

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL – TRIAL DIVISION**

IN THE MATTER of charges of academic dishonesty made on September 18, 2008;

AND 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:

UNIVERSITY OF TORONTO

-and-

Z [REDACTED] C [REDACTED]

Members of the panel:

- Mr. John A. Keefe, Chair
- Professor Graeme Hirst, Faculty Member
- Ms. Elena Kuzmin, Student Panel Member

Appearances:

- Mr. Robert A. Centa, Assistant Discipline Counsel for the University of Toronto, Paliare Roland Barristers

In Attendance:

- Ms. Lucy Gaspini, Academic Affairs Officer, University of Toronto, Mississauga
- Mr. Z [REDACTED] C [REDACTED], the Student, not in attendance

REASONS FOR DECISION

1. The University Tribunal was convened on Wednesday, September 16, 2009 to hear charges under the *Code of Behaviour on Academic Matters, 1995* (the “Code”) laid against Z [REDACTED] C [REDACTED] (the “Student”). The Student was informed by letter dated September 18, 2008 from Professor Edith Hillan, Vice-Provost, Faculty & Academic Life, that he has been charged with academic offences and was provided with particulars of those charges.
2. Notice of Hearing was sent to the Student on September 15, 2009.
3. The Student was not present at the hearing.
4. At the outset of the hearing, the Tribunal was advised that the matter would proceed based on an Agreed Statement of Facts dated September 5, 2009.
5. In the Agreed Statement of Facts, the Student acknowledges that he has received reasonable notice of this hearing. He also states that he will be out of the country on the day of the hearing, and requests that the hearing proceed in his absence.
6. The Tribunal determined that it was appropriate to proceed in the absence of the Student in these circumstances.
7. The Tribunal noted that the Student was not represented at the hearing by counsel and that he executed the Agreed Statement of Facts without legal representation.

8. Paragraph 10 of the Agreed Statement of Facts provides as follows.

Mr. C [REDACTED] acknowledges that the Provost of the University of Toronto has advised him to obtain independent legal advice before signing this ASF. He acknowledges that he has either done so, or deliberately has waived his right to do so.

9. The Agreed Statement of Facts was executed on behalf of University by Robert A. Centa, Assistant Discipline Counsel of the University of Toronto. Mr. Centa assured the Tribunal that the Agreement was executed with Mr. C [REDACTED]'s full knowledge and consent and without any undue pressure.

The Charge

10. The Charge to which the Student agreed to plead guilty is:

On or about March 25, 2008, you knowingly represented as your own an idea, or an expression of an idea, or the work of another, in connection with an assignment titled "State of the Issue Paper: Arsenic Poisoning in Bangladesh" ("Essay"), which you submitted for academic credit in GGR345H5S – Environmental Issues in the Developing World ("Course"), contrary to section B.I.I(d) of the *Code*.

The Background Facts

11. The Agreed Statement of Facts describes the background facts as follows:

1. For the purposes of this hearing under the *Code of Behaviour on Academic Matters* ("Code"), the University of Toronto (the "University") and Z [REDACTED] C [REDACTED] ("Mr. C [REDACTED]") have prepared this Agreed Statement of Facts ("ASF") and a joint book of documents ("JBD"). The University and Mr. C [REDACTED] agree that:

- a. each document contained in the JBD may be admitted into evidence before 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 indicates that it was sent or received by someone, that is *prima facie* proof that the document was sent and received as indicated.

2. This hearing arises out of charges of academic misconduct filed by the Provost under the *Code*. A copy of the Charges, which were filed on September 18, 2008, is included in the JBD at Tab 1. Mr. C [REDACTED] acknowledges that he received a copy of the Charges.
3. The Notice of Hearing into the Charges is included in the JBD at Tab 2. Mr. C [REDACTED] acknowledges that he has received reasonable notice of this hearing. Mr. C [REDACTED] will be out of the country on the day of hearing, and requests that the hearing proceed in his absence.
4. In Fall 2005, Mr. C [REDACTED] registered as a student at the University of Toronto, Mississauga. At all material times, Mr. C [REDACTED] remained a registered student at the University. A copy of Mr. C [REDACTED]'s academic record dated September 4, 2009, is included in the JBD at Tab 3.
5. In Winter 2008, Mr. C [REDACTED] enrolled in GGR345H5: Environmental Issues in the Developing World ("Course"). David Sider was the instructor for the Course. A copy of the Course Syllabus is included in the JBD at Tab 4. Mr. C [REDACTED] admits that he received a copy of the Course Syllabus.
6. Assignment #2 in the Course assignments was to complete a "State of the Issues" report that focused on one environmental issue in a developing country of the student's choice. Assignment #2 was worth 30% of the final grade in the Course. A copy of the assignment is included in the JBD at Tab 5.
7. On March 25, 2008, Mr. C [REDACTED] submitted his State of the Issue Report, "Arsenic Poisoning in Bangladesh," in partial completion of the Course requirements ("Report"). A copy of the Report is included in the JBD at Tab 6.
8. Mr. C [REDACTED] admits that, the Report, he knowingly:
 - a. included verbatim and nearly verbatim excerpts from a number of on-line sources, copies of which are included in the JBD at Tabs 8 to 14;
 - b. failed to attribute those excerpts appropriately using quotation marks; and
 - c. did not include all of the sources in the bibliography.
9. Mr. C [REDACTED] admits that, in the Report, he represented the work and expressions of others as his own, and that he committed the academic offence of plagiarism as set out in charge #1 of the Charges, which are included in the JBD at Tab 2.
13. Mr. C [REDACTED] acknowledges that the Provost of the University of Toronto has advised him to obtain independent legal advice before signing this ASF. He acknowledges that he has either done so, or deliberately waived his right to do so.

