

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on date,
September 1, 2005,

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 -

The Student

Members of the panel:

- Ms Julie Hannaford, Chair
- Professor Markus Bussmann, Faculty Panel Member
- Ms Saimah Aleem, Student Panel Member

Appearances:

- Ms Linda Rothstein, for the University of Toronto
- Mr. Robert Centa, for the University of Toronto
- Ms Emily Lawrence, for the University of Toronto

- The Student
- Mr. Rob Wakulat, for the Student

BACKGROUND

- [1] The Trial Division of the University Tribunal was convened on November 15 and November 16, 2005 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the “Code”). The Notice of Hearing is dated October 25, 2005.
- [2] The Student entered the University of Toronto in the fall of 2001. She has pursued studies at the University since 2001 and continues as a student in the University at this time. The allegations which were the subject of the present proceedings occurred in 2003 and 2004

- [3] When any student enters the University of Toronto, that student is taken to accept and agree to comply with the *Code of Behaviour on Academic Matters*. That code is the foundation for the University’s reputation and status in the academic community. The *Code of Behaviour on Academic Matters* governs and defines “the responsibilities of all parties to the integrity of the teaching and learning relationship. Honesty and fairness must inform this relationship, whose basis remains one of mutual respect for the aims of education and for those ethical principles which must characterize the pursuit and transmission of knowledge in the University.”
- [4] The *Code of Behaviour on Academic Matters* not only prescribes the way in which the teaching and learning relationship flourishes, but not surprisingly it governs what occurs when the teaching and learning relationship is undermined by certain types of conduct by either the teacher or the student. The *Code of Behaviour on Academic Matters* provides that the faculty and students in the University are involved in a balanced cooperative relationship involving teaching and learning. The *Code* also provides:

Such co-operation is threatened when teacher or student forsakes respect for the other – and for others involved in learning – in favour of self-interest, **when truth becomes a hostage of expediency**. On behalf of teacher and student and in fulfillment of its own principles and ideals, the University has a responsibility to ensure that academic achievement is not obscured or undermined by cheating or misrepresentation, that the evaluative process meets the highest standards of fairness and honesty, and that malevolent or even mischievous disruption is not allowed to threaten the educational process.

- [5] Paragraph 1 of the codified offences relates to seeking credit or other advantage through fraud or misrepresentation or seeking to disadvantage others through disruptive behaviour, dishonesty or unfairness. Consequently, Section B.I. 1. (b) provides:

It shall be an offence for a student knowingly:

- (b) to use or possess an unauthorized aid or aids or obtain unauthorized assistance in any academic examination or term test or in connection with any other form of academic work

- [6] Subparagraph, B.I. 1. (d) provides:

It shall be an offence for a student knowingly:

- (d) to represent as one’s own any idea or expression of an idea or work of another in any academic examination or term test or in connection with any other form of academic work, i.e. to commit plagiarism.

- [7] The Student admits to having committed the offences set out in B.I. 1.(b) and (d).

- [8] The Student and the University agree relating to the offences as follows:

I. “Micro-Credit – December 1, 2003

1. In the fall of 2003, The Student enrolled in “Economics of Micro, Small and Medium Sized Enterprises and of Micro-Credit,” 1DSB05, which was taught by Prof. Albert Berry (“Micro-Credit”).

2. Prof. Berry assigned the students in Micro-Credit a term paper worth 30% of the final grade in the course. The paper was due on December 1, 2003.
3. Professor Berry also provided the students in Micro-Credit with a list of illustrative paper topics for the term paper ("Topic Handout"). Illustrative topic #25 suggested:

"When large and small firms come into conflict in the legal system, some believe that the latter have little chance of victory. Review the evidence, for any country (developed or developing) on this issue."
4. On October 22, 2003, after receiving a copy of the Topic Handout, The Student went to Essay Experts Inc. to order a custom essay from the company. The Student ordered a 15-page paper, which would utilize 8 secondary sources, in the subject area of International Development Studies. The Student ordered a paper on the following topic:

