

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on November 11, 2016,

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 (the “University”)

-and-

R ■ W ■ (the “Student”)

REASONS FOR DECISION

Hearing Date: February 22, 2017

Panel Members:

Ms. Michelle S. Henry, Lawyer, Borden Ladner Gervais LLP, Chair

Dr. Maria Rozakis-Adcock, Faculty Panel Member

Ms. Natasha Brien, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

In Attendance:

Professor Michael Georges, Dean’s Designate (via Skype)

Ms. Lucy Gaspini, Manager, Academic Integrity & Affairs, Office of the Dean, University of Toronto, Mississauga

Mr. Ted Flett, Student at Law, Borden Ladner Gervais LLP

Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances

Mr. Sean Lourim, Technology Assistant, Office of the Governing Council

Not in Attendance:

The Student

1. A Hearing of the Trial Division of the University Tribunal convened on February 22, 2017, to consider charges of academic dishonesty brought by the University against the Student under the *Code of Behaviour on Academic Matters*, 1995 (the “Code”). The Student was informed of the charges by letter dated November 11, 2016, from Professor Sioban Nelson, Vice-Provost, Faculty & Academic Life.

PRELIMINARY ISSUE: PROCEEDING IN THE ABSENCE OF THE STUDENT

2. The hearing was scheduled to commence at 1:45 p.m. The Tribunal waited until 2:00 p.m. before commencing the hearing. The Student did not appear at the hearing.
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. In this case, the University requested that the Tribunal proceed with the hearing in the absence of the Student.
4. Pursuant to Rule 9, a Notice of Hearing may be served on a student by various means, including by: sending a copy of the document by courier to the Student’s mailing address contained in ROSI (the Repository of Student Information); or emailing a copy of the document to the student’s email address contained in ROSI.
5. The University’s Policy on Official Correspondence with Students expressly states that students are responsible for maintaining on ROSI a current and valid postal address and a University-issued email account. The Policy also makes it clear that 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.
6. Counsel for the Provost also filed the Affidavit of Virginia Fletcher, a Law Clerk at Paliare Roland, sworn on February 21, 2017 (“Fletcher Affidavit”). The Fletcher Affidavit confirmed the steps taken to contact the Student. The University filed affidavit evidence demonstrating that, on November 11, 2016, the Student had been served with the charges by way of email to the Student at his Utoronto address, and by courier to the mailing address the Student had provided on ROSI. Further, the Student was provided with the Notice of Hearing dated January 4, 2017, by way of email to the Student at his Utoronto address and by courier to the mailing address the Student had provided on ROSI. A reminder email was also sent to the Student on February 16, 2017.
7. Having reviewed the evidence and heard the submissions of counsel for the Provost, the Tribunal concluded that the Student was given reasonable notice of the hearing in

accordance with the notice requirements set out in the Act and the Rules. The University has proven that it provided reasonable notice of the hearing to the Student. Accordingly, the Tribunal proceeded to hear the case on its merits in the absence of the Student.

THE CHARGES AND PARTICULARS

8. At all material times, the Student was a registered student at the University of Toronto Mississauga. The University alleges that the Student engaged in the following offences:
 - I. On or about November 30, 2015, the Student knowingly represented as his own an idea or expression of an idea or work of another in an essay that he submitted in CIN101H5F (the “Course”) entitled Narrative Structure as a Literary Style (“Essay”), contrary to section B.I.1(d) of the *Code*.
 - II. In the alternative to charge 1, on or about November 30, 2015, he 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 the Essay that he submitted in the Course, contrary to section B.I.3(b) of the *Code*.
9. The Particulars for the charges are as follows:
 - a) At all material times, the Student was enrolled at the University of Toronto Mississauga. In Fall 2015, the Student enrolled in the Course, which was taught by Professor Meghan Sutherland.
 - b) Students in the Course were required to submit an essay assignment. On or about November 30, 2015, the Student submitted the Essay to complete this requirement.
 - c) He submitted the Essay knowing that it contained ideas, the expression of ideas, and verbatim or nearly verbatim text from several publications and articles (the “Sources”) which were not written by him.
 - d) He knowingly represented the work of another person, or persons, who wrote the Sources as his own. He knowingly included in the Essay ideas and expressions that were not his own, but were the ideas and expressions of another person, or persons, who wrote the Sources, which he did not acknowledge in the Essay.

- e) He knowingly submitted the Essay with the intention that the University of Toronto Mississauga rely on it as containing his own ideas, expressions of ideas or work in considering the appropriate academic credit to be assigned to his work.
- f) For the purposes of obtaining academic credit and/or other academic advantage, he knowingly committed plagiarism in the Essay.

