

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on May 14, 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 -

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Hearing Date: October 16, 2009

Members of the Panel:

- Ms. Roslyn Tsao, Barrister and Solicitor, Chair
- Professor Louis Florence, Faculty Panel Member
- Mr. Jamon Camisso, Student Panel Member

Appearances:

- Ms. Lily Harmer, Assistant Discipline Counsel for the University, Paliare Roland Barristers
- Ms. Betty-Ann Campbell, Law Clerk, Paliare Roland Barristers
- Professor Janet Poole, Department of East Asian Studies

In Attendance:

- Professor Donald Dewees, Dean's Designate, Office of Academic Integrity
- Dr. Tamara Jones, Academic Integrity Officer, Office of Student Academic Integrity
- Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances, Office of Governing Council
- Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances, Office of Governing Council

- G H ■■■■■ J ■■■■■ L ■■■■, the Student, not in attendance

Reasons

1. The panel provided its findings regarding guilt and penalty orally at the time of hearing and gave brief oral reasons regarding penalty (see Appendix "A"). We are providing the supplemental reasons in order to provide some background regarding this case and to address certain procedural issues that arose.
2. The Student was charged on May 14, 2009 of the following:
 - (i) On or about November 18, 2008, he knowingly used or possessed an unauthorized aid or aids or obtained assistance in an academic examination or term space, namely In-Class Quiz #2 in EAS 251H1, contrary to section B.I.1(b) of the Code.
 - (ii) On or about November 18, 2008, you knowingly represented as your own an idea, or an expression of an idea, or the work of another, in connection with In-Class Quiz #2, which you submitted for academic credit in EAS 251H1, Aesthetics and Politics in 20th Century Korea ("Course"), contrary to section B.I.1(d) of the Code.
 - (iii) In the alternative, on or about November 18, 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 In-Class Quiz #2, which you submitted for academic credit in the Course, contrary to Section B.I.3(b) of the Code.
3. The Student did not attend at the Hearing. The Tribunal waited until 9:45 a.m., 15 minutes after the scheduled Hearing time, with the doors open to the room, to allow for the Student to appear.

Reasonable Notice of Hearing

4. The University proposed to proceed in the Student's absence and, therefore, had the onus of satisfying the Tribunal that "reasonable notice" of the Hearing has been provided to the Student, pursuant to the *Code* and the *Statutory Powers Procedure Act* ("SPPA"). Reasonable notice of the Hearing must also include a warning to the Student that if he does not attend at the Hearing, the Tribunal may proceed in his absence and the Student will not be entitled to any further notice of the proceeding (s.6(3)(b) of the SPPA) ("the Warning").
5. The University presented evidence to the Tribunal with respect to the steps undertaken to communicate with the Student, advise him of the charges, provide notice of the Hearing and disclosure of the materials, by calling Ms. Betty-Ann Campbell, a law clerk at the firm of Palliare Rolland Rosenberg Rothstein LLP, the University's counsel.

6. Without going into all of the efforts made by the University, as set out in the Affidavit of Betty-Ann Campbell, Exhibit 2, the University did the following:
- On May 14, 2009, the Charges were mailed and e-mailed by the University to the Student by regular mail, to his ROSI address, his ROSI e-mail address.
 - On June 22, 2009, Ms. Campbell confirmed the Student's active ROSI to obtain the listed telephone number(s) and mailing and e-mail addresses for the Student.
 - Counsel for the University wrote to the Student on June 24, 2009 with a summary of the University's anticipated evidence, the University's documentary disclosure brief ("Disclosure") and 5 proposed dates in August, 2009 for a hearing of the case. Counsel indicated that the student was to contact Ms. Campbell no later than June 30, 2009 for the purpose of scheduling the Hearing. On June 25, 2009, Ms. Campbell e-mailed a copy of counsel's June 24, 2009 letter to the Student's ROSI e-mail address and sent the letter with enclosures by courier to the Student's mailing address.
 - On July 6, 2009, Ms. Campbell received a telephone call from the courier that the Disclosure was not delivered to the Student as the concierge indicated that the Student no longer lived at the given address.
 - On July 6, 2009, Ms. Campbell attempted to contact the Student by telephone at his ROSI telephone number. The call was answered by an automated message: "The customer you are calling is unavailable at the moment. Please try again later."
 - On July 6, 2009, Ms. Campbell also e-mailed the Student requesting a current address, as well as e-mailing the Student an electronic version of the University's Disclosure in four parts.
 - On August 19, 2009, Ms. Campbell reconfirmed the Student's active ROSI record. The previous addresses and telephone number continued to be listed.
 - On August 19, 2009, Ms Campbell attempted to call the student by telephone and received the same automated message. Ms. Campbell also e-mailed the Student on August 19, 2009 asking for a current address, providing the Student with four Tribunal dates in September and October, 2009 (including October 16, 2009) and indicating that if he failed to respond, then a Hearing date might be set on any of the proposed dates.
 - On September 2, 2009, Ms. Campbell attempted to call the Student again and received the same automated message. Ms. Campbell then e-mailed the Office of the Governing Council to request a Tribunal hearing date for October 16, 2009, one of the dates proposed in Ms. Campbell's August 19, 2009 e-mail to the Student, and copied this e-mail to the Student's e-mail.

