



**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 -

Mr. S. B.

Members of the Panel:

- Mr. Raj Anand, Chair
- Professor Bruno Magliocchetti, Faculty Panel Member
- Mr. Christopher Oates, Student Panel Member

Appearances:

- Ms. Lily Harmer, Assistant Discipline Counsel for the University

- Mr. Steve Frankel, Law Student, Counsel for the Student
- Mr. S. B., the Student, in attendance

In attendance:

Dr. Kristina Gourlay, Manager, Office of Student Academic Integrity

Mr. Mike Nicholson, Office of Student Academic Integrity

Preliminary

[1] The Trial Division of the University Tribunal was convened on September 6, 2007 to consider charges under the *University of Toronto Code of Behaviour on Academic Matters, 1995* (the *Code*) laid against the Student by letter dated November 1, 2005 from Professor Edith Hillan, Vice-Provost, Academic.

Hearing on the Facts

[2] The charges are as follows:

1. In or about April 2005 you knowingly represented as your own, an idea or expression of an idea and/or work of another in "Buddhism on Sexuality and Enlightenment", an

essay that you submitted to fulfill the course requirements of RLG314H1, contrary to section B.i.1.(d) of the *Code of Behaviour on Academic Matters (the Code)*.

2. In or about April 2005, you knowingly submitted an academic work containing a purported statement of fact or reference to a source which has been concocted in “Buddhism on Sexuality and Enlightenment”, an essay that you submitted to fulfill the course requirements of RLG314H1, contrary to section B.i.1.(f) of the *Code*.
3. In the alternative, in or about April 2005, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind in “Buddhism on Sexuality and Enlightenment”, an essay that you submitted to fulfill the course requirements of RLG314H1, contrary to section B.i.3.(b) of the *Code*.

[3] Particulars of the charges were as follows:

1. At all material times you were a student in RLG314H1 taught by Professor Klassen during the winter term of academic year 2004-2005.
2. You submitted an essay, “Buddhism on Sexuality and Enlightenment”, in or about April 2005, in completion of the course requirements in RLG314H1.
3. Significant portions of this essay were reproduced verbatim, or nearly verbatim, from unacknowledged internet sources.
4. This essay referenced sources which were concocted.
5. The Student pleaded not guilty to all charges, and the parties called their evidence.

[4] The University called two witnesses: Professor Pamela Klassen and Professor David Smith.

[5] Professor Klassen testified that repeated efforts were made to educate students on the seriousness of plagiarism. For example, the course syllabus for RLG314H1 contained material on plagiarism and tips on how to write papers. In addition, four essay-writing tutorials were provided for students, the purpose of which was to teach students about citation formats, the citation of primary and secondary sources, and truth in essay writing. Although students were not required to attend the tutorials, they were strongly encouraged to do so. Professor Klassen explained that the course requirements included a final research paper for which students were expected to engage in research using primary sources, that is, conduct interviews, read diaries and letters, investigate cultural artifacts, etc. Students were required to append to their research papers a signed declaration, stating: “I have read the document *How Not to Plagiarize* and I have not plagiarized in writing this paper.”

[6] Discipline counsel then questioned Professor Klassen about the Student’s research paper. On direct examination, Professor Klassen demonstrated to the panel the extensive

similarities between the Student's research paper and several internet websites. Moreover, many citations contained in the research paper to print material did not correspond with the actual texts cited. Professor Klassen also testified that the Student did not attach the signed declaration mentioned above as required.