"When large and small firms come into conflict in the legal system, some believe that the latter have little chance of victory. Review the evidence, for any country (developed or developing) on this issue."
5. The paper that The Student ordered was on exactly the same topic suggested on Topic #25 from the Topic Handout.
6. Essay Experts Inc. advised The Student that producing the paper would cost \$452 plus the Goods and Services Tax. The Student paid a \$250 deposit on a Visa credit card in her name.
7. The Student returned to pick up the essay on December 1, 2003. She paid the outstanding balance of \$233.65 on the essay on the same Visa card on which she had placed the deposit.
8. On December 1, 2003, a paper entitled "Disputes Between Small Firms and Large Firms" was submitted in The Student's name to Prof. Berry in an envelope. The Student did not submit the paper herself, but arranged for her boyfriend to hand in the paper.
9. Prof. Berry opened the envelope some time later to discover that it contained the paper in The Student's name and a receipt from Essay Experts Inc.
10. On May 3, 2004, The Student met with Ian McDonald, the Associate Dean at the University of Toronto at Scarborough. At this meeting The Student denied that Essay Experts Inc. produced the paper that she submitted to Prof. Berry. She stated that she had received only editing assistance from Essay Experts. The Student now admits that these statements were not true.
11. The Student admits that she took the paper that she purchased from Essay Experts Inc. and had it submitted in her name to Prof. Berry for the purpose of obtaining academic credit in Micro-Credit. The Student admits that she created the cover page, but did not alter the paper written for her by Essay Experts Inc. prior to submitting it to Prof. Berry.
12. The Student admits that on or about December 1, 2003, The Student knowingly represented as her own, an idea or expression of an idea, and/or work of another in connection with a form of academic work, namely, "Disputes Between Small Firms and Large Firms", an essay that she submitted to fulfill the course requirements of 1DSB05, contrary to Section B.I.1(d) of the *Code of Behaviour on Academic Matters* ("Code").

II. State and Society – June 2004 – Term Paper #2

13 In the summer of 2004, The Student enrolled in JMC301Y – State and Society in 20th Century China (“State and Society”), in the department of East Asian Studies. Mr. Victor Falkenheim and Mr. Jeff Webber taught State and Society.

14. Mr. Falkenheim assigned the students in State and Society a term paper worth 25% of the final grade in the course (“Term Paper #2”). Term Paper #2 required students to submit a critical assessment of certain work of Ken Lieberthal.

15. On or about June 15, 2004, The Student ordered two four-page essays from Essay experts Inc. in the subject of east Asian Studies on the topic of Ken Lieberthal. The Student gave Essay Experts Inc. a copy of the assignment and the relevant pages referred to in the assignment. Essay Experts Inc. charged her \$226.82 to produce the essays, which were due on June 22, 2004. This amount was paid, in advance, on June 15, 2004 by a VISA card held in the name The Student’s father. The Student signed the credit card slip with her father’s permission.

16. The Student picked up the two papers on June 22, 2004.

17. The Student admits that she used one or both of the papers provided to her by Essay Experts Inc. when writing her submission for Term Paper #2, which she submitted for academic credit in State and Society.

18. The Student admits that on or about June 22, 2004, she knowingly used or possessed an unauthorized aid or obtained unauthorized assistance in connection with the essay on Ken Lieberthal, which she submitted to fulfill the requirements of Term Paper #2 in State and Society, contrary to State and Society, contrary to Section B.I.1(b) of the *Code*.

III. State and Society – June 2004 – Term Test #2

19. Mr. Falkenheim also provided the members of the class with test preparation questions in advance of the June 24, 2004, term test in State and Society (“Term Test”). Mr. Falkenheim advised students that five of the eight preparation questions would appear on the Term Test and that students would have to answer three of the five questions appearing on the Term Test

20. On June 16, 2004, The Student ordered a seven-page paper from Essay experts Inc. on the topic of “answer questions 1 to 5” in the subject area of east Asian Studies. Essay Experts Inc. charged her \$211.87 to produce the answers by June 23, 2004. This amount was paid, in advance, on June 16, 2004, by a VISA card held in the name of The Student’s father.

21. The Student used the answers provided to her by Essay Experts Inc. to prepare for and write the Term Test.

23. The Student acknowledges that on or about June 24, 2004, she knowingly used or possessed an unauthorized aid or obtained unauthorized assistance in connection with a Term Test in State and Society, contrary to Section B.I.1(b) of the *Code*.

