

**THE UNIVERSITY TRIBUNAL  
THE UNIVERSITY OF TORONTO**

**IN THE MATTER OF** charges of academic dishonesty made on September 2, 2008,

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

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

**BETWEEN:**

**THE UNIVERSITY OF TORONTO**

- and -

**Mr. F.C.**

**Members of the Panel:**

- Ms. Rodica David Q.C., Chair
- Professor Bruno Magliocchetti, Faculty Member
- Mr. Sam Liu, Student Member

**Appearances:**

- Mr. John N. H. Britton, Dean's Designate, for the University of Toronto
- Mr. Robert A. Centa, Assistant Discipline Counsel, for the University of Toronto
- Mr. Khalid Janmohamed, assisting Mr. Robert A. Centa
  
- Mr. F. C., the Student
- Mr. Nick Shkordoff, Law Student for the Student
- Ms. Charlotte Macdonald, assisting Mr. Nick Shkordoff
- Mr. Daniel Saposnik, assisting Mr. Nick Shkordoff

**THE CHARGES**

[1] The Student was charged with various offences under the *University of Toronto Code of Behaviour on Academic Matters* ("Code") which may be summarized as follows:

- a) Plagiarism relating to two separate essays;

- b) Submitting an examination paper under a false name;
  - c) Having another person sit in for him while giving a false name on a final examination.
- [2] The Student pleaded guilty to all charges.
- [3] Although the Student also pleaded guilty to alternative general charges laid under Section B.1.3.(b) of the Code, the University withdrew these charges and these charges were not proceeded with.
- [4] The University of Toronto and the Student filed a Joint Book of Documents as well as an Agreed Statement of Facts.

## **BACKGROUND**

- [5] In June 2006, the Student graduated as an Ontario scholar from Thornlea Secondary School. In his last year of high school he had high marks. According to his mother, who gave testimony, he not only did well in high school, being an Ontario scholar, but he also participated in sports and did volunteer work in an old age home.
- [6] He was admitted into a first year Commerce Programme at the Faculty of Arts and Science at the University of Toronto in the fall of 2006. After one year in this programme, his marks were not sufficient to enable him to continue studies towards a Bachelor of Commerce degree. Accordingly, in the fall of 2007, he switched to Philosophy. During the 2007-2008 academic year, he worked full-time with the Canadian Imperial Bank of Commerce while enrolled in a full time Arts programme in Philosophy.
- [7] In the winter of 2008, the Student was enrolled in the following two Philosophy courses: PHL240H - Persons, Minds and Bodies, taught by Professor James John; and PHL271H - Law and Morality, taught by Professor Wayne Sumner. The charges to which the Student pleaded guilty related to events that occurred in connection with these two courses between May 6, 2008 and May 23, 2008.
- [8] In the Fall of 2008, the Student ceased attending the University of Toronto and was enrolled in Computer and Marketing courses at Seneca College. He obtained good marks in these courses. However, he did submit an essay that, while quoting from and giving credit to various online websites, did not actually place quotation marks around the quotes. He did not attribute any significance to the absence of quotation marks since it is clear from his essay that he clearly identified the sources of the excerpts he had taken from the websites.

## EVENTS RELATING TO THE CHARGES

- [9] On January 14, 2008, the Student received a lengthy memorandum entitled "Honesty in Scholarship" which outlined in detail the nature and consequences of plagiarism.

### Persons, Minds and Bodies PHL240H

- [10] The course outline indicated that there were four elements to this course as follows in respect of which the Student's performance was dismal:
- a) Tutorial participation - 5% - The Student did not attend any tutorials.
  - b) Essay # 1 – 20% – The Student handed in an essay entitled "A Study of Moral Responsibility and Alternative Possibilities" significantly later than its due date, having given various excuses why it was late. This essay listed verbatim and nearly verbatim excerpts from sources that he did not identify nor did he attribute these excerpts to any source by using quotation marks or otherwise.
  - c) Essay # 2 – 30% – The Student again handed in, much past the deadline, a document entitled "Personal Identities Essay" which likewise contained extensive excerpts from unacknowledged sources without attributing them to these sources.
  - d) Final examination – 45% – The Student attended at the examination, provided his student identification, and then handed in an examination booklet under the fictitious name of Alex Li. Subsequently, the Student falsely alleged that he had completed the examination and then had the audacity to complain that he had received a mark of zero when his examination paper could not be found. We assume that the University staff was put to unnecessary effort to try to locate this fictitious examination paper.