12. It is important to understand some of the facts in order to understand the basis of the Tribunal's conclusion. In this case, it is very clear that the Student submitted an essay that was based almost entirely on content taken from on-line sources. The Tribunal was provided with the relevant materials from which the Student's work was taken. There was little or no independent thought put into the Student's work. It appeared, in fact, that the Student was able to effectively cut and paste most of the paper from the on-line sources. In this respect this would have to be viewed as being at the most serious end of the spectrum in terms of the nature of this offence.
13. Based on the facts as set out in the Agreed Statement of Facts and the documents in the Joint Book of Documents, the Tribunal concluded that it was prepared to make a finding of guilt to count 1 of the Charges. Discipline Counsel then withdrew count two of the Charges.

Joint Submissions on Penalty

14. After the Tribunal concluded that it was prepared to make the finding of guilt on count 1 of the Charges, the Tribunal was presented with an Agreed Statement of Facts and Joint Submission on Penalty ("Joint Submission of Penalty"). This was also executed on September 5, 2009 by Mr. C [REDACTED] and University Discipline Counsel.
15. Paragraph 8 of the Joint Submission on Penalty provides as follows:
 8. Mr. C [REDACTED] acknowledges that the Provost of the University of Toronto has advised him to obtain independent legal advice before signing this "Joint Submission on Penalty" and that he has either done so or has deliberately waived his right to do so.

16. The Joint Submissions on Penalty provides as follows:
2. Mr. C [REDACTED] has previously admitted to committing two other academic offences under the *Code*, and for which he received sanctions.
 3. On April 16, 2007, Mr. C [REDACTED] admitted that he had obtained unauthorized assistance in two lab reports that he submitted for academic credit in CHM 221 H5S. He submitted the lab reports, which were each worth 5% of the final grade in the course, on March 21 and 30, 2007.
 4. On June 11, 2007, Professor Moore, Chair of the Department of Chemical and Physical Science, University of Toronto Mississauga imposed a mark of zero on each of the two lab reports as a sanction. A copy of Prof. Moore's letter to Mr. C [REDACTED] is attached to this JSP as Tab 1. Mr. C [REDACTED] admits that he received a copy of Prof. Moore's letter.
 5. On July 16, 2007, Mr. C [REDACTED] admitted that he had committed plagiarism in an assignment that he submitted for academic credit in GGR 333 H5S. He had submitted the assignment, which was worth 35% of the final grade in the course, on April 19, 2007.
 6. Assistant Dean Lynn Snowden imposed a mark of zero on the assignment, which was worth 35% of the final grade in the course. A copy of Assistant Dean Snowden's letter to Mr. C [REDACTED] is attached to this JSP as Tab 2. Mr. C [REDACTED] admits that he received a copy of Assistant Dean Snowden's letter.

Guidelines on Penalty

17. The Factors to be considered when determining penalty are well established:
- (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 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.¹

¹ In the Matter of the University of Toronto Code of Behaviour and an Appeal by Mr. C., November 1976 pg 12.

18. The Tribunal, in determining the appropriate penalty, should consider various factors in order to find a fit sentence for this offender, for this offence in this community. In doing so, fairness, balance and proportion must be blended in.
19. There should be some measure of uniformity or proportionality so that there should be similar sentences imposed for offences committed in similar circumstances. The sentencing should preserve and ensure fairness by avoiding disproportionate sentences among similar sentencing processes so that there are not wide swings or inconsistencies between like offences and like offenders, recognizing that there is never a like offence or like offender.
20. There should be a range of sentences for offences such as plagiarism with sentences within that range moving up or down within that range depending on aggravating or mitigating circumstances.

Conclusion of Penalty

21. The Student was not in attendance at the hearing. No witnesses were called to present character evidence. There was no evidence before the Tribunal concerning the Student's personal or family background, his current activities or his academic intentions.
22. This makes it somewhat difficult for the Tribunal to weigh all the relevant factors relating to the offender are not available to the Tribunal.

23. The Tribunal was presented with the decisions of the Tribunal on other matters. One such decision was a Tribunal decision in the matter of *The University of Toronto and Mr. S.M.* This was a case involving a Joint Submission of Penalty and the principles to be applied in accepting or rejecting the Joint Submission of Penalty. In that decision, the Tribunal stated as follows:

A panel is not obliged to accept the Joint Submission on Penalty. Having said that, we accept the principle set out in the decision of the Ontario Court of Appeal in *R. v. Michael Tsicos*² dated October 6, 2006 that, generally speaking, a joint submission on penalty should be accepted unless it would be contrary to the public interest or bring the administration of justice into disrepute to give effect to the joint submission.