- [9] Because The Student and the University presented an agreed Statement of Facts (hereto attached as Appendix A), no evidence was given in regard to the charges and the plea of guilty beyond the facts set out in the agreed Statement of Facts. After considering submissions from counsel, the Panel unanimously accepted The Student's plea of guilty.
- [10] For the remainder of the hearing, the evidence that the Tribunal heard was directed to the issue of the penalty.

PENALTY PHASE

- [11] The Tribunal deliberated on the issue of penalty and decided that:
- 1) A grade of 0 should be assigned for the courses IDSB05H3F and CJMC301Y;
 - 2) That the President of the University request that the Governing Council expel The Student from the University of Toronto. The Tribunal understands that in making its recommendation to the President such expulsion, if ordered, shall mean that The Student shall be denied any further registration at the University and any program, and that The Student's academic record and transcripts shall record this sanction permanently.
 - 3) That it is appropriate and imperative in this case that the decision of the Tribunal be reported to the provost and a notice of the decision of the Tribunal and the sanctions imposed be published throughout the University with the student's name withheld.
- [12] The following are the reasons for the decision made above.
- [13] The Tribunal recognizes that expulsion from University is the most severe penalty that can be delivered under *The Code of Behaviour on Academic Matters*. Expulsion is in itself an extreme penalty. Underlying expulsion is the proposition that any benefit that might inure to the student as a result of remaining in the institution is outweighed by the detriment to the University community that would occur if the student continued to be present in the academic community. Because of the nature of the expulsion penalty, there must be cogent evidence to support the proposition that the benefit to a student of remaining in the University is outweighed by the detriment to the community arising from the offence and the detriment that would occasion if the student, having committed such an offence remains in the community.
- [14] The Tribunal is guided by the dicta in the file 1976/77-3, in the matter of the University of Toronto *Code of Behaviour* and an appeal by Mr. C. In that decision Mr. John Sopinka QC (as he then was) provided at Page 12:

What then are the principles that this Tribunal should follow in dealing with an appeal from sentence? First, in my opinion, punishment is not intended to be retribution to get even, as it were, with the student for what he has done. It must serve a useful function. The classical components of enlightened punishment are reformation, deterrence and protection of the public. In applying these criteria, a Tribunal should consider all of the following:

- 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;
- f) the need to deter others from committing a similar offence.

[15] In essence, in order to achieve the goals of reformation, deterrence, and protection of the public (which we take to mean the university community), the Tribunal must consider both subjective and objective factors.

[16] Amongst the subjective factors are questions relating to the individual who committed the offence, their background, any extenuating circumstances, and the degree to which their evidence, character, and approach is of such a manner that they will re-offend or not re-offend.

[17] Amongst the objective considerations, are factors relating to the nature of the offence that was committed, the detriment that was occasioned to the University and the detriment that was occasioned to the University in general terms by the type of offence that has been committed. Part of this consideration, of course, relates to the need to deter others from committing a similar offence.

OBJECTIVE CONSIDERATIONS – NATURE OF OFFENCE, DETRIMENT, DETERRENCE

[18] The objective considerations were largely the subject matter of argument before the Tribunal, rather than the focus of the evidence.

[19] The offence committed was that of cheating – “misrepresenting the work of another as one’s own”. It was compounded by the fact that the misrepresentation came about as a commercial transaction: The Student did not simply copy someone else’s work – she contracted with an organization to produce work that she would call her own, and she paid money for such work.

[20] It is hard to imagine how any offence could be more detrimental to the University community and its essential integrity. The fact that the offence was committed demeans the pursuit of original thought; that it was facilitated by the engine of commerce debases the integrity of the *Code of Behaviour on Academic Matters* and the attempts to protect learning in a fair and honest environment.

[21] Moreover, the “enterprise” of purchasing work for submission to the University is emblematic of the highest and greatest danger to the University community that the *Code* attempts to prevent, namely the circumstance when respect for learning is forsaken “in favour of self interest, when truth becomes a hostage of expediency.” In this regard, a failure to recognize this type of cheating threatens the integrity and respect that lie at the heart of the learning environment necessary to maintain the University community. Failure to recognize the severity of this threat would in effect be punitive to those students and teachers who strive through their honest hard work to maintain those values. As such, the effect on the University community is serious.

