

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL
TRIAL DIVISION**

IN THE MATTER OF charges of academic dishonesty filed on August 5, 2010;

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 -

K H

REASONS FOR DECISION

Hearing Date: August 18, 2010

Members of the Panel:

Mr. Michael Hines, Barrister and Solicitor, Chair
Professor Charmaine Williams, Associate Dean, Academic, Faculty of Social Work,
Faculty Panel Member
Mr. Jorge Prieto, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Pallare Roland Barristers
Ms. Camille Labchuk, Legal Case Worker, Downtown Legal Services
Professor Janet Poole, Course Instructor for EAS33H1: Modernism and Colonial Korea

In Attendance:

Dr. Kristi Gourlay, Manager and Academic Integrity Officer, Office of Student Academic Integrity, Faculty of Arts and Science
Dr. Martha Harris, Academic Integrity Officer, Office of Student Academic Integrity, Faculty of Arts and Science
Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances, Office of the Governing Council

1. This hearing arises out of charges of academic misconduct filed by the Provost of the University of Toronto (the "Provost") under the *Code of Behaviour on Academic Matters* ("Code"). For the purpose of this hearing, the Provost and K H ("Mr. H ") entered into an Agreed Statement of Facts ("ASF") and provided the panel with a Joint Book of Documents ("JBD"). The Provost and Mr. H agreed that:
 - (a) each document contained in the JBD could be admitted into evidence at the Tribunal for all purposes, including for the truth of the document's contents, without further need to prove the document; and
 - (b) if a document indicated that it was sent or received by someone, that was to be taken as *prima facie* proof that the document was sent and received as indicated.
2. Mr. H admitted that he received a notice of hearing for August 18, 2010, and a revised notice of hearing for the same date. He acknowledged that he had received reasonable notice of the hearing. The revised notice of hearing is included in the JBD at Tab 1.
3. Mr. H was represented by a law student from Downtown Legal Services.

Charges and guilty plea

4. Mr. H admitted that he received a copy of the charges filed by the Provost. The charges are as follows:
 1. On or about April 21, 2010, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in an essay you submitted for academic credit in EAS 333 H1F – Modernism and Colonial Korea (the "Course"), contrary to section B.I.1(d) of the *Code*.
 2. On or about April 21, 2010, you knowingly obtained unauthorized assistance in connection with an essay you submitted for academic credit in the Course, contrary to section B.I.1(b) of the *Code*.
 3. In the alternative, on or about April 21, 2010, 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 an essay you submitted for academic credit in the Course, contrary to section B.I.3(b) of the *Code*.
5. Mr. H waived the reading of the charges filed against him, and pled guilty to charges #1, #2 and #3.

6. The Provost agreed that if the Tribunal were to convict Mr. H on charges #1 and #2, the Provost will withdraw charge #3.
7. At all material times, Mr. H was a registered student at the University of Toronto. A copy of Mr. H's academic record was included in the JBD at Tab 3.

The Course

8. The Agreed Statement of Facts, including several express admissions, are, in all material respects, set out below in paragraphs 9 - 21.
9. In Winter 2009, Mr. H enrolled in EAS 333H1 – Modernism and Colonial Korea, which was taught by Prof. Janet Poole ("Course"). Mr. H admitted that he received a copy of the Syllabus, which stated, in part:

I consider plagiarism to be a serious breach of trust between instructor and student and will refer all cases to the appropriate authority according to UofT's Code of Behaviour on Academic Matters. This code defines academic offences as follows:

It is an or in any other way offence if a **student** knowingly;

- forges alters or falsifies any document or evidence required by the University, or utters, circulates or makes use of any such forged, altered or falsified document, whether the record be in print or electronic form;
- uses or possesses 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;
- personates another person, or has another person personate, at any academic examination or term test in connection with any other form of academic work, i.e., to commit plagiarism;
- represents as one's own any idea or expression of an idea or work of another in any academic work, i.e., to commit plagiarism;
- submits, without the knowledge and approval of the instructor to whom it is submitted, any academic work for which credit has previously been obtained or is being sought in another course or program of study in the University or elsewhere;
- submits any academic work containing a purported statement of fact or reference to a source which has been concocted.
(<http://www.utoronto.ca/academicintegrity/academicoffenses.html>)

If you are not clear what plagiarism is or are worried that you may unwittingly plagiarise, please see the following link and/or some and talk to me:

<http://www.writing.utoronto.ca/advice/using-sources/how-not-to-plagiarize>.

