

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on March 18, 2009;

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 -

D■■■■ O■■■■ S■■■■

Members of the Panel:

- Ms. Lisa Brownstone, Chair
- Professor Nick Cheng, Faculty Panel Member
- Ms. Elena Kuzmin, Student Panel Member

Appearances:

- Mr. Robert A. Centa, Assistant Discipline Counsel
- Ms Betty-Ann Campbell, Law Clerk, Paliare Roland
- Dr. Tamara Jones, Academic Integrity Officer

- Mr. D■■■■ O■■■■ S■■■■, the Student, did not attend

Preliminary

- [1] The Trial Division of the University Tribunal was convened on August 25, 2009 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "Code") laid against the student by letter dated March 18, 2009 from Professor Edith Hillan, Vice-Provost, Academic.
- [2] The student did not attend at the hearing, which was scheduled to commence at 5:30 p.m. At 6:50 p.m., the Tribunal proceeded to hear evidence and submissions about proceeding in the student's absence. University counsel filed the Notice of Hearing and the Charges, and advised the Panel that the events giving rise to the allegations occurred in the fall of 2008, and came to light in late November 2008.

After that, the student dropped all remaining courses (other than the subject course, which he was prohibited from dropping, given the circumstances).

- [3] A Notice of Hearing was issued July 7, 2009 and was sent to the student's mailing address and email address, both of which were provided by the student to the University and were listed as his current addresses on ROSI.
- [4] The Tribunal heard that on March 24, 2009, Ms Nancy Smart, then of the Office of the Governing Council, couriered and emailed the student at the addresses provided. Ms Smart enclosed the charges, advised the student that he had been charged with offences under the Code, advised him to speak with a legal representative, and enclosed a letter with some information about how to obtain legal representation.
- [5] The Panel was advised that on June 22, 2009, a letter from Discipline counsel as well as a package of material was sent to the student, both by email at his University of Toronto address and by courier to the address on ROSI. The courier confirmed that the package had been received and signed for. The letter advised the student of evidence that the University expected to call against him and suggested a series of possible hearing dates. Again, the student was encouraged to obtain legal representation.
- [6] On June 26, 2009, having heard nothing from the student, Ms Campbell, Law Clerk for the firm that is University discipline counsel, telephoned, and spoke to someone who identified himself as the student's brother. Ms Campbell provided the information of who she was and her telephone number, and asked that the student call her back.
- [7] A further email was sent on July 6, 2009 advising that, not having heard from the student, counsel would ask that the matter be scheduled for Tuesday, August 25, 2009 at 5:30 p.m. The student was then copied on a letter to Ms Smart requesting that date.
- [8] On July 7, 2009 the Notice of Hearing was sent to the student by both email and courier. The student was advised that the hearing was scheduled for Tuesday, August 25, 2009 at 5:30 p.m. Previous correspondence, including the charges letter, were attached. The Notice of Hearing indicated the following:

"If you do not attend, the hearing may take place without you and you will be not be entitled to further notice in the proceeding."
- [9] On August 17, 2009, Discipline counsel contacted the student at a cell phone number provided by the student's mother. The student said he would call University counsel back, but never did.

- [10] The Panel notes that the University's Policy on Official Correspondence with Students, effective September 1, 2006, states in part as follows:

Postal Addresses and Electronic Mail Accounts

Students are responsible for maintaining and advising the University, on the University's student information system (currently ROSI), of a current and valid postal address as well as the address for a University-issued electronic mail account that meets a standard of service set by the Vice-President and Provost.

Failure to do so may result in a student missing important information and will not be considered an acceptable rationale for failing to receive official correspondence from the University.

...

Students' rights and responsibilities regarding retrieve of official correspondence

Students are expected to monitor and retrieve their mail, including electronic messaging account[s] issued to them by the University, on a frequent and consistent basis. Students have the responsibility to recognize that certain communications may be time-critical.

- [11] The relevant provisions of the *Statutory Powers Procedure Act* regarding notice are as follows:

Notice of hearing

6.(1)The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal. R.S.O. 1990, c. S.22, s. 6 (1).

Statutory authority

(2)A notice of a hearing shall include a reference to the statutory authority under which the hearing will be held.

Oral hearing

(3)A notice of an oral hearing shall include,

(a) a statement of the time, place and purpose of the hearing; and

(b) a statement that if the party notified does not attend at the hearing, the tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

...

