

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on July 20, 2015,

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:

UNIVERSITY OF TORONTO

- and -

Y ■ L ■

REASONS FOR DECISION

Hearing Date: September 29, 2015

Members of the Panel:

Ms. Sarah Kraicer, Barrister and Solicitor, Chair

Dr. Joel Kirsh, Faculty Panel Member

Mr. Simon Czajkowski, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland, Barristers

Professor Dylan Clark, Director of Contemporary Asian Studies, University of Toronto

Professor Pamela Klassen, Dean's Designate for Academic Integrity, Office of the Dean, Faculty of Arts and Science

In Attendance:

Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances, University of Toronto

Ms. Johanna Braden, (Observer, new University Tribunal Chair)

Not In Attendance:

Mr. Y ■ (F ■ ■ ■ ■) L ■, Student

1. The Trial Division of the University Tribunal was convened on September 29, 2015, to consider charges brought by the University of Toronto (“the University”) against Mr. Y (F) L (“the Student”) under the *University of Toronto Code of Behaviour on Academic Matters*, 1995 (“the Code”).

Preliminary Issue: Proceeding in the Absence of the Student

2. The Tribunal waited until 5:55 p.m. to commence the hearing. Neither the Student, nor a representative of the Student, appeared.
3. Pursuant to sections 6 and 7 of the *Statutory Powers Procedure Act* (“the Act”), and Rule 17 of the University Tribunal Rules of Practice and Procedure (“the Rules”), where reasonable notice of an oral hearing has been given to a party in accordance with the 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. The University requested that the Tribunal proceed with this hearing.
4. A notice of hearing may be served on a student by personal service, “by sending a copy of the document by courier to the student’s mailing address contained in ROSI” [Repository of Student Information], “by emailing a copy of the document to the student’s email address contained in ROSI”, or “by other means authorized under the University’s Policy on Official Correspondence with Students” (the “Policy”) (Rules 9 (b) (c) and (d)).
5. The Policy states that Students are responsible for maintaining on ROSI a current and valid postal address and a University-issued email account. Students are expected to monitor and retrieve their mail, including email accounts issued to them by the University, on a frequent and consistent basis.

6. The onus of proof is on the University under the Act and the Rules to establish that it provided the Student with reasonable notice of the hearing in accordance with these provisions.
7. The University filed evidence from Christopher Lang, Director, Appeals, Discipline and Faculty Grievances of the University, that Natalie Ramtahal of his office served the Student with the Notice of Hearing on September 1, 2015 at the email address the Student had provided on ROSI: [REDACTED]. [REDACTED]@mail.utoronto.ca.
8. The Notice of Hearing stated that the hearing would be held on September 29, 2015 at 5:45 p.m.
9. Ms. Ramtahal's September 1, 2015 cover email attaching the Notice of Hearing also set out the time and location of this hearing, and attached the Charges, the Code of Behaviour on Academic Matters, and the Rules of Practice and Procedure.
10. The University also filed evidence from Susan Murphy, Executive Secretary and Office Manager in the office of Professor Sioban Nelson, Vice-Provost, Faculty & Academic Life, that on July 20, 2015, she emailed a letter from Professor Nelson to the Student, dated July 20, 2015, which set out the Charges against the Student.
11. The Student did not respond to these communications from the University.
12. Counsel for the University advised the Tribunal that his office had also attempted to reach the Student by email and did not receive any response.
13. The Tribunal has reviewed the evidence and the submissions of counsel for the University and has concluded that the Student has been given reasonable notice of the hearing in compliance with the notice requirements of the Act and the Rules. The Notice of Hearing and the Charges were sent to the Student via email

to his email address listed on ROSI, in compliance with the Rules and Policy on official correspondence. The content of the Notice of Hearing complies with the requirements of the Act and the Rules.

14. The Tribunal therefore determined that it would proceed to hear the case in the absence of the Student.

The Charges and Particulars

15. The Student was charged with offences that related to two essays submitted on or about April 2, 2015 for the course CAS400Y. At the outset of the hearing, the University advised that it was withdrawing charges 1-3 relating to the essay titled "History as Contested Memory" and charge 5 relating to the essay titled "Historical Character of Indonesia". The University only proceeded on charges 4 and 6 and, in the alternative, 7 with relating to the Historical Character of Indonesia essay ("the Essay"). For completeness, the original charges and particulars are set out below. However, the Tribunal heard no evidence and makes no findings relating to the essay "History as Contested Memory, or to charges 1-3 or the particulars related to those charges.