10. Mr. H had received the following grades on the first three Course assignments:
 - (a) First quiz: 4 out of 15;
 - (b) Second quiz: 8 out of 15; and
 - (c) First essay: 15 out of 30.

The Essay

11. The academic requirements for the Course included an 8 – 10 page paper worth 30% of the final grade in the Course. The paper was to be handed in on April 21, 2010.
12. On April 21, 2010, Mr. H submitted an essay in partial completion of the Course requirements and for academic credit. Mr. H submitted a paper titled "Modernization in 1930s Korea: From Wonso Pond" ("Essay"). A copy of the Essay was included in the JBD at Tab 5.
13. Prof. Poole reviewed the Essay and concluded that Mr. H did not write the Essay. Prof. Poole referred the matter to the Office of Student Academic Integrity in the Faculty of Arts & Science.

The Meeting with the Dean's Designate

14. Mr. H met with Prof. John Browne, Dean's Designate for Academic Integrity on July 7, 2010. At that meeting, Mr. H provided a written statement to Prof. Browne, which read as follows:

I agreed that I got too much help from my friends to write an essay, and I also agree that I missed to quote some contents from Korean website. The contents from Korean website were not from official documents, but from opinions of Korean normal people, so I thought it does not have to be quoted on my essay

The reason I asked friends to help to write an essay was that I really had to pass this course. My mark before the essay was not good, so I really needed to get good mark on this, because if anything goes wrong in this course, I will not be able to graduate in this summer. Also the bigger problem is, I received a letter from Korean military, so I am already arranged to join the army on November 18th this year. Once I go back to Korea for military service for 2 years, it will be impossible to come back for only half credit after 2 years.

I am really sorry about this situation. I made a big mistake, and I also disappointed professor. I will never stand here with this problem again. Thank you for your time.

15. Mr. H offered a verbal explanation to Prof. Browne that was consistent with the written statement.
16. Throughout most of the meeting, Mr. H denied having purchased the Essay. He then stated that he did not purchase the Essay, but he had received it from a friend. Mr. H stated that he did not receive the complete paper from his friend, but he had obtained "almost" all of the paper from his friend, who was a student at York University.
17. Towards the end of the meeting, Mr. H admitted that he had in fact purchased the Essay.

Admissions

18. Mr. H admits that he purchased the essay he submitted from The Essay Place. Mr. H admits that he paid \$200.00 or more for the Essay.
19. The website for "The Essay Place" lists its business address as 593 Yonge Street, Suite 216, Toronto, Ontario. The Essay Place writes custom essays for students for prices starting at \$28.00 per page. According to its website, The Essay Place's "writers all have MA's, or PHD's in their field of expertise, and are looking to pass on their knowledge to our clients."
20. Mr. H admits, with respect to the Essay that he:
 - (a) did no meaningful academic work;
 - (b) knowingly submitted it in essentially the same form as he received it from The Essay Place.
 - (c) knowingly represented the ideas of another person, the expression of the ideas of another person, and the work of another person as his own;
 - (d) knowingly committed plagiarism contrary to section B.I.1(d) of the *Code*;
 - (e) knowingly obtained unauthorized assistance in the completion of the Essay contrary to s. B.I.1 (b) of the *Code*; and
 - (f) knew that he was engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit, contrary to section B.I.3(b) of the *Code*.
21. Mr. H acknowledges that:

- (a) the Provost of the University of Toronto has made no representations or promises as to what sanction the Provost will seek in this case; and
- (b) he is signing this ASF freely and voluntarily, knowing of the potential consequences he faces, and does so with the advice of counsel.