### Law and Morality PHL271H

- [11] Two days after the Student attended the examination in the course entitled Persons, Minds and Bodies, the Student attended to write the examination in Law and Morality. He presented his student card, and signed an examination list. He submitted an examination booklet in a fictitious name (the details of which were not revealed in the evidence) and, in addition, arranged for a friend (who he refused to identify) to attend the examination and submit the examination booklet in his name.

### Disposition on the Substantial Charges

- [12] Section C.II.(a)9 makes it clear the onus is on the University to show on "clear and convincing evidence" that the accused committed the alleged offence.
- [13] Given the Agreed Statement of Facts and Joint Document Brief, the Tribunal

had no hesitation in accepting the Student's plea of guilty on these charges.

### **SANCTION – POSITION OF THE PARTIES**

[14] The University took the position that the Tribunal should recommend to the President, expulsion under section C.II.(b)(i). The student put forth the position that he should be suspended for a period of five years.

### **THE EVIDENCE ON SANCTION**

[15] The University offered no evidence on sanction; it relied on the Joint Book of Documents and the Agreed Statement of Facts.

[16] The Student testified on his own behalf. In addition he called his mother as a witness.

[17] We found that the evidence submitted by the Student and his mother to be credible. This evidence revealed that the Student had a rather tortuous family history. His mother throughout this period had serious health issues including hypertension, diabetes, high cholesterol, and heart disease. These conditions became so serious that she was hospitalized in September of 2008. She apparently followed in the footsteps of her own mother who, with similar ailments, died in a supermarket in front of the Student and his sister while they were grocery shopping. Presumably this had a life long effect on the Student.

[18] The Student's mother had held a senior position at the Royal Bank of Canada, an obviously very responsible position. When the Student was in grade 10, she quit this position to become a marketing consultant. However, she had a very fervent desire to see the Student pursue higher education and achieve success. It appears that it is for this reason that the Student originally enrolled in the Commerce Programme. When his marks were so poor that he did not satisfy the requirements to continue in the Commerce Programme, he apparently arbitrarily chose to enrol in Philosophy in the Faculty of Arts. At approximately the same time, he became employed full-time with the Canadian Imperial Bank of Commerce. He testified that he was torn between pursuing a career through continuing to work or pursuing higher education. He worked so much that he did not have time to devote to his Philosophy courses in which, one could reasonably conclude, he had very little interest. He enrolled in this course because of the significant pressure placed upon him by his parents, and presumably, in particular, by his mother.

[19] The Student testified that he wasn't aware that he was actually plagiarizing at the time that he submitted the essays. However, it would appear more likely that he simply paid little attention to these essays and felt so pressured to

submit them, that he simply fired them off without much thought. It was obvious that he was not ready to write any exams given that he did not attend classes, did not attend tutorials and had presumably done very little study in the courses. He then began to try to devise ways of passing the exams, firstly by creating a fictitious exam so that he would be given another opportunity to write it, and secondly by having a friend impersonate him on the next exam.

- [20] Following the events giving rise to the charges, he wrote a letter to his professor in PHL240H - Persons, Minds and Bodies trying to urge the professor to consider his essays and insisting that he had written the exam. This letter was apparently primarily composed by his mother.
- [21] The Student attended a meeting with the Dean along with his mother. He testified that he could not find the courage to admit everything, although he did admit the plagiarism at that first meeting. He expressed remorse and advised that he knew what he had done was wrong.
- [22] In the second meeting with the Dean, which his mother did not attend, he admitted guilt again on the plagiarism and also on the personation offences relating to the two examinations.
- [23] During his testimony, the Student repeatedly expressed remorse about his conduct. He acknowledged that he had plagiarized the essays. He refers to himself as being stupid and that he should have known better. The Student described his behaviour in relation to the personation offences as being "ridiculous, completely unacceptable"
- [24] The Student expressed the hope that he could complete his courses at Seneca which he estimated would take three years, and thereafter enrol in University again for a period of four years. If he successfully completed every year of his programs, he would be age 27 when he graduated University. He now understands the importance of higher education and appeared to be sincere in wishing to pursue this goal. He expressed sincere regret to everyone for the consequences of his conduct.
- [25] The Student advised that he was extremely depressed during this time period. However, he failed to provide any expert medical evidence in this regard. Notwithstanding the absence of expert evidence, it does appear that his depression coupled with the pressure that was being exerted upon him by his parents accounts for his decision to pursue the disastrous course that resulted in the charges. Although he could have simply dropped out of the course when he had an opportunity to do so and wished to do so, he was persuaded and pressured by his mother to continue. Moreover it is entirely possible that his cultural background made it difficult for him to seek help such as counselling among numerous services available at the University of Toronto.
- [26] It is clear that the Student has been thoroughly humiliated and discredited

within his own family and possibly within his ethnic community.