Effect of non-attendance at hearing after due notice

7.(1)Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding. R.S.O. 1990, c. S.22, s. 7; 1994, c. 27, s. 56 (14).

...

- [12] The Tribunal was satisfied that the University had provided reasonable notice to the student, and that the student had chosen not to respond to or engage with the University in respect of these matters.

[13] The Panel therefore proceeded in the student's absence.

Hearing on the Merits

[14] The charges facing the student are the following:

- (i) On or about November 13, 2008, you knowingly represented as your own, an idea or expression of an idea, and/or the work of another in an essay that you submitted to fulfill the course requirements of FRE 240 contrary to section B.I.1(d) of the *Code*.
- (ii) In the alternative, on or about November 13, 2008, you knowingly engaged 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 in connection with an essay you submitted for academic credit in FRE 240, contrary to section B.I.3(b) of the *Code*.

[15] Particulars of the charges are as follows:

- (i) You were registered at the University of Toronto and enrolled in FRE 240 ("Course") at all material times.
- (ii) On or about November 13, 2008, you submitted an assignment titled "Life Notre View par Paul Eluard: Une Analyse Profonde" to fulfill partially the Course requirements ("Essay").
- (iii) The Essay contained unacknowledged passages taken verbatim or nearly verbatim from various sources including websites. The Essay contained ideas that were not your own ideas, but were the unacknowledged ideas of others.
- (iv) For the purposes of obtaining academic credit or another academic advantage, you knowingly plagiarized your assignment.
- (v) Your conduct violated the *Code*

[16] The Tribunal heard from Professor Corrinne Denoyelle, who taught the FRE 240 course in which the student's offence was alleged to have taken place. Professor Denoyelle identified her course syllabus, which was filed, in which she had provided the students with information on how they would be evaluated. The assignment in question was set out as being worth 25% of the mark in the course.

[17] Professor Denoyelle also identified for the Panel the document that set out the assignment that gave rise to the charges in this case. That document provided the

student with the structure that the assignment was to follow and a breakdown of how the assignment would be marked. At the bottom of the page, Professor Denoyelle had included a note advising that there are internet sites that provide some explanations of the text at issue, which was a poem by Paul Eluard. The note advised that Professor Denoyelle was familiar with these sites, and asked the students to have the courtesy of only consulting those sites after having handed in their work. She went on to say that what is most important is that the students express their own thoughts about the text. Attached to the handout was a 2 page document prepared on July 21, 2008 by Dr. Margaret Procter, University of Toronto Coordinator of Writing Support entitled "How Not To Plagiarize". At the top of that document, the offence of plagiarism from the Code of Behaviour and Academic Matters was set out.

- [18] Professor Denoyelle testified that when she received the student's essay, she noticed that there were some sentences in very, very good French, with very few spelling and grammar errors, which was unusual. She also noticed that some of the explanations were very elegant, also unusual for a second year French student. She testified that there were other students who plagiarized and she saw some of the exact same sentences in their work as well.
- [19] University counsel filed a copy of the student's paper, as well as a copy of the website. Professor Denoyelle pointed out that there were seven main ideas in the website explanation of the text, and that the seven main ideas appeared, in the same order, in the student's paper. The paper did not follow the structure that she had provided to the students in the paper explaining the assignment. She testified that the student had made some small changes to the writing, so that it was not a case of verbatim plagiarism as is the case in other plagiarism cases brought before the Tribunal. There were even some errors in the website that reappeared in the student's essay (for example, using the term "pieds" in explaining French poetry, which she had explained to the class was no longer used or acceptable in analysis of French poetry).
- [20] Professor Denoyelle took the Panel through the seven main ideas in both the website and the paper. The ideas were the same, and in many cases important words had been copied. In some cases, the structure of some of the sentences had been changed. There was one paragraph which the student had added in the paper that did not appear on the website. Nowhere in the paper did the student attribute any thoughts, ideas or words to any author, publication or internet site.
- [21] In the submissions of counsel, the plagiarism offence is made out when either the ideas in a work belong to another but are expressed as one's own, without attribution, or when the actual words of another are taken and used as one's own, without attribution. In this case, University counsel submitted that both elements were present, but that it was really more of an "ideas" case, in that many portions of the paper had been tweaked or rewritten from the text.

