

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on October 23, 2007;

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 -

A [REDACTED] B [REDACTED]

Members of the Panel:

- Ms. Julie Hannaford, Chair
- Professor Marc Lewis, Faculty Panel Member
- Mr. Alex Kenjeev, Student Panel Member

Appearances:

- Mr. Rob Centa, Assistant Discipline Counsel,
- Dr. Kristi Gourlay, Manager, Office of Student Academic Integrity
- Mr. Max Shapiro, Student Representative for Mr. B [REDACTED], Downtown Legal Services
- Mr. A [REDACTED] B [REDACTED], Student

REASONS FOR DECISION

[1] Mr. A [REDACTED] B [REDACTED] was charged with a number of offences under the *Code of Behaviour on Academic Matters* ("the Code"). At the opening of his hearing, Mr. B [REDACTED] pleaded guilty to the following:

CHARGE # 1: *On or about April 5, 2007, you knowingly represented as your own idea or expression of an idea, and/or the work of another in connection with your paper on globalization submitted for academic credit in POL103Y1Y, contrary to section B.I.1. (d) of the Code.*

CHARGE # 4: *On or about May 8, 2007, you knowingly represented as your own idea or expression of an idea, and/or the work of another in connection with your paper on globalization submitted for academic credit in POL103Y1Y, contrary to section B.I.1. (d) of the Code.*

[2] The University withdrew the following alternative charges:

CHARGE # 5: *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:*

a. submitting you paper on globalization on or about April 5, 2007, in partial fulfillment of the course requirements in POL103Y1Y; and/or

d. submitting a further paper on globalization on or about May 8, 2007, in partial fulfillment of the course requirements in POL103Y1Y.

[3] As a result, the Tribunal heard evidence in respect of the following charges, to which Mr. B█████ pleaded not guilty:

CHARGE # 2: *On or about April 5, 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, and/or uttered, circulated or made use of any such forged, altered or falsified document, namely, a University of*

Toronto Student Medical Certificate submitted with your paper on globalization in POL103Y1Y, contrary to section B.I.1. (a) of the Code.

CHARGE # 3: *On or about April 5, 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, and/or uttered, circulated or made use of any such forged, altered or falsified document, namely, a letter purportedly from the University of Toronto Accessibility Services, submitted with your paper on globalization in POL103Y1Y, contract to section B.I.1. (a) of the Code.*

CHARGE # 5: *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:*

b. submitted a forged or altered University of Toronto Medical Certificate on or about April 5, 2007; and/or

c. submitting a forged or altered letter from University Accessibility Services on or about April 5, 2007.

[4] This hearing spanned a period commencing July 2, 2008, and concluding November 24, 2008. The Tribunal found Mr. B [REDACTED] guilty in respect of Charges #2, #3, and in respect of the alternative charges in #5 b. and c. above.

[5] The following are the reasons for the Tribunal's finding. Because of the way in which this hearing evolved and because of the developments related to the delivery of evidence, these reasons describe the hearing as it progressed from one date to another.