### RANGE OF SANCTIONS AVAILABLE

- [27] Pursuant to the Code, the Tribunal's authority to impose sanctions is clearly set out (and indeed limited) by section C.II.(b)1. The range of sanctions within the jurisdiction of the Tribunal to impose, are from a minimum of an oral reprimand to a suspension of up to five years. Unfortunately there is no jurisdiction in the Tribunal to recommend a suspension exceeding five years.
- [28] Pursuant to subsection (i), the Tribunal does however have jurisdiction to recommend expulsion, but, in that event, the recommendation is made to the President for a recommendation by him or her to the Governing Council. The Tribunal does not have the jurisdiction to impose a sanction of expulsion.
- [29] Regardless of the sanction imposed, the Tribunal has the power to order that any sanction be recorded on the student's academic record and transcript, without limitation as to the length of time; the length of time is entirely in the discretion of the panel.
- [30] Finally the Tribunal may report any case to the Provost who may publish a notice of the Tribunal's decision and the sanction imposed in the University newspapers with the name of the student withheld.

### SANCTION CONSIDERATIONS

- [31] In the well known case of Mr. C, (November 5, 1976), a decision of the University Tribunal sitting on Appeal from the then local branch of the Trial Division of the Tribunal, Mr. John Sopinka, as he then was, enunciated the principles relevant to sanction namely:

*"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."*

## THE AUTHORITIES AND CASE LAW

[32] Appendix "C" to the Code, the Provost's Guidelines on Sanctions, Offences and Suggested Penalties For Students, states, inter alia, as follows:

*"The particular circumstances of each case will, of course, have to be taken into account, but the following are suggested guidelines:*

2. *For submitting work, where it forms a major fraction of the course, in whole from another person, the sanction recommended shall be suspension from the University for at least two years.*
6. *For personating, or having an individual personate on a test or examination, the recommended sanction shall be expulsion from the University."*

[33] It is clear, therefore, that each case must depend on its own facts.

[34] Counsel for both parties presented extensive case authorities, which they urged the panel supported their position. Unfortunately, none of these cases on their facts mirror the case of this Student.

[35] With respect to the case authorities submitted to us by counsel for the University, the cases differ significantly and can be distinguished as follows:

1. In the case of Mr. S.B. (November 14, 2007), the student had pleaded not guilty and accordingly a Trial was necessitated on the merits. The student had two prior offences. However, only one count of plagiarism was involved. A three year suspension was imposed for a third offence which, according to paragraph 35 of the decision, "*strikes a balance of punishment, compassion, rehabilitation and deterrence*".
2. In the case of Mr. K.N. (April 18, 2008) there was one count of personation, the student did not appear, but there was a Joint Submission for a five year suspension.
3. In the case of Mr. V.A. and Mr. A.H. (May 17, 2002), also cited by the Student, the two students charged were the impersonator and the registered student who was being impersonated. An Agreed Statement of Facts was submitted with a Joint Submission on sanction recommending five year suspension for each student. The student requesting the impersonation, being the initiator, pleaded guilty and was given a five year suspension. There were mitigating circumstances in that he had medical difficulties and had expressed remorse.

The impersonator was given only a four year suspension as the panel felt that the initiator should be more severely sanctioned than the

impersonator. In both instances, a comparable period of time was set for the notation of the suspension on each student's academic record.

4. In the case of Mr. C., (November 17, 2000), also cited by the Student, the student, who had impersonated another student at an examination was expelled. However, the student did not attend the hearing, and there were absolutely no extenuating circumstances.
5. In the case of Mr. P., (November 17, 2000), being the student for whom Mr. C. in the above matter had acted as impersonator, also cited by the Student, a suspension of five years was imposed and a five year notation was placed on his academic record.