16. The original charges and particulars are as follows:

A. History as Contested Memory

1. On or about April 2, 2015, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in an essay titled "History as Contested Memory," that you submitted for academic credit in CAS400Y (20151) (the "Course"), contrary to section B.I.1(d) of the *Code*.

2. On or about April 2, 2015, you knowingly obtained unauthorized assistance in connection with History as Contested Memory, which you submitted for academic credit in the Course, contrary to section B.I.1(b) of the *Code*.

3. In the alternative, on or about April 2, 2015, 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 History as Contested Memory, which you submitted for academic credit in the Course, contrary to section B.I.3(b) of the *Code*.

The particulars related to charges 1 to 3 are as follows:

- (a) At all material times, you were a registered student at the Faculty of Arts and Science, University of Toronto. In term 20151, you enrolled in the Course, which was taught by Professor Dylan Clark.
- (b) Students in the Course were required to submit an essay in partial completion of the Course requirements. On or about April 2, 2015, you submitted the History as Contested Memory to complete this requirement.
- (c) You did not write the History as Contested Memory or you knowingly obtained unauthorized assistance from a person named "Naseem" or from someone else.
- (d) You knowingly represented the work of that other person as your own. You knowingly included in the History as Contested Memory ideas and expressions that were not your own, but were the ideas and expressions of the other person, which you did not acknowledge in the History as Contested Memory.
- (e) For the purposes of obtaining academic credit and/or other academic advantage, you knowingly committed plagiarism in the History as Contested Memory.

B. *Historical Character of Indonesia*

4. On or about April 2, 2015, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in an essay titled "Historical Character of Indonesia," which you submitted for academic credit in the Course, contrary to section B.I.1(d) of the *Code*.

5. On or about April 2, 2015, you knowingly obtained unauthorized assistance in connection with Historical Character of Indonesia, which you

submitted for academic credit in the Course, contrary to section B.I.1(b) of the *Code*.

6. On or about April 2, 2015, you submitted Historical Character of Indonesia for academic credit in the Course knowing that it contained references to sources that had been concocted, contrary to section B.I.1(f) of the *Code*.

7. In the alternative, on or about April 2, 2015, 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 Historical Character of Indonesia, which you submitted for academic credit in the Course, contrary to section B.I.3(b) of the *Code*.

The particulars related to charges 4 to 7 are as follows:

- (a) At all material times, you were a registered student at the Faculty of Arts and Science, University of Toronto. In term 20151, you enrolled in the Course, which was taught by Professor Dylan Clark.
- (b) Students in the Course were required to submit an essay in partial completion of the Course requirements. On or about April 2, 2015, you submitted Historical Character of Indonesia to complete this requirement.
- (c) You submitted Historical Character of Indonesia knowing that it contained ideas, the expression of ideas, and verbatim or nearly verbatim text from articles (the "Sources"), including but not limited to:
 - (i) "Indonesia: A Historical Glimpse" found at www.indo.com/indonesia/history.html
 - (ii) "Indonesia at a glance": www.kbriseoul.kr
 - (iii) J. Touwen, "The Economic History of Indonesia" found at: <http://eh.net/encyclopedia/the-economic-history-of-indonesia>
 - (iv) J. Scott, "The Evidence of Experience" in *Critical Inquiry* 17 (Summer 1991)

- (d) You did not write Historical Character of Indonesia or you knowingly obtained unauthorized assistance from a person named "Warda Khan" or "Naseem" or from someone else.
 - (e) You knowingly represented the work of that other person, or persons, as your own. You knowingly included in Historical Character of Indonesia ideas and expressions that were not your own, but were the ideas and expressions of the other person, or persons, which you did not acknowledge in Historical Character of Indonesia.
 - (f) For the purposes of obtaining academic credit and/or other academic advantage, you knowingly committed plagiarism in Historical Character of Indonesia.
 - (g) You submitted Historical Character of Indonesia knowing that it contained references to sources that were concocted or/and that you did not consult in order to obtain an academic advantage;
17. As set out above, Counsel for the University advised that the University was withdrawing Charges 1-3 and 5 and was only proceeding with Charges 4, 6 and 7. He further advised that if the Tribunal were to find the Student guilty of Charges 4 and 6, the University would withdraw Charge 7.