BACKGROUND

- [6] A ██████ B ██████ began studying at the University of Toronto in the Faculty of Arts and Science in the fall of 2001. Initially, he registered in the transitional year program, and in 2004, he registered in the first year program at Woodsworth College. At some point, as reflected in Mr. B ██████'s academic record, he was placed on a one year academic suspension, and in August 2005, he was encouraged to take the opportunity to consider his academic plans and goals and to work on his reading and writing skills.
- [7] In the academic year 2006-2007, Mr. B ██████ enrolled in a course (POL103Y1Y) called "Canada in Comparative Perspectives". This course was taught by Professor Rodney Haddow and Professor Haddow was assisted by Mr. Luc Turgeon. The course was designed to introduce students to the study of politics, and it was taught on Tuesdays from 6:00 p.m. to 8:00 p.m. Evaluation in the course was structured around two essays, one fall term test, and a final examination. Ten percent of the total grade of one hundred percent was assigned to tutorial participation. According to the course outline, twenty percent of the total grade was allocated to the fall term essay, seventeen percent of the total grade was allocated to the fall term test (an in-class test), twenty percent was allocated to the winter term essay, and the final examination was worth thirty-three percent.
- [8] The course outline provided for a strict schedule and penalty scheme. Late papers were penalized at the rate of two percent per weekday. The course outline provided for the dates upon which papers were due. The last date for submission of second term work was described as April 13th. Exceptions to the penalty scheme were to be made only with proper documentation.
- [9] The work in question in this matter relates to the winter term essay, an essay that was required to be eight to ten pages long, and that was due on March 13, 2007.
- [10] The second term essay assignment was the subject matter of a separate handout, and it appeared on the course webpage as well. The topics for the written paper were set out in this separate handout. There were five topics from which to choose. In each case, where a

topic was assigned, students were given text resources, and were required to identify and use two other book length sources or the equivalent thereof.

- [11] As with most other courses at the University of Toronto, students were warned about the consequences of failure to cite quotations, paraphrases, and borrowed ideas. Students were informed that failure to do so would constitute plagiarism, something which is the subject of a severe penalty. The course outline also contained a reference to the importance and necessity of referencing borrowed ideas, quotations, and paraphrases. In addition, the course outline and second term essay assignment referenced a guide on plagiarism circulated at the beginning of the course. Students were invited to consult with the teaching assistant or with Professor Haddow about any questions they had about what ought to be footnoted and how it should be footnoted.
- [12] Sometime on April 5, 2007, an essay bearing Mr. B [REDACTED]'s student number was submitted to the Department of Political Science drop box. This "April 5th essay" contained verbatim and nearly verbatim excerpts from unacknowledged sources. These excerpts were not attributed appropriately with the use of quotation marks. Mr. B [REDACTED] admits that the April 5th essay is plagiarized.
- [13] The April 5th essay was accompanied by a note from the University of Toronto Accessibility Services Department, which note was dated March 13, 2007. This letter is signed by Dr. Pearl Levey, a learning disabilities specialist. The letter asks for an accommodation with regard to Mr. B [REDACTED], namely delivery of his paper on March 23rd, rather than March 13th. In fact, Dr. Levey had provided a letter for Mr. B [REDACTED] in which an extension was sought until March 20th, not March 23rd. Mr. B [REDACTED] agrees that the Accessibility Services letter from Dr. Levey has been altered, but he says he did not make the alteration to the letter.
- [14] In addition to the Accessibility Services letter from Dr. Levey, a medical certificate was submitted with the April 5th essay. The medical certificate that was submitted indicated that Dr. S. Goldhar provided medical services to A [REDACTED] B [REDACTED] on April 5, 2007, and stated that Mr. B [REDACTED] was "unable to complete the assignment (due on 13/03/07) due to medical symptoms and unable to concentrate". Dr. S. Goldhar is Mr. B [REDACTED]'s treating physician, and Dr. Goldhar did treat Mr. B [REDACTED] on January 14 and March 3,

2005, March 13, May 18, October 23, October 31 and November 16, 2006, February 12, June 13, June 29, July 10 and September 26, 2007 and as well January 9, 2008. Dr. S. Goldhar did not attend with Mr. B [REDACTED] on April 5, 2007. Mr. B [REDACTED] agrees that the medical certificate submitted along with the April 5th essay is not authentic and that he did not see a medical professional on April 5, 2007. Mr. B [REDACTED] says that he did not make the alteration.