- [7] Professor David Smith, Dean's Designate for Judicial Affairs, Faculty of Arts and Science, testified that he met with the Student in August 2005. The meeting began with a reading by Professor Smith of the "Dean's Warning" as it appears in the *Code* [Section C.i.(a).6]. The purpose of that meeting was to investigate the allegations of plagiarism against the Student. Professor Smith reviewed with the Student the meaning of plagiarism and the manner in which academic papers must be written in order to conform to the *Code*. The Student's responses indicated to Professor Smith that the Student had an adequate understanding of plagiarism and that he knew how to implement citation rules to avoid committing plagiarism.
- [8] Professor Smith testified that, during this meeting, the allegation that the Student had plagiarized from the internet was discussed. The Student told Professor Smith that he had obtained material not from the internet, but from a personal interview with a Buddhist monk, who had visited the Student in Toronto. The Student claimed that he had recorded the interview; however, he did not furnish Professor Smith with the recording, nor was he requested to do so. Professor Smith led the Student through a close comparison of the research paper and the internet source, pointing out those portions of the paper that were identical to the internet source. The Student adamantly denied using the internet as a research source when he wrote the paper.
- [9] Professor Smith and the Student were unable to resolve the issue. Consequently, Professor Smith explained to the Student that the matter would have to be referred to the Provost. The Student was encouraged to seek legal representation before having to appear before the Tribunal. Upon hearing this, the Student became very upset. He offered to plead guilty, if Professor Smith would agree to resolve the issue at the decanal level, rather than forwarding it on to the Provost.
- [10] In cross-examination, counsel for the Student questioned Professor Smith about the Student's offer to plead guilty at the decanal level, specifically, whether it was perceived to be a genuine, true confession of guilt. Professor Smith testified that he did not believe that it was such a confession; rather he perceived an element of expediency to it.
- [11] The panel questioned Professor Smith about the elapsed time between the offence being committed in April 2003 and the meeting with the Student in August 2005 and how Professor Smith came to learn of the allegations. Professor Smith could not recollect the date on which the allegations were first reported to his office. He testified that there had been staffing issues during that interval and that those issues may have contributed to the delay in bringing the case to his attention.
- [12] The panel asked if Professor Smith questioned the Student about the concoction allegations in addition to the plagiarism allegations at the August 2005 meeting.

Professor Smith testified that the two issues were intertwined, so that by investigating the plagiarism he had considered the concoction allegation. From the University's perspective, the extensive similarity between the internet source and the Student's paper established that the personal interview had been concocted as a source of research.

- [13] On examination in chief, the Student testified that the individual he had interviewed as part of his research was a Buddhist monk. The Student reported that he knew the monk well, since they had lived together for 10 years in a Buddhist monastery in Thailand. The Student testified that he had recorded the interview, but he no longer had the cassette. When asked to explain why there were similarities between his paper and the internet source, the Student first suggested that karma may have contributed to the similarities. When asked again, the Student spoke of the "magic of miracle", but testified that he really did not know how to explain the similarities.
- [14] On cross-examination, the Student was asked to explain in further detail what he had meant when he spoke of the "magic of miracle". The Student was unable to clearly articulate what he had meant, but instead testified that the monk had memorized the internet source prior to their meeting and then repeated the words to the Student during the interview. The Student was then asked whether the monk had read from a piece of paper during the interview. He confirmed that, indeed, sometimes the monk had read text from a piece of paper. On further questioning, the Student affirmed that the text that the monk had read was taken from the internet.
- [15] Discipline counsel questioned the Student about his understanding of Professor Klassen's expectations, specifically the requirement to accurately cite sources referenced in research papers. The Student responded that he had understood this requirement. The Student was also asked whether he was familiar with the document *How Not to Plagiarize*. Again, the Student responded in the affirmative. The Student was asked if he recalled that Professor Klassen required students to submit a signed declaration attesting to their knowledge of and compliance with the document *How Not to Plagiarize*. The Student responded that the Professor had to work on the basis of trust. In agreement with discipline counsel, The Student further agreed with the discipline counsel that the University was built on trust and that it was impossible for every professor to police all students' research work. When asked if he had submitted the required signed declaration, the Student confessed that he had not. The Student did not feel that it was necessary, since it should have been obvious to Professor Klassen that he had not plagiarized.
- [16] The panel questioned why the Student had been prepared to plead guilty at the Dean's meeting in 2005 but was now pleading not guilty before the Tribunal. In response, the Student responded that he perceived Professor Smith to be sympathetic. He thought of Professor Smith as a guru or holy man - one who might punish him, but who would, through that punishment, also bless him. Moreover, going before the Tribunal would be a shameful experience. To avoid that shame, the Student was willing to plead guilty to Professor Smith.

Decision of the Tribunal

- [17] After the panel deliberated, the Chair delivered the oral decision of the Tribunal on guilt at this point in the hearing:

“On the charge of plagiarism, the panel concluded that the explanations offered by the Student to account for the striking similarities between his paper and internet sources were not credible. As for the concoction charge, the panel noted that the citations contained within the Student’s paper did not match up to the sources cited and, therefore, the panel had to conclude that the sources were concocted. Consequently, the panel rules that the Student is guilty of both charges.”