- [22] University counsel submitted that the ideas did not belong to the student; rather, at a structural level, he presented the ideas from the website in the same order they appeared there. Given the scale of this, it was clear that he took someone else's ideas and represented them as his own.
- [23] The Panel concluded that the first offence alleged had been made out. Given both the volume and order of the ideas presented in the student's paper when compared to the website, without any attribution whatsoever by the student, it was clear that the student had taken the ideas from the website and expressed them as his own. This was not a case of one or two sentences or ideas appearing in both the website and the student's paper, which could be perhaps explained as some sort of coincidence. The order and the volume of the duplication were such that it was impossible to conclude that this could have been a coincidence.
- [24] The Panel notes that the handout "How Not To Plagiarize" which accompanied the assignment specifically said, "If I put the ideas into my own words, do I still have to clog up my pages with all those names and numbers?" with a corresponding answer "sorry – yes you do - ...whether you quote a passage directly in quotation marks, paraphrase closely in your own words, or just summarize it rapidly, you need to identify the source then and there (that applies to internet sources too; you still author and date as well as title and URL)." Again, on the second page, the document states "Be sure to document these paraphrases or summaries even when you are not using the exact original words."
- [25] The Panel concludes that it is clear that the student violated these rules and principles, and committed the offence of plagiarism as set out in the first charge.

Sanction

- [26] The University called Dr. Tamara Jones, an Academic Integrity Officer, as its only witness on sanction. Dr. Jones filed Exhibit 7, which was a letter dated May, 2006 but which should have read May 2008, which indicated that the student had previously committed the offence of submitting an assignment for credit which contained material taken from sources without appropriate acknowledgment. The student had admitted that offence, expressed regret for his actions, provided an explanation, and said that he was very sorry and would not act similarly in future. The sanction of the Dean's Designate in that case had been a grade of zero in the course and a two year notation on the student's transcript.
- [27] University counsel requested the following sanction in this case:
- (i) a final grade of zero in the course FRE 240Y1 from August 25, 2009 to August 24, 2012;
 - (ii) a suspension from the University of Toronto from August 25, 2009 to August 24, 2012;
 - (iii) a 4 year notation on the student's transcript, from August 25, 2009 to August 24, 2013; and

(iv) a report to the Provost for publication in newspapers of the decision, with the student's name withheld.

[28] The Discipline counsel took the panel through the sentencing principles set out in the case of *Mr. C*. He pointed out that the student had chosen not to participate in the process, and that this was a second offence. The likelihood of repetition was therefore fairly high, in that the repetition of the offence had occurred within 6 months of the first sanction. It was clear that the student had learned little the first time. Plagiarism is a serious offence. In this regard, the Panel agrees with the statements of the Panel in the case of *Mr. S.B.* that "plagiarism and concoction of sources are serious offences that go to the heart of the trust relationship when which the University's programming is built. The credibility and academic mission of the University, and the degrees that is awards to its students, can be gravely harmed by the commission of offences such as plagiarism and concoctions."

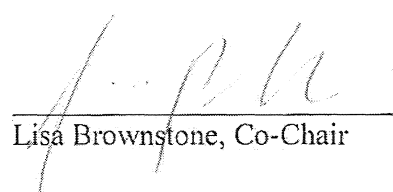
[29] In this case, there was no evidence of any mitigating circumstances, given that the student unfortunately had chosen not to participate in the process. The Panel notes that it is unfortunate when students do not participate in the process, as the Panel is then unable to have any evidence or information of factors that may have led to the behaviour, and there is no ability for the Panel to know of or consider any potential mitigating circumstances.

[30] In the cases of both *Mr. S.B.* and *Mr. M.H.H.*, previous panels noted that when a serious breach of trust such as plagiarism and/or concoction occurs, a response of at least a 2 year suspension for a first offence and a 3 year or longer suspension on a subsequent finding should occur.

[31] In the circumstances, the Panel agrees that a 3 year suspension is warranted, and orders that:

- (i) the student be assigned a final grade of zero in the course FRE 240;
- (ii) the student be suspended from the University of Toronto from August 25, 2009 to August 24, 2012;
- (iii) there be a notation on the student's academic record and transcript from August 25, 2009 to August 25, 2013; and
- (iv) a report of this case to the Provost who may publish a notice of the decision of the University of Toronto Tribunal and the sanctions imposed, with the student's name withheld.

Dated this 7th day of October, 2009


 Lisa Brownstone, Co-Chair