- [15] Mr. Turgeon reviewed the April 5th essay, and concluded that substantial portions of it were plagiarized. He so advised Professor Haddow. These concerns were discussed by Mr. Turgeon and Professor Haddow, and these discussions set in motion a series of events, and an evolving series of explanations, which further evolved over the course of the hearing, as explained below.
- [16] Professor Haddow and Mr. B [REDACTED] engaged in e-mail correspondence beginning in late April, 2007. As well, Mr. B [REDACTED] and Mr. Turgeon exchanged messages. All of these messages were about the April 5th essay.
- [17] On May 8, 2007, Mr. B [REDACTED] attended a meeting with Professor Haddow to discuss the concerns about his paper. At that meeting, Mr. B [REDACTED] submitted an essay ("the May 8th essay") that Mr. B [REDACTED] said was the one that should have been submitted rather than the April 5th essay.
- [18] The May 8th essay was almost entirely plagiarized. Mr. B [REDACTED] admitted that the May 8th essay was plagiarized.
- [19] On May 16, 2007, Mr. B [REDACTED] sent an e-mail message to Professor Haddow, attaching another essay, this one purporting to be the "second term essay" that he intended to submit.
- [20] Mr. B [REDACTED] attended a Dean's meeting on July 17, 2007, and a second Dean's meeting on August 20, 2007.
- [21] It is important to recognize that Mr. B [REDACTED] did not dispute that the April 5th essay and the May 8th essay were plagiarized. However, the essence of Mr. B [REDACTED]'s explanation was that, at least with respect to the April 5th essay, it was handed in by mistake. In other

words, Mr. B█████ said that he was obliged, because of his schedule and urgent airline flight, to ask a friend to hand in the paper for him. The friend printed the wrong document, and apparently, also altered the medical certificate and the letter from Accessibility Services and handed these documents in to Professor Haddow.

- [22] Mr. B█████ said that the individual to whom he entrusted the printing and submission of these documents had some kind of animus towards him, and this is why the documents that were printed were wrong and the medical and accessibility certificates were altered.
- [23] At the July 17th meeting with Professor Nicholson, Mr. B█████ said that this individual (named "E█████ J█████" or "E█████ J█████"), did it "on purpose", and did it "against him". According to Mr. Nicholson, Mr. B█████ said that he had had a debate about women in parliament with Mr. E█████ J█████ (or Mr. E█████ J█████), and that he ("E█████ J█████" or "E█████ J█████") was "weird" and also had had access to Mr. B█████'s home. When asked about the whereabouts of this individual named "E█████", Mr. B█████ said E█████ was in British Columbia. Mr. B█████ had no way of getting in touch with ██████.
- [24] The University ultimately contacted an individual named "E█████ O█████". He submitted an Affidavit in the proceeding, in which he said that he certainly knew Mr. B█████ but had no contact with him at the relevant time (April 2007) except that he did provide some assistance to Mr. B█████ with regard to an essay he was writing. He denied categorically handing in a paper or delivering any academic work on behalf of Mr. B█████. He also denied altering a medical note or any other note from a third party.
- [25] Mr. B█████ had made contact with Mr. O█████ at some point after these Dean's meetings, and so had the University.
- [26] By the time of the second Dean's meeting in August, 2007, it is clear that E█████ O█████ had been identified and had denied any role in these events.
- [27] At the time of the hearing, which commenced on July 2, 2008, it was the contention of Mr. B█████ that in fact he was not referring to E█████ O█████ at all but rather to an individual named "D█████". D█████ apparently was also known as "D█████ D█████".