Finding of Guilt

- 22. Based on the Agreed Statement of Facts and the guilty pleas of the Student, the Panel made findings of guilt in respect of Charges 1 and 2, and accepted the withdrawal of Charge #3.

Sanction

- 23. The parties then turned to the issue of sanction. Discipline Counsel indicated that the Provost was seeking a recommendation for the expulsion of the student coupled with an immediate five year suspension. Mr. H , through his representative, submitted that he ought to receive a mark of zero in the course and a suspension of two to three years' duration.
- 24. Mr. H was sworn and gave testimony. He was the only witness. He testified that he had come to Canada in 2001 to study at the University of Toronto, and was one credit short of receiving his degree at the time of the offences noted above. He stated that in December 2009 he had received notice that he would be required to enter into the South Korean military service for a period of two years, commencing in the fall of 2010. This prospect, he said, was in itself a great distraction to him academically. Moreover, he was concerned that, should he not complete his required courses in 2010, it would be very difficult to resume his studies for the purposes of obtaining his one remaining credit following the completion of his military service. His lack of confidence in his ability to pass the course coupled with the consequences of failure in that regard led him to purchase the Essay. He testified without contradiction that he had not been convicted of any prior academic offences.
- 25. Mr. H then read a prepared statement which expressed contrition for his actions, his willingness to accept the judgment of the Tribunal and his desire to be permitted at some point to continue his studies.
- 26. On cross-examination, Mr. H agreed that he had known for several years that he would be called into military service, since that is obligatory in his country. He also agreed that, his grade point average was actually higher in the semester following the receipt of his military notice than it had been in the two previous semesters.

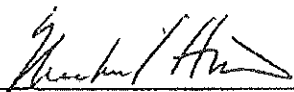
27. Mr. H through his counsel, indicated that he believed an appropriate sanction would be a suspension of two or three years duration. The parties then made submissions in support of their respective positions. In the course of his submissions, Discipline Counsel advised the Panel, with Mr. H's consent that of the forty-one students enrolled in the Student's EAS 333 class, four (including him) had, by this time, been convicted of purchasing essays from the same "service", and that a prosecution in respect of a fifth case would be commencing in the coming weeks.
28. The Panel can state without hesitation that the sanction suggested by Mr. H would be wholly inadequate in this case, if for no other reason than it would work effectively no hardship on him at all, given the fact that he will be unable to attend the University for at least two years simply in view of his upcoming military service.
29. In the Panel's view, the only decision to be made in this case is between expulsion and a five-year suspension. We agree with the submission of Discipline Counsel that the offence of purchasing and submitting an essay prepared by another is one of the most egregious of academic offences. It is unlike typical cases of plagiarism, in which at least some of the student's independent thought and expression is included in the submitted work. It is deliberate, pre-meditated and (given the "originality" of the purchased work) harder to detect than plagiarism. We agree as well that the detriment to the academic integrity of the University in this case is profound.
30. The most unusual and troubling feature of this case lies in the evidence concerning the prevalence of this form of academic misconduct in the Student's class. Among the materials provided to the Panel were printouts from the internet site through which the Student (and evidently at least four of his classmates) obtained assistance. There is a distressing brazenness to these materials. We agree that this evidence demonstrates a need for a strong message of deterrence.
31. At the same time, we are reminded that a guiding principle in matters of academic discipline is the concept of rehabilitation. We appreciate that the Provost's Guidelines presumptively call for expulsion in a case such as this, even in the context of a first offence. These are, however, not binding on the Tribunal.
32. We assess the likelihood of re-offence in this case as minimal. However, this is primarily due to the fact that the Student is virtually at the end of his undergraduate career. We therefore see this as a neutral factor. Similarly, it was difficult to get a sense of the overall character of the Student (apart from the obvious reflection caused by his offence).
33. Counsel reviewed the cases that appear to be most similar to the one before us. Unfortunately, they provide no consistent guidance, emphasizing appropriately the need for an individualized approach to such matters.