24. Based on this principle, even if the Tribunal concludes that the penalty may not be what it considers it would impose in the circumstances, the Joint Submission on Penalty should be accepted unless to do so would be contrary to the public interest or bring the administration of justice into disrepute.
25. The academic offence of plagiarism is a serious breach of the University's standards of ethical behaviour. The offence of plagiarism undermines the relationship of trust between the University and its students. Given the access to the Internet and sources of information, plagiarism has become a serious problem in the University environment. Principles of general deterrence must be considered in determining the appropriate penalty. As stated in *The University of Toronto and Mr. S.B.* (November 14, 2007):

² *Her Majesty the Queen v. Michael Craig Tsicos*, CAO, Oct. 11, 2006, Docket: C45531

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 greatly harmed by the commission of offences such as plagiarism and concoction.”

26. In support of the submission that the proposed penalty was within the appropriate range, the University Discipline Counsel referred the Tribunal to a number of cases. One such case was *The University of Toronto and Mr. N.H.H.* In that case, the student was charged with two counts of plagiarism, one committed on March 15, 2007 and one committed June 19, 2007. The Student had not been disciplined before. The student did not appear at the Tribunal hearing. After examining a number of other cases, the Tribunal concluded that the consistent minimum penalty for a first time offence of plagiarism would be a two year suspension. The Tribunal concluded that a three year suspension was warranted having regard to the fact that the student was found guilty on two counts of plagiarism.
27. University Discipline Counsel also referred the Tribunal to the case *The University of Toronto and Mr. S.B.* In this case, the Tribunal was considering the appropriate penalty for plagiarism for a third time offender. In that case, University Discipline Counsel was seeking a three year suspension. The student appeared at the hearing, pleaded not guilty, but was found guilty. There were extenuating personal circumstances presented by the student and there had been considerable delay in prosecuting the offence. The Tribunal concluded as follows:

[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.

28. Based on this decision and earlier decision referred to, *The University of Toronto and M.H.H.*, University Discipline Counsel submits that a three and a half year suspension is appropriate in this case. University Discipline Counsel submitted that this is the third offence of plagiarism for the Student. The Tribunal had to consider whether the prior offences should be treated as one prior offence rather than two separate offences. The background in the connection with the two prior offences was then examined by the Tribunal in some detail.
29. The first offence involved obtaining unauthorized assistance in two lab reports that the Student submitted for academic credit which were each worth 5% of the final grade in the course. The two lab reports were submitted on March 21 and 30, 2007. The Student was

interviewed by his professor and the Chair of the Department on April 16, 2007. At that time he admitted guilt and a mark of zero in each report was imposed. He received written notice of the outcome of the interview on June 11, 2007.

30. The second offence was in connection with an assignment which was worth 35% of his final grade in course GGR 333 H5S. This assignment was submitted on April 19, 2007, just three days after he had met with his Professor and the Head of the Department in connection with the two lab reports. In respect of the second offence, he met with Assistant Dean and the Professor on July 16, 2007, at which time he admitted that he had plagiarized the assignment. He received formal notice that he would be given a mark of zero on the assignment on July 17, 2007.
31. The Tribunal concluded that the prior offences should be considered as two separate offences. It is very clear that when Mr. C [REDACTED] submitted the assignment on April 19, 2007, just three days after meeting with the Professor and the Head of the Department in connection with the lab reports that he would be very well aware of what he was doing and that it was wrong.
32. Accordingly, the Tribunal concluded that the Student was well aware of the seriousness of the offence of plagiarism when he submitted the plagiarised assignment in this particular case. The Tribunal also noted that the circumstances in this offence were on the higher threshold of seriousness for this type of offence. Although the Student had not

been previously suspended for plagiarism, we believe that it is appropriate to consider this to be his third offence.

33. One other factor that the Tribunal considered to be of some significance was that the Student was very close to completing the requirements for his degree. His academic record shows that in the first two years of his academic period at the University he performed very well. In the last two years his academic performance slipped considerably. The Tribunal had no evidence before it as to the circumstances that caused the Student's academic performance to deteriorate so significantly.
34. Although the Tribunal considered the proposed penalty to be on the high side, the Tribunal concluded that it should accept the Joint Submission on Penalty. The penalty proposed in the Joint Submission on Penalty is within the range of the appropriate penalties for this offence in these circumstances. The Tribunal concluded that accepting the Joint Submission of Penalty would not be contrary to the public interest or bring the administration justice into disrepute.

Order

35. Accordingly the Tribunal has determined that the penalty in the circumstances is as follows:
 - (a) Impose a final grade of zero in the course GGR 335;

- (b) Suspend the Student from the University of Toronto from September 16, 2009 until March 16, 2014;
- (c) Impose a notation on his academic record and transcript stating that he has been found to have committed academic offences until March 16, 2014; and
- (d) Report this case to the Provost who may publish a notice of the decision of the University Tribunal and the sanctions imposed with the Student's name withheld.

Dated November 26, 2009



John Keefe
The Chair

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