- [28] An adjournment was sought and obtained for the purposes of attempting to identify and find an individual who went by the name of "D██████" or "D██████ D██████".
- [29] The Tribunal reconvened on September 29, 2008, after the adjournment that was sought and obtained on July 2, 2008. The Tribunal heard evidence from Mr. B██████ at this hearing, as the University had concluded the evidence in the case.
- [30] Mr. B██████ explained during his direct examination that he did not personally hand in the April 5th essay, that the May 8th essay was submitted in error and that the May 16th essay was the essay that ought to have been submitted all along, Mr. B██████ explained in his direct evidence that he had difficulty with respect to writing and some other medical problems, and was registered with Accessibility Services. Mr. B██████ explained that he frequently saw Dr. Levey, and that in fact, he was not in Canada on April 5, 2007, when his paper was submitted. Moreover, Mr. B██████ explained that he was working on the paper that was to be handed in at the Robarts Library, on April 4th and in the very early morning hours of April 5th. In fact, he went from the Robarts Library to the airport.
- [31] As he was pressed for time, he approached the individual he described as "D██████", gave him his USB key at the Robarts Library, asked D██████ to print out the paper and hand it in for him, because there was no one else to hand the paper in for him. He said he knew D██████ from his history class, and that D██████ was also known as "D██████ D██████".
- [32] According to Mr. B██████, he gave Dennis the USB key on which the paper was stored. Mr. B██████ said that D██████ is the one who likely made the changes to the medical certificate and the letter, and he said that he was "shocked" when he learned that these documents had been altered, something that he did not learn about until the Dean's meeting.
- [33] Mr. B██████ explained that the May 8th essay was in fact mistakenly handed to Professor Haddow at the time that Mr. B██████ was meeting with him on May 8th, because he was nervous and was unaware of what he was handing to Professor Haddow.
- [34] According to Mr. B██████, this May 8th essay was in fact a draft of something he was working on with an individual named "G██████".

- [35] Mr. B█████ explained that much of the confusion arising from the discussions he was having with Mr. Nicholson and Professor Haddow, and the confusion about the names are a result of his dyslexia. This, according to Mr. B█████, causes him to mix up dates and names. Moreover, he was nervous and flustered in these meetings, and he felt pressured.
- [36] In essence, Mr. B█████ informed the Tribunal that "D█████" was the only person available in the Robarts Library in the early morning hours of April 5, and he was the only person he knew who could help him hand in the paper, and so he asked D█████ to help him out - even though he had had a fight with D█████ only two weeks before the request to D█████ to print off and hand in the paper for him.
- [37] At the conclusion of Mr. B█████'s direct examination, a further adjournment was sought.
- [38] The basis for the adjournment was that Mr. Centa, on behalf of the University, wished to examine the USB key to which Mr. B█████ was referring in his direct examination. It was determined that the USB key still existed, that it was available, and on the consent of all parties, the matter was adjourned so that the USB key could be properly analyzed and examined on terms satisfactory to all parties.
- [39] The case next convened on November 24, 2008. At this point, the USB key had indeed been examined and analyzed, and the evidence of Betty-Ann Campbell, a law clerk with the firm Paliare Roland Rosenberg Rothstein (the solicitors acting on behalf of the University of Toronto) was tendered on the consent of all parties.
- [40] Mr. B█████ admitted that he did not disagree with the contents of the evidence of Betty-Ann Campbell (which became exhibit 5).
- [41] The essence of the evidence of Ms. Campbell is two-fold. First, Ms. Campbell's evidence makes it clear that the April 5th essay was created between the hours of 9:04 p.m. on April 4, 2007 and 2:35 a.m. on April 5, 2007 and that it was heavily altered to disguise the fact that it was almost entirely plagiarized. Second, the May 8th essay appears to have gone through several iterations, in March, 2007, and this essay also contained passages reproduced from unattributed online sources. It is also replete with editing, whereby

certain words are substituted with synonyms, and there are some voice changes, notably the substitution of the pronoun "I" for the collective "we". In other words, Ms. Campbell's evidence makes it clear that the April 5th essay and the May 8th essay underwent significant alterations in order to disguise the existence of plagiarism.