34. Since the hearing of this matter, two further decisions have been released, both dealing with those of Mr. H's fellow students in EAS 333 who purchased essays from The Essay Place and were caught.
35. In the decision in *CHK* (November 16, 2010), the majority of the Panel (the Chair dissenting) determined to impose marks of zero in the course and suspensions of five years on each of the three students involved. The Chair would have recommended expulsion in all three cases.
36. In large part, the majority of the Panel justified its decision on its perception of the degree of remorse expressed by the students at their hearing and the impact the majority felt should be given to personal difficulties allegedly faced by the students during the period in question.
37. The Chair was of the view that the personal factors relied on by the majority were of little relevance. She emphasized, persuasively in our view, the most destructive nature of this kind of offence to the integrity of the University. She also concluded, given the evident willingness of the three students to engage in misconduct even after having been disciplined before, that there was, in fact, a "likelihood" that they would re-offend if they were permitted to resume their studies.
38. The facts in *CHK* are materially different from the facts before us in that each of the three accused students in that case had already been convicted of serious academic misconduct on two prior occasions. C had provided unauthorized assistance to another student in that student's preparation of an essay. H had altered travel documents to support a request to be excused from a test. K, like C, had provided unauthorized assistance to another student. In addition, all three had subsequently been found guilty of improper collaboration with one another on a test.
39. It is not our place to comment on the merits of the majority's decision in *CHK*. Suffice to say that the repetitive acts of misconduct that were present in that case and that might well cause one to question the sincerity of the students' expressions of remorse are not present before us. This is Mr. H's first conviction for an academic offence. Had he been a repeat offender, we have little hesitation in saying that we would have supported expulsion.
40. The more recent decision in *S.P.* (March 8, 2011) is factually more similar to our case. There, another of Mr. H's classmates in EAS 333 H1F also purchased an essay from The Essay Place. Like Mr. H, S.P. had no prior disciplinary record. Unlike Mr. H, S.P. failed to acknowledge his wrongdoing promptly. Rather, he took steps on several occasions to try to persuade the Office of Student Academic Integrity of his innocence.
41. The Panel in *S.P.* expressly disagreed with the outcome in *CHK*, but extended some degree of leniency to S.P., concluding that the appropriate result in his

case was a mark of zero and a five year suspension. The Decision can be interpreted as accepting the student's efforts to avoid detection as an aggravating factor.

42. This Panel agrees with Discipline Counsel that the offence in this case is at the extreme end of the spectrum. We accept the need for a powerful deterrent message in this type of case. However, we cannot allow one factor to dominate our thinking. We must balance the need for general deterrence with the objective of rehabilitation.
43. Like S.P., Mr. H has no prior convictions for academic offences. As stated, S.P. received a grade of zero and a five-year suspension. We are of the view generally that, absent the most exceptional circumstances, the type of misconduct demonstrated here should attract an extreme penalty, either a five year suspension or expulsion. In our view, the offence is so serious that, absent the most exceptional circumstances, a guilty student should only be able to avoid expulsion if they have demonstrated an ability to reform their behaviour by a prompt acknowledgement of their wrongdoing when confronted.
44. That is the case before us. Accordingly, we have decided that the appropriate balance in this case is reached by the following:
 1. that Mr. H receive a final grade of zero in EAS 333;
 2. that Mr. H be immediately suspended for a period of five (5) years from the date of this decision
 3. that a notation be placed on Mr. H's transcript for a period of seven years from the date of this decision or his graduation, whichever occurs first, to the effect that Mr. H was sanctioned for academic misconduct
 4. that a report of this decision be made to the Provost for publication in the University's newspapers, with name withheld.

Dated at Toronto, this 6th day of May, 2011.



Michael Hines, Co-Chair