- On September 10, 2009, a Notice of Hearing was issued by the Office of the Governing Counsel for October 16, 2009. The Governing Counsel e-mailed this Notice of Hearing to the Student.
 - On October 8, 2009, Ms. Campbell reconfirmed the Student's active ROSI contact information which was the same. Ms. Campbell then telephoned the student at his ROSI telephone number. A male answered the call and Ms. Campbell asked to speak to "J█████". The male confirmed that he was this individual and after Ms. Campbell provided her name and law firm, she indicated that she was calling about the Tribunal Hearing that was set for the following week. The Student said "yes" and Ms. Campbell asked the Student if he was planning on attending the Hearing and the Student indicated that he was not sure. The Student confirmed the e-mail address that the University Counsel and the University had been using to be his email address. At this time, Ms. Campbell indicates that the telephone call was apparently terminated. When she immediately tried to call the Student back, she received the same automated message that she had received before.
7. The Tribunal also received evidence of Alex Nishri by Affidavit sworn October 15, 2009 (Exhibit "3"). Mr. Nishri is the Manager of E-mail and Web Services and Small Systems in the University of Toronto's Information and Technology Services. Mr. Nishri was asked by University Counsel to review the activity record associated with the Student's e-mail account at the University of Toronto, which was his ROSI listed e-mail address. Mr. Nishri's evidence is that during the period of June 26 – September 2, 2009, the Student's e-mail box was accessed only once on August 5, 2009 and the only email that was marked "Read" was the e-mail Ms. Campbell sent to the Student on July 6, 2009 at 3:00 p.m. (Exhibit "2R"). This was the 4th e-mail from Ms. Campbell attaching Part 4 of the University's Disclosure Brief and indicated that it was "Further to my previous e-mail...".
 8. Mr. Nishri was also asked to review the status of the e-mail sent by the Office of the Governing Counsel to the Student on September 10, 2009, with the Notice of Hearing. Mr. Nishri's evidence is that this e-mail was marked "Read" and that the Student's mailbox was accessed on October 8, 2009 (accordingly, the Student appears to have accessed his e-mail account only on August 5, 2009 and October 8, 2009).
 9. The Tribunal is satisfied that the Notice of Hearing (including the Warning) for the October 16, 2009, 9:30 a.m. hearing, the Charges and the University's Disclosure, were served by e-mail to the Student's ROSI e-mail address. The Tribunal is satisfied that the Student has received reasonable notice of the Charges and the Hearing, given the phone discussion between Ms. Campbell and the Student on October 8, 2009 and the apparent opened e-mails in the Student's ROSI e-mail address.

10. Accordingly, the Hearing proceeded without the Student.

Facts of the Case

11. The Course instructor, Professor Janet Poole, testified before the Tribunal. Her evidence was the following:

- Professor Poole has been at the University for two years, teaching previously at New York University for 4 years and was engaged in PhD. work at Columbia University before that.
- Professor Poole taught the Course EAS251H1 beginning in the Fall of 2008. This was the first time that Professor Poole had taught the Course and it was a new course at the University. There were 26 or 27 students in her class and the Student was one of these registered students.
- The Syllabus for the Course contains a clear warning against plagiarism and Professor Poole testified that on the first day of class, she reviews the Syllabus with the students and the plagiarism warning. Professor Poole testified that she told the students that she will report any case of plagiarism that she finds and that they must avoid plagiarism and treat it seriously, because they have a responsibility to themselves and in this Google age, she can easily identify plagiarism.
- There was an In-Class Quiz #2 on November 11 scheduled in the Syllabus, but was actually given on November 18. The value of the Quiz was 15% of the Course grade. It was conducted in a regular classroom and consisted of 5 questions, of which the students chose three to answer, with each question being worth 5%. Each question contained a citation from the assigned readings. The student was to identify the author and title (2 points) of the cited reading and provide a brief essay regarding the significance of the passage (3 points). It was scheduled for the first hour of the two hour class.
- Professor Poole recalls that the classroom was arranged in approximately four rows and each student had an individual desk. There were no books allowed on the desk.
- Upon reviewing the Student's Quiz answers, Professor Poole noticed a "disparity" in 2 parts of each answer. Professor Poole noted that for each answer, the vocabulary, grammar and sentence structure was markedly different in different parts of the particular answer. Professor Poole also noted that some of the responses contained "far more than what she had taught in class".