- [42] Finally, Ms. Campbell's evidence makes it abundantly clear that the May 16th essay was created beginning on May 9, 2007 at the very earliest.
- [43] When confronted with these various pieces of evidence, and the plagiarism replete in the April 5th and the May 8th essay, Mr. B█████'s explanation evolved to say that first, these documents "are not my work" and/or that these documents are or were exam study notes, not papers. In any event, whatever the changes were to the April 5th essay and the May 8th essay, Mr. B█████ denied that he made any of those changes.
- [44] Mr. B█████ stated, under cross-examination, that the paper that he intended to submit all along is the one that is referred to as the "May 16th paper".
- [45] At the end, the problem with Mr. B█████'s evidence is that the essay that was supposed to be submitted "all along" and which Mr. B█████ said ought to have been submitted by "D█████" on April 5th, did not come into existence until at the earliest, May 9th.
- [46] Further, it is hard to imagine why those documents which were identified as "study notes" by Mr. B█████ (and it is unclear as to whether all of the wrongly handed in documents were study notes or only some of them) would be so painstakingly doctored in order to disguise plagiarism, if they were what they purported to be -- study notes.
- [47] Rather, it appears that Mr. B█████ confounded the extraction of the true story line, by changing key elements of his narrative, at each step of the way. Further, Mr. B█████ confounded the issue of which document was intended to be a study note rather than a plagiarized essay, and which document was the real essay that ought to have been handed in, by adding a third party, someone named "D█████" or "D█████ D█████", as the individual who set out to negatively affect Mr. B█████ by handing in the wrong paper, doctoring the paper, and then doctoring medical certificates and/or Accessibility letters in order to confound Mr. B█████.

- [48] It is hard to imagine why an individual, who wished to do harm to Mr. B█████, would alter an Accessibility Services letter to extend the time within which Mr. B█████ had to submit the paper. This simply does not make sense. It cannot be that Mr. B█████ was the victim of a miscreant (whether he was named "D█████" or "D█████ D█████" or "E█████ J█████" or "E█████ J█████") when the purported miscreant is alleged to have forged or altered a medical certificate in order to provide a medical foundation for the late delivery of the paper. Surely, if someone was out to "get" Mr. B█████ (as he says the purported miscreant was), they would have done the very opposite, namely refused to hand in the certificate, or alter the certificate in order to eradicate the foundation for the late delivery of the paper. Even if someone did favourably alter a medical certificate or Accessibility Services note in order to get someone in trouble, it would stand to reason that such a person would make the forgery as obvious as possible in order to ensure that the victim got caught. Here, the forgeries were very difficult to detect and, indeed, went undetected until after other irregularities prompted the University to look at them more closely.
- [49] At the end of this long hearing, after three hearing dates, the Tribunal was left with a layered story, that had evolved over a series of days, which resolved into the general proposition that someone, between the hours of 9:00 p.m. and 2:00 a.m. on April 4 to April 5, 2007, altered Mr. B█████'s April 5th essay, then somewhere in or around that time, altered a letter from Accessibility Services at the University of Toronto, and created a false medical certificate, both of which were designed to extend the time for delivery of a paper by Mr. B█████. The problem with this explanation is that it does not make sense when viewed against the painstaking analysis of the USB key (on which the paper was composed) and the logs at the University related to the use of the computer facilities at the Robarts Library.
- [50] The evidence, and in particular the evidence arising from the examination of the USB key, simply does not support any of the explanations provided by Mr. B█████. The Tribunal prefers the submission of the University, namely that Mr. B█████ was placed in a position whereby he needed to explain certain papers and events associated with the failure to properly cite or reference sources. It is hard to dispute the painstaking analysis conducted by Ms. Campbell in respect of the USB key. Simply put, the essay that was intended by Mr. B█████ (apparently) to be handed in to Professor Haddow "all along",

