

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on October 29, 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 -

K ■ W ■ K ■ L ■

REASONS FOR DECISION

Members of the Panel:

Mr. Clifford Lax, Q.C., Chair
Professor Annette Sanger, Faculty Panel Member
Mr. Jamon Camisso, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland
Danny Kastner, Counsel, Paliare Roland

In Attendance:

Ms. Lucy Gaspini, Academic Affairs Officer, Office of the Dean, University of Toronto
Mississauga

Ms. K ■ W ■ K ■ L ■, the Student, did not attend

Preliminary

- [1] The Trial Division of the University Tribunal was convened on August 17, 2009 at 1:00 p.m., in the Boardroom, Simcoe Hall to consider the two charges laid against Ms. K ■ W ■ K ■ L ■ under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the “Code”) by the Vice-Provost, Professor Edith Hillan.

Proof of Service of the Notice of Hearing and the Charges

- [2] Increasingly, this Tribunal is being asked to draw an inference that the student who does not appear at the hearing, has received notice of the hearing and of the charges to be decided at the hearing.
- [3] As is frequently the case, the student does not update their contact information as required by the *University Policy on Official Correspondence With Students*, effective September 1, 2006. Even though students are responsible for advising the University of a current and valid postal address, as well as the address for a University issued electronic mail account, experience indicates that this requirement is often ignored.
- [4] The University bears the evidentiary burden of establishing that on a balance of probabilities, the student has received effective notice. In order to discharge that burden, it is not enough for the University to submit that there is no evidence to support the conclusion that the student did not receive notice, as such a submission effectively shifts the burden of proof from the University to the student. Further, to invite the Tribunal to draw an inference based upon a lack of evidence, does not satisfy the onus cast upon the University of establishing that the student was more likely served than not.
- [5] We were referred to only one prior decision which dealt with the University’s evidentiary burden to establish effective service. In the decision *University of Toronto and F ■ B ■*, released February 15, 2007 the panel judged that the content of the notice and the timing of its attempted service, were both reasonable. In arriving at this conclusion, that Tribunal had regard to section 6(1) of the *Statutory Powers Procedure Act* which requires that “the parties to a proceeding shall be given reasonable notice of the hearing by the Tribunal.”
- [6] The requirement that the parties receive reasonable notice relates to both the contents of the notice and the amount of time between the date of service and the day of hearing. So for example in an earlier case, the *University of Toronto and Ms. O ■ K ■* released June 2006, the panel was concerned whether a Notice of Hearing, dated only a week before the hearing, was reasonable under the circumstances.
- [7] In this case, we are not concerned with the reasonableness of the University’s attempts to serve Ms. L ■, but the effectiveness of bringing to Ms. L ■’s attention both the nature of the charges and the hearing date. Therefore, even if the University’s attempts were eminently reasonable but (with the benefit of hindsight), ineffectual, can the University then come before the Tribunal and claim to have given reasonable notice of the charges

even though it could offer little positive evidence to support the inference that the student was made aware of the charges.

[8] It is the University's burden to submit the evidence, which can support the inference to be drawn. The inference must be based upon evidence. So for example, a lack of response, in itself, is not evidence that the student has ignored the notification. There must be evidence that the notice was sent to an address, postal or electronic, that was likely to come to the student's attention..

[9] In this case, the Tribunal ultimately concluded that it was prepared to draw an inference that Ms. L■ had received effective notice, both of the charges and of the hearing date. In order to fully understand the rationale for drawing such an inference, an abbreviated chronology of relevant facts is required.

- (a) In April 2007, Ms. L■ submitted an essay for academic credit in PHL3111H1S, which essay was plagiarized from the published work of Michael Jacovides of the Department of Philosophy, Purdue University. Ms. L■ made little effort to conceal the plagiarism other than to insert an introductory sentence preceding the plagiarized text. Her bibliography of sources contains two references, neither of them being Professor Jacovides' work.
- (b) While she was required to meet with her course instructor before submitting her essay, she did not do so.
- (c) Professor Ainslie, the course instructor attempted to communicate with Ms. L■ by email but his attempts were unsuccessful as the address she had provided was not functioning. Therefore, as a result of a telephone call, Professor Ainslie arranged to meet with Ms. L■ on May 11, 2007 at 3:00 p.m. to discuss his concerns regarding the essay she had submitted to him. Ms. L■ did not attend the meeting.
- (d) Thereafter, the University made numerous attempts to communicate with Ms. L■ at her Toronto address for the purpose of convening a meeting with the Dean's Designate in accordance with section C.I.(a)(5) of the *Code*. The University was unaware that Ms. L■ had returned to live in Hong Kong.
- (e) In an email dated June 27, 2007 from Robert Gardin of the Registrar's office, Ms. L■ was advised that the University had been attempting to send her information by mail and she was asked to update her address on the repository of student information.
- (f) On July 2, 2007, Ms. L■ responded to the June 27, 2007 email providing an address in Hong Kong and because her response was sent by email, she also provided an email address through which she could be reached.
- (g) Ms. L■'s response of July 2, 2007 indicated that she knew that the University was trying to get in touch with her and she acknowledged that she would update her