The Evidence

18. The Student was enrolled in the Fall of 2014 in the Capstone Seminar CAS400Y, (the "Course"). This is a full year advanced small seminar course for upper year students. It is a required course for those, like the Student, majoring in Contemporary Asian Studies.
19. The Tribunal heard the evidence of Professor Dylan Clark, the Lead Instructor of the Course, who is also the Director of Contemporary Asian Studies at the University.

20. The Course was a culmination of the program in Contemporary Asian Studies. Course requirements included a minor term paper, major term paper, and a final exam. The major term paper was worth 35% of the total course and was due on March 30, 2015.
21. The Course Syllabus indicated that all essays in the course had to be submitted in online format to Turnitin.com, a website that detects potential plagiarism by identifying textual similarity to other sources. In addition, the Syllabus provided warnings about plagiarism and the penalties for plagiarism in academic work. During the seminar sessions, Professor Clark also repeatedly warned students about not committing plagiarism in their assignments.
22. Students in the Course were not permitted to use internet sources for their essays without obtaining permission in advance.
23. The Student submitted the Essay entitled "Historical Character of Indonesia" as his major term paper online to Turnitin.com on April 2, 2015. He also submitted the Essay to Professor Clark directly on or about that date.
24. On reviewing the Student's Essay, Professor Clark began to suspect that some of the text in the essay was copied from other sources and was not the Student's own individual work. Professor Clark searched some phrases from the Essay on Google, and found documents on the Internet that contained identical or virtually identical text to that contained in the Essay. The Essay did not cite to those internet sources, and the verbatim language was not contained in quotation marks.
25. The Tribunal has reviewed the Essay and has compared it with a number of online documents identified by Professor Clark that were obtained from the Internet.

- (a) The Essay contains 7 sequential paragraphs at pp. 2-3 that contain ideas and text that are the same, or virtually the same, as sequential paragraphs in two identical online documents: one entitled "Indonesia at a glance" retrieved from the website of the Embassy of the Republic of Indonesia, and the other entitled "Indonesia – A Historical Glimpse" retrieved from the website www.indo.com.
 - (b) The Essay also contains two further paragraphs at pp. 6-7 that contain ideas and text that are the same, or virtually the same, as paragraphs found in an online document entitled "The Economic History of Indonesia" retrieved from the website www.eh.net.
 - (c) Some of the text in these Essay paragraphs is identical to the online documents, and is not contained in quotation marks. Most of the text in these Essay paragraphs is very similar, but not absolutely identical to, the online documents, as words have been rearranged or slightly paraphrased. However, these Essay paragraphs contain exactly the same ideas, presented in the same order, as in the online documents.
26. The Essay does not contain any citation or reference to these online sources. None is listed in the list of references at the end of the Essay.
27. Some of these paragraphs have citation references to other non-Internet sources. Professor Clark testified that at least four of these citations are false (the citation to "Tani 1997" at p. 2, the two citations to "Stoler 2002" at p. 3 and the citation to "Vickers 2013" at p. 3). Professor Clark is very familiar with these sources, as he assigned them as required reading in the Course. He advised the Tribunal that these sources have nothing to do with the text in the Essay for which they are cited.
28. Professor Pamela Klassen, one of the Dean's Designates for the Faculty of Arts and Science, testified about a meeting she had with the Student on June 8, 2015 regarding the plagiarism concerns identified by Professor Clark and the Faculty

relating to the Essay. She warned the Student at the meeting that if he were to make any admissions they could be used in respect of a discipline hearing. The Student acknowledged to her that he had plagiarized sections of the Essay and had concocted false sources. She recalled that he may have indicated that he was rushed and under pressure to complete the Essay at the last minute, but did not recall him providing any further explanation at that meeting.