namely the May 16th essay, could not possibly have been in existence before April 5, 2007. The pillars upon which Mr. B [REDACTED]'s explanations rested in respect of the papers, of the chicanery of which he says he was the victim, and of the confusion on his USB key cannot be adequately explained. Conversely, the failure of this explanation to hang together, in the face of the various analyses to which it was subjected, inclined the Tribunal to be convinced that Mr. B [REDACTED] played the only role in the submission of the papers and the medical certificate and the Accessibility Services letter and that he was the only person who altered these documents. Mr. B [REDACTED]'s explanation about the various essays was subjected to and filtered through the prisms of scientific and rational analysis, and, as a the result, his explanation simply did not hold water. And, it is on that basis that the conclusion arose that Mr. B [REDACTED]'s explanation about the Accessibility Services Letter and the Medical Certificate did not ring true. And, it is on this basis that the Tribunal came to be convinced that Mr. B [REDACTED] himself altered the Accessibility Services Letter and the Medical Certificate. This is an indirect way of arriving at the conclusion, and the evidence upon which the conclusion of the Tribunal is based is indirect. The absence of direct evidence is not, however, a bar to conviction. The duty of the Tribunal is to consider all the evidence, direct and indirect, to view it in its totality and to filter the evidence through the prism of common sense. The evidence that was elicited, viewed in its totality, cannot but lead to one conclusion, namely that Mr. B [REDACTED] did indeed submit plagiarized work, alter both an Accessibility Services Note and a Medical Certificate, and repeatedly lie about doing all of these things. The evidence also shows that, in weaving his web of lies, Mr. B [REDACTED] did not hesitate to implicate other innocent individuals.

- [51] For these reasons, the Tribunal concluded that Mr. B [REDACTED] was guilty of the offences, as set out at the beginning of these reasons.

Reasons on Sanction

- [52] On January 22, 2009, the panel convened to hear submissions with regard to penalty. It is important to note that the hearing on January 22, 2009 had been previously convened for November 28, 2008. However, Mr. B [REDACTED] was not available and did not attend. His counsel could not assist the Tribunal with regard to the reason for the non-attendance,

and in order to provide Mr. B [REDACTED] and his counsel ample time to confer and to attend at the hearing, the date of January 22, 2009 was scheduled.

[53] Mr. B [REDACTED] did not attend at the penalty hearing. Again, his counsel again was unable to advise as to the reasons.

[54] The Tribunal heard submissions from discipline counsel on sanction. On behalf of the Provost, Mr. Centa asked the Tribunal to impose the following sanction:

1. An assignment of a grade of zero in POL103Y
2. A recommendation to the President to recommend to Governing Council that the Student be expelled
3. That the decision be reported to the Provost for publication in the University's newspaper with Mr. B [REDACTED]'s name withheld

[55] After deliberating, the Tribunal imposed the above sanction. The following are the Tribunal's reasons for the penalty.

[56] It is true that there is a range of penalties available to the Tribunal after a finding of guilt. These penalties are connected to the nature of the charges and of course, to the findings in those charges.

[57] There is now a substantial body of jurisprudence developed by the Tribunal with respect to penalty. The foundational case with regard to penalty is that of the decision commonly referred to as "Mr. C.", dated November 5, 1976. In that decision, John Sopinka Q.C. (as he then was) states, "...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.”

[58] In this case, the Tribunal focused on the following:

1. There were four acts that gave rise to the charges and the conviction. They included the plagiarized essay delivered on April 5th; the further plagiarized essay delivered on May 8th; the falsified Accessibility Services note; and the falsified medical certificate.
2. These plagiarized documents and the falsified note and certificate all occurred within a very short timeframe.
3. In addition, the essay that was provided on May 8th was submitted at a meeting held to discuss concerns about the April 5th essay and plagiarism evident in it.
4. The fact that there are four separate, discrete instances whereby documents were either plagiarized or altered, all within a short period of time, makes the conclusion that these instances of plagiarism and forgery of documents were part of a pattern, if not a deliberate plan.

[59] The reason why the acts of plagiarism are made more significant relates to the use by the Student of the Accessibility Services offered at the University of Toronto.