- [22] The Tribunal did note that because of the sophistication that appears to have developed in the enterprises related to purchased work, detecting this type of misrepresentation is extremely difficult. It is important to observe that the difficulty of detecting this offence makes it all the more imperative that the sanctions for detection have an import that sends a message to the community about the severity of the offence, and the commitment of the University community to its eradication.
- [23] It is a fact that it is likely extremely hard to determine when a student is found to have purchased work. And of course it is arguable that punishing the product of the cheating enterprise does not do much to deter or curtail the commercial enterprise that thrives on the impulse to substitute purchased work for one's own. That is – in the view of the Tribunal – no reason at all to modify or diminish the severity of the sanction that should be delivered. The University does not have the resources to ferret out the enterprises that exist on the avails of the market for purchased work. The Tribunal does not have the mandate or jurisdiction to bring before it those who build or maintain such enterprises, or to mete out penalties for subsisting on those avails. The best that the Tribunal can do is to highlight the damage that is done to the University community by the existence of such enterprises. And in doing so, it can only be hoped that such enterprise – or the appetite for it – might wither.

SUBJECTIVE CONSIDERATIONS – CHARACTER, BACKGROUND, PROSPECT OF RE-OFFENDING, REMORSE

- [24] The Student gave evidence about the circumstances leading up to the offence and about the personal background and challenges facing her while she was in her early years at the University. The Student explained her very difficult family background, and the problems she encountered in her social and personal life as a result. The Tribunal heard about the distant (and perhaps non-existent) relationship with her parents. The Student was betrayed by her boyfriend and this had a profound effect on her emotional well-being. Finally, The Student was involved in a motor vehicle accident and was obliged to undergo physiotherapy and as well, she learned that she had some curvature of her spinal column. The motor vehicle accident appeared to have occurred in the early part of 2003, some time before the first essay purchase related to these charges.
- [25] The Student explained that she decided to purchase her essays because she saw this solution as the only way to deal with the pressures facing her and to save time. She did not feel strong enough emotionally to ask her professors for assistance. She informed the Tribunal that she “felt bad” when she was charged because she realized that she had not chosen the right way to deal with her problems. Now, she understands that if she encounters a problem she should seek the assistance of a professional, and she informed the Tribunal that she intended to see a psychologist in the future (although she had not done so prior to the hearing, she had seen her family doctor sporadically about her problems).
- [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. The Student had several opportunities to confront the offences she committed and she turned aside those opportunities, in that she prevaricated when questioned by the Dean and she failed to demonstrate any appreciation of the severity of the offence, except, it seems, at the hearing.
- [30] The Tribunal was truly sympathetic with The Student’s sad personal life, but the Tribunal was not persuaded that The Student had acquired a genuine understanding of the severity of the offences, and nor had she acquired much insight into why the offences were so serious. This belief was not formed as a result of any assessment of The Student’s evidence at the hearing, but rather related back to the fact that The Student purchased work on not one, but two occasions. Further, she re-offended in the face of having been “caught” – or at least potentially "caught" in her first offence. Further, The Student offered the administration a series of excuses for the offences only after being pressed when she denied that any offence had occurred. Finally, her own explanation for why she purchased essays related not to pressure so much as to expediency. It was the “easiest thing to do”.
- [31] It is the Tribunal’s view that the only way to achieve the object of the *Code* and to preserve the respect for learning that evolves out of respect between teacher and student is to deliver the sanctions described earlier. The Tribunal is not satisfied that personal adversity encountered by The Student was sufficiently connected to the occurrence of the offence, and nor was that personal adversity sufficient in kind to reasonably give rise to the suspension of otherwise sound judgment.

[32] The Tribunal was concerned with all the desiderata of enlightened sentencing, and considered how deterrence might live with the need for the protection of the University community, and how this object might live with a fair and respectful consideration of the personal circumstances leading up to the commission of the offence by The Student – in this case the serial purchase of essays from a commercial provider of such work. It is the view of the Tribunal that the only means of achieving the deterrence required, and to preserve the values of the community that inhere in the *Code*, and to protect the community from the danger of appearing to excuse or explain away such offences, is to recommend The Student's expulsion on the terms set forth in its sentence delivered at the hearing (and reproduced above).

DATED at Toronto

April 6, 2006

Chair