Decision of the Tribunal on the Charges

29. The onus is on the University to establish on clear and convincing evidence on a standard of probabilities that the academic offence charged has been committed.
30. The Student is charged with plagiarism - knowingly representing the ideas or the expressions of the ideas of another as his own work. The Student is also charged with knowingly submitting academic work containing references to sources that had been concocted. The Code provides that "knowingly" includes where a person ought reasonably to have known.
31. The Essay contains numerous paragraphs that are identical, or nearly identical, to paragraphs in online sources that are not cited in the Essay. The ideas in these paragraphs and the sequence of the paragraphs are not the Student's own, but are the ideas of others. In some instances, these ideas are presented as the Student's own, amounting to plagiarism. In other instances, these ideas are attributed in the Essay to sources that do not in fact relate to the ideas.
32. In the view of the Tribunal, the Student knowingly plagiarized sections of the Essay from internet sources, which were not permitted to be used in the assignment, and attempted to conceal the plagiarism by creating concocted references to other, permitted sources.
33. The rules about what constitutes plagiarism and concocted references are set out in the University's Code of Behaviour. Warnings about plagiarism were

reinforced for the Student in the Course Syllabus and by Professor Clark in the Course seminars. The Essay was submitted in an upper year course and the Student had had considerable experience with academic work at the University at the time he submitted the Essay. All of these factors support the finding that the Student either knew or ought to have known that the Essay contained plagiarism and concocted references.

34. The Tribunal is of the view that the documentary evidence and the testimony of Professor Clark summarized above establishes that the Student is guilty of both of these charges. While this evidence alone is, in the view of the Tribunal, sufficient to meet the University's onus, the evidence of Professor Klassen that the student acknowledged that he committed these offences in the meeting with her provides further evidentiary support for the finding of guilt.
35. The evidence establishing the offence is cogent and compelling and has met the University's burden of proof with respect to Charges 4 and 6. The Tribunal finds that the Student is guilty of one count of plagiarism, and one count of knowingly submitting academic work containing references to sources that have been concocted, contrary to the Code of Behaviour on Academic Matters.
36. Charge 7 was therefore withdrawn by the University.

Decision of the Tribunal on Penalty

37. The University sought the following sanctions:
 - (a) a final grade of zero in the course CAS400Y;
 - (b) a suspension from the University of Toronto for a period of three years from the date of this Order; and
 - (c) the sanction be recorded on his academic record and transcript for 3 years from the date of this Order;

- (d) that this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with the Student's name withheld.
38. At the penalty stage, the University led evidence that the Student had committed two prior acts of plagiarism.
39. In June, 2011 the Student was disciplined for submitting an assignment in the course SII199Y1Y that contained material taken from sources without appropriate acknowledgement. The Student acknowledged that he borrowed material verbatim from sources without enclosing that material in quotation marks. The Student received a zero for the assignment, an additional reduction of 20 marks in the final grade in that course, and a transcript annotation with "Censured for Academic Misconduct" from March 15, 2011 until March 14, 2013. The decision letter from the Dean's Designate to the Student of June 10, 2011 warned the Student about how to avoid plagiarism in the future and advised that "a second offence of a similar nature will be treated more severely and is likely to result in suspension."
40. On March 30, 2015, the Student was disciplined for submitting an assignment in the course ENV200H1 that contained material taken from a source without appropriate acknowledgement. The Student had cut and pasted material from a source without quotation marks or proper citation, and acknowledged that he had submitted plagiarized work. The Student received a grade of zero for the assignment, a further 15 mark reduction in the final course grade, and an annotation of the sanction on his transcript until graduation. The decision letter from the Dean's designate conveyed disappointment with this second offence, provided further guidance on how to avoid plagiarism in the future, including that the Student must "identify all borrowed ideas, words, and phrases with an accurate citation or reference" and "put exact words taken from a source inside quotation marks to show that they are not your own". The letter also contained a

strong warning that another offence would likely result in suspension from the University or a recommendation that the case go before the Tribunal.