[60] Part of the ethos of the University of Toronto relates to the recognition that not all students come to the University with the same levels of linguistic and/or learning competencies. In order to create a level learning field, then, the University of Toronto, at its own expense, has established a network of services and organizations designed to assist those students with learning and language difficulties to participate at the same level as other students in the University. In essence, the role of the University of Toronto's Accessibility Services is to ensure that students admitted to the University are able to participate and learn and obtain their education without fear of being held back by challenges associated with learning competencies or language difficulties.

[61] In order to promote the assistance that the University of Toronto has provided to such students, it has become a practice across the University to accept, at face value, medical

notes and Accessibility Services requests and letters. In the absence of such acceptance, the University's support for those students who face various challenges will be significantly undermined.

- [62] Of course, it is also true that the provision of Accessibility Services and other services to students, including medical services, and the acceptance of notes, certificates, and letters from these services, is part of the relationship of trust between the University and the student. This relationship of trust is part of the wider relationship of trust that goes hand in hand with the expectation of ethical behaviour and fair treatment within the general University population.
- [63] In considering the likelihood of a repetition of an offence, the intertwined use and abuse of the Accessibility Services by the Student, together with the repeated plagiarism, played a significant role.
- [64] When a student engages in both plagiarism and a misuse of the University policy related to accommodation of students, and when, in addition, the student in defence implicates another student (which is what occurred in this case), the need for deterrence by way of a penalty becomes important.
- [65] It is true that Mr. B [REDACTED] pleaded guilty in respect of part of the charges, but, in doing so, he did not take responsibility either in whole or in part for either that to which he pleaded guilty, or to those charges upon which he was found guilty. In his testimony, he demonstrated no remorse or insight into his offences. While it is true that Mr. B [REDACTED] was entitled to require the University to prove its case, Mr. B [REDACTED] cannot be given any credit for insight and/or remorse in the course of his testimony. He demonstrates no insight or remorse for even those charges upon which he has pleaded guilty.
- [66] For this reason as well as the fact that there was a pattern of four incidents of plagiarism and altered documents, the Tribunal concluded that there was a very high likelihood that the Student would repeat the offence, and that there must be little to no prospect of rehabilitation, especially in light of the failure of the Student to exhibit either insight or remorse for those charges to which he pleaded guilty.

- [67] Finally, as noted above, the Student was given not one, but two opportunities to attend at the penalty hearing. He chose to attend neither.
- [68] In the absence of the Student attending for either of the penalty hearings (both of which were scheduled to allow him to have time to prepare and attend), the Tribunal concluded that the Student was prepared not only to lie and cheat in order to gain an academic advantage but was also prepared to implicate other students as excuses or scapegoats, (which in this case was unsuccessful) and to abuse the very services (Accessibility Services) put in place to assist him, and resorted to by him for assistance in the past.
- [69] It is notable that this matter proceeded over a series of many evenings. The panel was obliged to hear evidence and retain and consider very complex volumes of evidence over a series of months.
- [70] In the result, the Tribunal was unanimous in its determination of guilt, because the evidence was highly convincing in that regard.

Reasons on Cost

- [71] At the request of a member of the panel, submissions as to costs were requested. The decision of the panel is not to award costs, although such an avenue is available to it.
- [72] It should be noted that the University in making its submissions respecting costs has also taken the position that no costs are being requested.
- [73] As an addendum to these reasons, the Tribunal attaches the submissions of the University respecting costs, and concurs that this is not an appropriate case where costs ought to be awarded.

April 22, 2009
DATE

Julie Hannaford
Julie K. Hannaford

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on October 23,
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AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic
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AND IN THE MATTER OF the *University of Toronto Act, 1971, S.O. 1971, c. 56*
as amended S.O. 1978, c. 88

B E T W E E N:

THE UNIVERSITY OF TORONTO

- and -

A [REDACTED] B [REDACTED]