Penalty Phase

- [18] Immediately after the panel gave this oral decision, the parties led evidence and made their submissions on penalty. After deliberation, the Chair announced the Tribunal's decision on penalty, with reasons to follow. What follows is a summary of the evidence and counsel’s submissions, as well as the panel’s reasons for the penalty decision.
- [19] The University submitted that the following penalty should be imposed:
1. A grade of zero in the course.
 2. A three year suspension.
 3. A notation of the sanction on the Student’s transcript for four years, or until the Student's graduation from the program, whichever occurs first.
 4. A report of the decision and sanction to the Provost, for publication by the University with the name of the Student withheld.
- [20] The University re-called Professor Smith to testify about the Student's prior offences. In short, the Student had committed two prior plagiarism offences, in RLG206Y in the spring of 2000 and in RLG323H. Professor Smith was the Dean's designate in both cases.
- [21] The Student admitted to both offences. In the first case, he said he had been rushed, and in his haste to complete the essay, he had failed to put in quotation marks or attribute his sources properly. As a first offender, he was treated leniently. He was required to submit a new essay, and his grade on this new essay was reduced by 25%. In addition, he was cautioned for academic misconduct, and a notation to this effect was placed on his transcript for two years from July 1, 2000. Professor Smith also took what he characterized as an unusual step in supplementing his standard penalty letter (Ex. 5) by providing advice on how to avoid plagiarism in the preparation of essays.
- [22] The second offence involved an essay that was substantially copied from different sources, one of which was not listed in the bibliography. The Student’s explanation was that he was again in a hurry, and that the sources said what he wanted to say much better

than he could. The penalty, set out in the memorandum to Academic Records (Ex. 6), was more severe: zero in the course, a seven month suspension from May 15 to December 14, 2002, and a notation of academic misconduct on his transcript, for three years from May 1, 2002.

[23] Both parties put forward, and the Tribunal adopts, the six criteria for sanction first proposed by the late Mr. Justice Sopinka in his concurring decision as a member of the University Tribunal in the appeal of Mr. C. (November 5, 1976). Our conclusions under these factors, which overlap in certain respects, are set out below.

[24] **The character of the person charged**

Apart from the Student's personal circumstances, none of the evidence was in his favour. Far from an admission by the Student, all of the charges were accompanied by transparently inadequate responses: he was rushed; the source could make the point better than he could; the striking similarity between the text and various internet sources was a "miracle" or the result of his friend reciting from a notebook.

[25] **The likelihood of repetition of the offence**

This was the third offence of the same kind, committed while the notation on the Student's transcript from the second offence was still outstanding, and after he had been given specific instructions, orally and in writing, by Professor Smith in 2000 on how to avoid a repetition of the first offence.

[26] **The nature of the offence committed**

Plagiarism and concoction of sources are serious offences that go to the heart of the trust relationship upon which the University's programming is built. Interestingly, these offences appear to be both increasingly prevalent and more easily detected with the availability of the internet. It was easy for the Student to find and copy the various portions of articles in this case; conversely, when Professor Klassen's suspicions were aroused, a simple Google search readily elicited the incriminating evidence.

[27] **The extenuating circumstances surrounding the commission of the offence**

Counsel for the Student put forward two classes of evidence:

First, there was the tragic and heartbreaking history of disadvantage and dependence of his two daughters, both of whom have severe disabilities, and the impact on him and his wife, which appears to have been operative at the time of the current offences. The difficulty here for the Student is that there is a gap in causation. There is no evidence from the Student or any expert practitioner of the impact of this personal situation on the Student himself, and no evidence to tie his personal situation to a propensity for dishonesty or irrational behaviour. Indeed, he did not, up to and including the hearing before us, acknowledge any behaviour of this kind in the charges before us. However sensitive the Tribunal must be to the barriers facing him at the relevant time, there are a host of unanswered questions about the link between

his daunting responsibilities as a parent and the commission of flagrantly dishonest acts as a student.

Second, Counsel asked for consideration of the delay in prosecuting the current charges. He traced the time line:

- June 13, 2003: Professor Klassen referred the current allegations to the Dean's office (Ex. 4), saying that the Student "did not arrive for the meeting" she had scheduled with him to discuss the issues;
- June 2005: Professor Smith first attempted to contact the Student to conduct the Dean's designate's meeting with him;
- August 26, 2005: Professor Smith met with the Student;
- November 1, 2005: The Vice-Provost, Academic, informed the Student of these charges; and
- September 6, 2007: The date of the Tribunal hearing

[28] The elapsed time concerned the Tribunal, and indeed the University's counsel said her client was not proud of it. Nevertheless, it is difficult to attach any significance to the delay in terms of penalty. This is not a case of "time served" as in criminal sentencing cases. While there was a period of time in which the Student was not in class, there was no evidence as to why. See the case of Mr. S., dated August 24, 2007, in which the Appeal Board was similarly unable to attach any significance to a voluntary absence during the time span of the charges.