- Professor Poole then Googled some of the phrases in the Student's answers and found matches from on-line material (in the Student's answers) which were identical or very similar to passages (Exhibit 1-6, 1-7 and 1-8).
12. Professor Poole e-mailed the Student to meet with her, but the Student did not reply for the first week, but then came to her office during office hours.
 13. Professor Poole then sent another e-mail and the Student replied to say that he would come to her office next week. The Student attended class the next week when the Quiz was being returned, but Professor Poole did not return his. The Student did not come to her office the next day, nor did he show up for the final exam three weeks later.
 14. Professor Poole noted that the Student obtained a grade of 8/15 on Quiz #1, which was a Quiz of the same format. Professor Poole also noted that he had handed in a paper which had serious problems in it, but that he did attend class.
 15. Lastly, Professor Poole noted that the responses given in Quiz #2 that seemed to have been plagiarized were not responsive to the question.

Decision of Tribunal

16. Based on the evidence tendered by Professor Poole, the Tribunal finds that the Student is guilty of Charge Number 2. The evidence supports a finding that the student used work of another without proper acknowledgment. The evidence demonstrates that work found from internet sources appeared verbatim or near verbatim in the Student's answers.
17. The University has withdrawn the first and third charges and accordingly, there is a finding of guilt on the second charge against the Student.

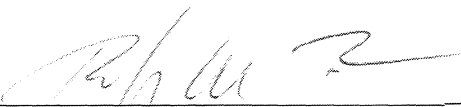
Penalty

18. Based on oral reasons, given at the Hearing (See Appendix "A"), the panel orders the following:
 - (a) A zero in the course EAS251H1;
 - (b) A two-year suspension;
 - (c) A notation on the Student's record and academic transcript for a period of two years; and

- (d) The Tribunal shall report the case to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed in the University newspapers with the name of the student withheld.

I certify that this is the decision of the Panel

December 16, 2009
Date


Roslyn Tsao, Barrister and Solicitor (Chair)

Appendix "A"

Transcription of the Finding of Guilt Delivered by the Chair During the Hearing

1. Chair: We have taken a brief recess to discuss this matter. We do not need to hear from you Ms. Harmer with respect to submissions on a finding of guilt. We are prepared, on the evidence that has been tendered to us, to make a finding of guilt on the second charge, on the list of charges. And, are charges 1 and 3 are withdrawn?
2. Ms. Harmer: That's correct.
3. Chair: OK.
4. Ms. Harmer: Thank you very much. If I could move on to the sanction stage, I will attempt to be brief.
5. Chair: Yes, please.

Transcription of Oral Reasons Regarding Penalty Delivered by the Chair at the Conclusion of the Hearing

1. We have decided to impose a penalty of the following. First, a zero grade in the course in question. And, second, a two-year suspension commencing today.
2. In terms of the third aspect, which is the notation, this has troubled the Panel the most and caused the most discussion. The University has requested three years. We are prepared to impose a two-year notation.
3. The Panel has some difficulty finding the link between the length, the more lengthy notation and individual deterrence.
4. On the second reason for requesting the extended notation by Ms. Harmer, and that is for the purposes of giving information to the University, again the Panel is not sure that it is the appropriate function of the panel to address this concern in imposing penalty. We certainly recognize that the incidence of plagiarism is growing and that the University requires all tools to combat it, and it may be that the penalties in *the Code* should consider whether the aspect of the notations should be left on the student's records as of course until graduation. But that, in our view, is perhaps a policy decision rather than something that the Tribunal should be considering in individual cases.
5. In these particular facts, given that this is a first-time offence for the student and that he is an undergraduate student in second year, we do not feel that it is appropriate to extend the notation past the two-year suspension period.