SUBMISSIONS OF THE UNIVERSITY REGARDING COSTS

1. On January 22, 2009, the University Tribunal requested that the University provide it with submissions dealing with two matters:
 - a. the jurisdiction of the University Tribunal to award costs of a proceeding; and
 - b. whether, in the circumstances of the case, the University's wished to seek costs of the proceeding against Mr. B [REDACTED].
2. The University submits that, while the Tribunal has the jurisdiction to award costs of proceedings, in all the circumstances of this case the University is not requesting that the Tribunal do so.
3. The University Tribunal takes its jurisdiction from the University of Toronto *Code*

of *Behaviour on Academic Matters* ("Code"). The Code confers jurisdiction on the Tribunal to award costs of proceedings at trial. Section C.II.(a)17(b) provides:

Where it is considered to be warranted by the circumstances, the chair of a hearing may in his or her discretion award costs of any proceedings at trial, and may make orders as to the party or parties to and by whom and the amounts and manner in which such costs are to be paid.

4. Thus, the University submits that the chair of a hearing has clear jurisdiction to award costs where she or he considers it appropriate to do so.

5. This jurisdiction has been exercised, albeit infrequently. Most recently, in the 2006 case of the University of Toronto and P [REDACTED] D [REDACTED], the University Tribunal did make a costs order against the student. I have attached a copy of the reasons for decision to these submissions.

6. Mr. D [REDACTED] was charged with falsifying and circulating two academic records in November 2003 and January 2004. The Tribunal found Mr. D [REDACTED] to have committed the offences and recommended that he be expelled from the University.

7. The Tribunal, at the request of the University, made an award of costs against the student. In particular, the Tribunal ordered the student to pay \$1,660.96 to the University in compensation for disbursements incurred by the University to locate and serve the student, who had evaded service. The Tribunal noted:

At the conclusion of the hearing, counsel for the University asked the Panel to award the cost of external disbursements incurred by the University in its efforts to contact the Student and set a hearing date. The panel heard submissions from the University regarding the lengthy and expensive nature of those efforts and had an opportunity to review the Tribunal's decision in the case of Mr. K, which was similar in many respects. Counsel for the University took the Panel to

section C.11.a.17(b) of the Code which sets the Tribunal's authority to award costs.

The University noted that, in the end, the Student had cooperated with the University and, as a consequence, they were not asking the Panel to award the University's total costs, but only its external disbursements. The University indicated that they were seeking \$1660.96.

The Student, through his counsel, did not contest the University's request; he only asked that, if the Panel awarded costs, he be allowed six months from the date of the hearing or the decision of the Governing Council on the Panel's recommendation of expulsion to remit payment. The University asked that the deadline for payment be set as February 15, 2007, six months from the date of the hearing.

The Panel, after deliberating, unanimously accepted the University's request and ordered the Student to pay costs of \$1660.96 to the University on or not later than February 15, 2007.

8. Thus, not only does the University Tribunal have jurisdiction to award costs of all or part of the proceedings before it, it has exercised that jurisdiction fairly recently.

9. However, in the circumstances of this case, the University does not seek an award of costs. Mr. B██████'s conduct during the proceedings was troubling. In particular, his unannounced decision not to attend the hearing on November 28, 2008, significantly inconvenienced the panel, Ms. Smart, and counsel. It also delayed the proceeding by almost two months.

10. Moreover, his failure to attend the peremptory hearing on January 22, 2009, again without advance notice, showed a troubling unwillingness to engage with the University discipline process.

11. There is no doubt that the University incurred costs directly related to Mr. B██████'s failure to attend without notice. In particular, the University incurred costs related to the scheduling of the aborted hearing on November 28, 2008, as well as costs

thrown away for its counsel to prepare for and attend for that hearing and it is our submission that this type of conduct could reasonably support an award of costs within the jurisdiction of the Tribunal.

12. However, having considered all of the circumstances, the University does not ask for an award of costs in this case.

13. Finally, the University wishes to emphasize that nothing in these submissions should be taken as a criticism of Mr. Shapiro or DLS.

All of which is respectfully submitted on January 27, 2009



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