario Court of Appeal (on the effect of a Joint Submission on discretion in sentencing) and the University Tribunal. While acknowledging the right of the Tribunal to impose a sanction different than that proposed by the parties, counsel for the University reminded the panel of the deference that is owed to joint submissions. Although the Tribunal is not bound by previous decisions, discipline counsel argued that the proposed sanction is within the range of penalties imposed by other Tribunal panels in similar cases.

9. The panel sought clarification as to the Student's academic status relative to graduation, to which the University replied that the Student had completed 13.5 credits and was, therefore, past the half way point to completion. The Student would have to complete 6.5 credits following her return to the University. Therefore, 2012 is the earliest that the Student would be eligible for graduation.

10. The Panel accepted the Joint Submission on Penalty. In reviewing the facts, the Panel acknowledged that the Student admitted the offence and cooperated with the University.

However, the Student should be aware that this was a very "close call". But for the University's acquiescence in a suspension of less than three years, we would not have imposed this sanction. We would likely have imposed a sanction of three years or more. The panel is concerned that there is no evidence to suggest that the Student has learned anything from the two previous offences for which she was sanctioned. Although we will accept this Joint Submission, we are not without our doubts about its propriety. We recognize that two years and eight months is a long time to be away from the University. We expect that by the time the Student returns to the University, she will have learned that there had better not be a fourth offence. We hope that the Student will benefit from the counselling she has undertaken. Although it is difficult for us to infer very much at this early stage, given the absence of any reports or evaluations from the counsellor, we are pleased to see that the Student has taken this initiative. The fact that the Student voluntarily withdrew from her courses (leaving these to be added to her course work upon her return) was an act that allowed the panel to ultimately accept this Joint Submission. That was a factor we put some emphasis on when accepting the Submission. Therefore, the penalty in this case will be:

- i. suspension from the University until April 30, 2011;
- ii. a grade of zero in the course FREA96H3;
- iii. a notation on the Student's transcript until April 30, 2011, indicating that she has been found guilty of an academic offence;
- iv. a report to the Provost who may publish a notice of the decision of the University Tribunal and the sanctions imposed with the Student's name withheld.

Nov 3/08
Date

W. Slaght
Ronald G. Slaght, Chair