repository of student information record to reflect both her address and her email account. She subsequently did update her student information.

- (h) Subsequently, by letter dated July 11, 2007 Lynn Snowden, Assistant Dean at the University of Toronto Mississauga Campus wrote to Ms. L■ at the address which Ms. L■ had provided in her email of July 2, 2007. Ms. Snowden's letter explicitly refers to a concern that the research paper submitted for academic credit may have contained plagiarized material and the student was invited to discuss the allegation with Ms. Snowden or with Ms. Snowden's representative. There was no reply from Ms. L■ to Ms. Snowden's letter. However, Ms. Snowden's letter which went out by registered mail was not returned to the sender.
- (i) Subsequent correspondence, both by post and by email (addressed to the email address from which K■ L■ had sent her July 2, 2007 email to the University of Toronto produced no responses.

[10] The Tribunal concludes that it is entitled to draw the inference that Ms. Snowden's letter of July 11, 2007 sent by registered mail and not returned, was in fact received by Ms. L■. Further, the Tribunal concludes that the email correspondence sent to Ms. L■'s email account "■■■■@hotmail.com" likely came to Ms. L■'s attention and her refusal to respond was a strategic decision.

[11] Therefore we have concluded that on a balance of probabilities, it is more likely than not that Ms. L■ did in fact receive notice of the charges and of this hearing, but has chosen to not participate.

Hearing on the Facts

[12] The charges dated October 29, 2008 are as follows:

1. In or about April, 2007, you knowingly represented as your own an idea or expression of an idea or work of another in connection with an essay entitled "How does Locke think that we acquire the Idea of Power?" ("Essay", which you submitted for academic credit in PHL311H1S, contrary to Section B.I.1.(d) of the *Code*.
2. In the alternative, in or about April, 2007, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code*, in connection with the Essay which you submitted for academic credit in PHL311H1S, contrary to Section B.1.3.(b) of the *Code*.

[13] A comparison of Ms. L■'s term paper and the published work of Michael Jacovides, leaves no doubt that Ms. L■'s paper, but for the first sentence, was entirely plagiarized.

[14] Therefore, the first charge has been made out and there is no need to consider the alternative charge.

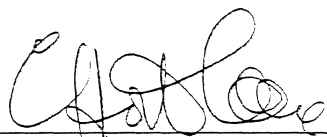
Decision of the Tribunal

[15] The Student is guilty on Charge #1 dated October 29, 2008.

Sanction

- [16] The student has not cooperated with the University nor has the student shown any remorse for the offence. As stated above, this was a gross act of plagiarism in that the student did not even bother to inject any of her own thoughts, observations or conclusions but simply lifted the entire paper from the text of Professor Jacovides.
- [17] Obviously, there is a need to deter others from committing a similar offence.
- [18] The University's counsel has suggested that an appropriate penalty would be for the student to receive a grade of zero on the course in question, that she be suspended from the University of Toronto for two years and that there be a notation on her academic record referencing this conviction for a period of three years.
- [19] In view of all the facts set out above, this Tribunal agrees with the University's counsel submission as to penalty. Indeed, considering all of Ms. L's conduct in this matter, the Tribunal might well have accepted a penalty submission with more serious consequences for the student. We mention this only because plagiarism appears to be an increasing problem and even though the students are repeatedly warned about the consequences of this academic offence, some, like Ms. L, have decided to ignore these warnings. Nor does it appear that the penalties imposed in the past, have had the desired deterrent effect.
- [20] The panel therefore imposes the following sanctions:
1. That the student receive a grade of zero in PHL311H1S.
 2. Suspension from the University for a period of two years.
 3. A three year notation on her transcript; and
 4. This matter shall be reported to the Provost for publication in the University newspapers with the name of the student withheld.

Date: September 1, 2009



Clifford Lax, Q.C. Chair