41. The timing of this second Dean's designate meeting is noteworthy and troubling. It took place 3 days before the Student submitted the Essay to Turnitin.com on April 2, 2015. Therefore, the Student submitted this plagiarized Essay within days of being disciplined for plagiarism for a second time.
42. The Tribunal has considered the principles and factors relevant to sanction set out in *University of Toronto and Mr. C* (Case No. 1976/77-3, November 5, 1976). The determination of an appropriate penalty in every case by the Tribunal will depend on an assessment of these principles and factors in the individual circumstances of the case. At the same time, it is important that there is general consistency in the approach of Tribunals to sanction, so that students are treated fairly and equitably. (Discipline Appeal Board, *University of Toronto v. D.S.*, Case No. 451, August 24, 2007).
43. The Student has not participated in this hearing. There is accordingly little evidence before us of mitigating or extenuating circumstances, good character, remorse or insight. The Student does appear to have demonstrated some insight in acknowledging responsibility for the misconduct in his meeting with the Dean's designate regarding the Essay on June 8, 2015. But it is difficult to put much weight on this factor, as he also acknowledged responsibility for the two previous instances of plagiarism yet that did not give him sufficient insight to avoid repeating this behaviour in writing the Essay.
44. The likelihood that the Student will repeat this misconduct is high. This is the Student's third incident of plagiarism-related misconduct, including two incidents in the 2014-2015 academic year. It is particularly concerning that the Student submitted this Essay only days after he had a discipline meeting with the Dean's Designate about his second act of plagiarism. The Student was repeatedly disciplined, repeatedly warned, and repeatedly advised on how to avoid

plagiarism. He nevertheless committed plagiarism for a third time and in this instance also concocted references to conceal the plagiarism. It is difficult to see any reason why the Student is not likely to continue to repeat this misconduct. A significant penalty is warranted to achieve specific deterrence in these circumstances.

45. As many Tribunals have noted, plagiarism is a very serious offence that strikes at the heart of the academic integrity of the University, and undermines the relationship of trust, learning and teaching between the University and its students. The threat that plagiarism poses to academic integrity warrants a strong penalty. In addition, the sanction must serve as an effective general deterrent to others, as plagiarism is an ongoing serious issue for the University.
46. In this case, the seriousness of the plagiarism is exacerbated by the Student's concoction of references. The Student concocted references in an attempt to conceal the plagiarism and to disguise the true source by attributing the plagiarized passages in the Essay to a permitted source. This concoction adds a further element of dishonesty to the plagiarism which increases the seriousness of the Student's misconduct in this case.
47. Our review of the Tribunal cases presented to us indicates that penalties of a final grade of zero in the course and a three year suspension requested by the University would generally be consistent with penalties in other cases for a third incident of plagiarism in similar circumstances. (See *University of Toronto and B.L.*, December 17, 2013, *University of Toronto and S.B.*, November 14, 2007).
48. The Tribunal is not, however, in agreement with the University's proposed penalty of a 3 year notation of the sanction in the Student's record. The Tribunal advised counsel for the University at the hearing that it was considering either a notation of 4 years or until graduation, whichever occurs first, or simply a notation until graduation and asked for submissions on those alternative penalties. Counsel for the University advised that it would not be an error in principle for the

Tribunal to order either of those alternative penalties, particularly where a student has already received a notation until graduation of discipline issued at the decanal level.

49. The Tribunal is of the view that a 3 year period for the sanction notation is insufficient in the circumstances of this case. If the Student were to register for classes at the conclusion of the three year suspension, there would be no notation of this sanction on his transcript or academic record at that time. Given the Student's misconduct history, the likelihood that he will repeat the misconduct, and need for specific deterrence, the notation of the sanction should appear on his transcript until he graduates. The serious and deliberate nature of the conduct in this case also supports maintaining the notation until graduation.
50. In addition, as a result of the second plagiarism incident, the Student's transcript contains an existing notation until graduation of the fact that he had been sanctioned for an academic misconduct in January 2015 relating to ENV200H1. While decanal discipline penalties may reflect different factors and need not be consistent with Tribunal penalties, in these circumstances the existing notation is a further reason for recording this sanction to graduation. If the length of the notation did not extend to graduation, then once the notation period ended, the Student's transcript would include a record of the less serious penalty until graduation, but no record of the more serious sanction. There is no sound reason for making this notation period shorter than the notation for the earlier, less serious sanction. Doing so could result in a transcript that gives the misleading impression that the most serious offence the Student has been sanctioned for was the January 2015 misconduct.
51. In our view, having regard to all the circumstances of the offence, and with regard to the relevant factors, the following sanctions are fair and appropriate:
 - (a) a final grade of zero in the course CAS400Y;

- (b) suspension from the University for 3 years from the date of the Order dated October 2, 2015; and
- (c) the sanction be recorded on his academic record and transcript until he graduates from the University;
- (d) That this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with the name of the Student withheld.

Dated at Toronto this 8 day of December, 2015

A handwritten signature in cursive script, appearing to read 'S. Kraicer', is written over a horizontal line.

Ms. Sarah Kraicer, Co-Chair