[29] Here, there was no motion to dismiss the charges, which were being heard almost four and a half years after the behaviour was detected. There was no protest or warning of reliance on delay by the Student until the penalty phase of this hearing, although the panel first raised the issue while Professor Smith testified about his actions in August 2005 as Dean's designate on these charges. While the charges hung over the Student's head for at least the two years that he knew about them, this was not a case in which any penalty should be backdated. See, for example, the case of Mr. S., referred to above, at paras. 53 and following; and Mr. L, Tribunal decision dated August 13, 2007, at paras. 19 and following. We agree that there must be a principled reason for such backdating, such as an early admission of guilt, or similar circumstances which dictate that the student would suffer unjustified harm as a result of the University's slowness in moving the matter to a hearing. Here, a backdated suspension would wipe out several courses that the Student had successfully completed during the currency of these proceedings.

[30] **The detriment to the University occasioned by the offence**

It hardly needs to be said that the credibility and academic mission of the University, and the degrees which it awards to its students, can be gravely harmed by the commission of offences such as plagiarism and concoction. Counsel for the Student did not suggest otherwise.

[31] **General deterrence**


For many of the reasons already described above, the Tribunal must endeavour to send a message through its decisions to the student and faculty community, as well as

the public at large, that academic cheating is intolerable and when proven, will be met with significant sanctions.

- [32] The central disagreement on penalty between the University and the Student was on the length of the suspension to be imposed. The University argued that three years was appropriate because a longer suspension would have been called for if not for some of the extenuating circumstances that the Student relied upon. The Student, on the other hand, submitted that three years was the "table amount" which should then be reduced by half or more to take account of his difficult personal circumstances.
- [33] In our view, the case law of this Tribunal supports the University's position in this case. On a purely numerical count, previous cases of "first time offenders" in cases of plagiarism and/or concoction have been met with suspensions of two years (K., June 2006; A., September, 2004; B., April, 2004 and February, 2006); three years (referred to as at the "most severe end" in L, October 8, 2004); and four years (S.). Previous cases of "repeat offenders" in such cases have resulted in suspensions of four months (W, March 25, 1998); sixteen months (K., May, 2003); three years (M.M., August 2005; and D., July, 2005); five years (L., above); and expulsion (B., February, 2007).
- [34] This summary, of course, captures only a few of the factors in Mr. Sopinka's list, most notably the nature of the offence and the degree and likelihood of repetition. A more detailed review of the decisions reveals other important evidence, such as remorse, cooperation with the University, circumstances of the offence, results flowing from different penalties, etc. Another factor seems to be a greater recognition, as time has passed, of the need for significant specific and general deterrence. In our view, we have reached a point where a serious breach of trust such as plagiarism and/or concoction should evoke a response of at least a two-year suspension for a first offence and a three year or longer suspension on a subsequent finding.
- [35] Here, a three year suspension for a third offence, having regard to the range of other circumstances that we discussed above, strikes a balance of punishment, compassion, rehabilitation and deterrence.
- [36] Counsel for the Student put forward a document indicating that his client had completed the requirements of his major program in Religion. We inquired about the significance of this point: was he entitled to graduate? Could he have obtained his degree before the hearing? What did he now require in order to graduate, given the zero he would receive in the course in question? There was no evidence from either side about the consequences of different potential penalties, and the panel expressed its concern that this was often the case in these hearings. The academic consequences of different penalties are not self-evident, particularly to an outside panel of this kind. While it may be difficult and inconvenient to anticipate and call evidence about the implications of every conceivable penalty that might be imposed, greater assistance, perhaps in the form of an agreed chart or statement, would help the Tribunal greatly.

[37] For the reasons set out above, the Tribunal imposes the penalty requested by the University, as quoted earlier. The Tribunal reiterates its gratitude to the representatives of both parties for their skill and cooperation in presenting this difficult case to the Tribunal.

Nov. 14/07
Date


Mr. Raj Anand, Tribunal Co-Chair