Mr. P. pleaded guilty to four different charges relating to the personation on the exam as well as falsifying doctor's notes and a medical certificate. However, there are some similarities with the case before the panel, specifically:

- a) He made an effort to substantially improve his academic performance.
  - b) All four charges occurred within a very short period of time.
  - c) There were no previous convictions nor any further misconducts subject to the one series of events that led to the four charges.
6. In the case of Mr. A.P., (July 5, 2005), the student was expelled on a second offence of forging an academic record. However, the student did not appear and there were no mitigating factors. There was, on the contrary, the aggravating factor that he had made it extremely difficult to be served.
  7. In the case of Ms. E., (March 15, 1994) after a Trial, the student was found guilty of separate offences relating to plagiarism and forgery. As she did not appear, the Trial had to proceed in her absence. Although the student had admitted the offences in a letter that she wrote to the Provost, and apologized, there were no other extenuating circumstances and no redeeming factor made known to the Tribunal. Accordingly, the sanction was expulsion.
  8. Finally in the case of Ms. S.L., (April 6, 2006) the student submitted two essays that she had purchased. The student pleaded guilty based on an Agreed Statement of Facts. Expulsion was recommended, however in that case, the Tribunal was of the view that the student's evidence of adverse circumstances could not be "*clearly causally connected to the offence*". In paragraph 31 the Tribunal stated "*The Tribunal is not satisfied that personal adversity encountered by Ms. L. 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.”*

- [36] Counsel for the Student cited three additional cases, all of which involved multiple offences and none of which resulted in an expulsion. Two of these cases involved Joint Submissions.
- [37] Finally the Student referred to four expulsion cases all of which involved aggravating factors.
- [38] In our view, the cases involving a Joint Submission on Sanction are of little assistance in this case, as the test for the Tribunal to refuse to accept a Joint Submission is a stringent one. It was enunciated in the decision of the Tribunal in the case of Mr. K.N. at paragraph 12 as follows:

*“In its submissions on penalty, the University reminded the panel of the courts’ directives on joint submissions, namely that adjudicators should be loathe not to accept the joint submission and should do so only if the administration of justice would become in disrepute following acceptance of a joint submission. In that context, the University strongly encouraged the panel to accept the joint submission on penalty”.*

- [39] The facts of the case of Mr. P.M., (April 9, 2002) cited by both parties most closely resembles this case. The student pleaded guilty, based on an Agreed Statement of Facts, to one count of personation. On a Joint Submission he was given five years suspension and five years notation on his academic record. The factors that were most similar to this case provided in the Joint Submission in litigation were as follows:

*“The Joint submission set out the following mitigating factors in this case:*

- 1) The student acknowledged his guilt when first confronted with the allegations;*
- 2) The student expressed remorse to the Dean when first confronted with the allegations;*
- 3) The student is a transplanted individual who has not been able to adjust fully to Canadian society in general, and to the university culture in particular;*
- 4) The student comes from a culture that is dominated in family control, in which personal decisions and educational decisions are made only with permission of the parents or elders. In this case, the student felt intense pressure to complete his studies, and believed that the consequences of failure would be severe;*
- 5) At the time of the offence, the student had a limited support network of friends. He did not have the benefit of*

*close peers to assist him in dealing with his academic problems when they first arose; and*

- 6) *The student understands the need for a significant sanction. The student has shown respect for the discipline process throughout, and accepts that the sanction submitted is appropriate."*

### **DISPOSITION ON SANCTION**

[40] We are of the view that the conduct of the Student is extremely egregious and deserves a very serious sanction. However, as there are mitigating circumstances, we are not persuaded that he should be given the "life sentence" of expulsion.

[41] We have therefore concluded that the most appropriate sanction within the limitations of the Code is as follows:

(1) Suspension for five years

(2) That the sanction be recorded on the Student's academic record for ten years.

(3) Report to the Provost to publish a notice of the decision of the Tribunal and the sanction imposed in the University newspapers with the name of the Student withheld.

[42] We would have imposed a suspension for ten years, if we had been given the authority to do so under the Code.

*Rodica David*

Rodica David, Co-Chair

[43] **Amendment to the Reasons for Decision**

Through oversight, one of the sanctions which discipline counsel and counsel for the Student recommended to the panel was not included in the original *Reasons*. For the sake of clarity, the parties have requested that the panel list all sanctions to be imposed. Therefore, we order the following sanction:

1. Grade of zero in PHL240H and PHL271H
2. Suspension for five years
3. That the sanction be recorded on the Student's academic record for ten years
4. Report to the Provost to publish a notice of the decision of the Tribunal and the sanction imposed in the University newspapers with the name of the Student withheld.

April 20, 2009

*Rodica David*

Rodica David, Co-Chair