THE EVIDENCE

10. The Tribunal received evidence of three witnesses on behalf of the Provost.
11. Professor Meghan Sutherland provided evidence by way of Affidavit, sworn January 25, 2017, as she was on sabbatical at the time of the hearing. The evidence of Professor Sutherland was as follows.
 - a) In the 2015 Fall Semester, the Student was enrolled in CIN101H5F, An Introduction to Cinema Studies (the “Course”). The Course was taught by Professor Sutherland. The Course syllabus included the University’s statements on academic honesty and plagiarism, and special tutorials were held to ensure that students understood the University’s policy regarding plagiarism. The Student was required to submit an essay, worth 25% of his final grade, to turnitin.com by 12:00 pm on November 30, 2015 (the “Final Paper”).
 - b) On November 30, 2015 at 5:36 a.m., the Student submitted the Final Paper to turnitin.com. A turnitin report revealed that the Student’s essay had a 16% similarity index.
 - c) Professor Sutherland compared the Final Paper against the internet source identified in the turnitin report which revealed that the essay contained several passages of text from the website www.examiner.com. The Student did not use quotation marks and did not attribute this text to any of the sources identified.
 - d) A Google search conducted by Professor Sutherland revealed two additional internet sources from which substantial passages of text were taken without appropriate attribution. Words and phrases were moved around and substituted but many of the words and ideas are the same as represented on www.wikipedia.com and www.oprah.com. Professor Sutherland’s Affidavit included printed evidence of the original internet source and the essay, indicating the similarities.
 - e) Professor Sutherland issued a final grade of 45% for the Final Paper and a final course grade of 45%. She explained that, absent a plagiarism violation, the grade for the Student’s Final Paper would be 45%, and his final course grade in the

Course. Professor Sutherland met with the Student on December 14, 2015 to discuss the Final Paper. The case was then forwarded to the Dean to address the academic misconduct.

12. Professor Michael Georges, Dean's Designate, gave evidence regarding his meeting with the Student. He confirmed that he met with the Student on April 14, 2016, and the Student admitted to the plagiarism. A copy of the Student's Admission of Guilt was submitted into evidence.
13. Ms. Lucy Gaspini, Manager, Academic Integrity & Affairs also provided evidence during the hearing regarding the Student's Academic History on ROSI and the Student Information Printouts.

DECISION OF THE TRIBUNAL ON CHARGES

14. Having considered all the evidence heard during the hearing and the Affidavit evidence, the Tribunal found that the Student knowingly represented the work of other persons as his own, and knowingly included in his essay ideas and expressions that were not his own, but were the ideas and expressions of other persons.
15. The Student's admission of guilt at the Dean's Designate meeting also supports a finding of guilt.
16. Consequently, the Tribunal finds that Charge 1 (as outlined in paragraph 8I) above) had been proven with clear and convincing evidence on a balance of probabilities. The Panel was advised that if the Tribunal convicts the Student on Charge 1, outlined above in paragraph 8II), the University would withdraw the alternative charge. The Panel therefore makes no findings with respect to Charge 2.

PENALTY

17. The University sought the following penalties:
 - a) That the Student receive a final grade of zero in CIN101H5F in Fall 2015;
 - b) That the Student be suspended from the University for a period of three years, commencing on February 22 and ending on February 21, 2020;
 - c) That the sanction be recorded for a period of four years on the Student's academic record and transcript to the effect that he was sanctioned for academic misconduct, commencing on February 22, 2017 and ending on February 21, 2021; and,

- d) That this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed, with the Student's name withheld.
18. The University led additional evidence with respect to sanctions. In particular, the University provided evidence that the Student had been found guilty of an academic offence regarding two separate courses.
19. The first offence relates to a course, Mathematical and Computational Sciences, in which he was enrolled in Spring 2015 (STA258H5S). The Student admitted that he was guilty of possessing a cell phone in a quiz that was submitted for credit for the course.
20. By letter dated April 29, 2015, Yael Karshon, Professor and Chair of the Department of Mathematical & Computational Sciences, advised the Student that he had imposed a mark of zero for the quiz as the sanction. The letter expressly advised the Student that "any subsequent allegations of academic misconduct are usually referred directly to the Office of the Dean or the Tribunal for investigation."
21. The second offence relates to a course Economics, in which he was enrolled in Fall 2014 ("ECO100Y5Y"). The Student admitted that he was guilty of academic misconduct for plagiarizing an assignment which he submitted as his own work and for credit in the course.
22. By letter dated November 16, 2015, Kelly Hannah-Moffat, Vice-Dean, Undergraduate, advised the Student that he was given a mark of zero for the quiz in question and an annotation on his transcript of "Mark Reduced in ECO100Y5Y, 2014 (9) due to academic misconduct", for 24 months, from November 2, 2015 to November 2, 2017.
23. The letter recommended that the Student contact a staff member from the University's Robert Gillespie Academic Skills Centre to ensure that he has a strategy in place to help with his future academic work and goals. He was also warned that any subsequent allegations of offence are usually referred directly to the Tribunal for investigation.
24. Counsel for the Provost noted that the Student had committed a prior offence just weeks before this more recent offence and was provided with letters indicating the serious consequences of future offences. Counsel further submitted that this present offence suggests that he had not learned from his prior mistakes. Further, his lack of participation in this disciplinary process demonstrates that he has not taken full responsibility for his misconduct.

DECISION OF THE TRIBUNAL ON PENALTY

25. The Tribunal 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).

- a) The character of the Student: as the Student did not participate in the proceeding, there was no evidence before the Tribunal regarding the Student's character other than the facts relating to this offence and the prior offences.
- b) The likelihood of a repetition of the offence: the Student has a prior record of academic offences. Given the two recent prior offences, the Panel accepts the University's submission that the Student does not appear to have learned from his prior mistakes.
- c) The nature of the offence committed: As noted in a number of Tribunal decisions, including *University of Toronto v. Y.G.*, (Case No 802, September 28, 2015), plagiarism is considered a very serious offence given its negative impact on academic integrity at the University. Plagiarism also undermines the relationship of trust between the University and its students. As such, it warrants a serious penalty.
- d) Any extenuating circumstances surrounding the commission of the offence: the Student did not participate in this hearing. Accordingly there is no evidence before the Tribunal of mitigating or extenuating circumstances.
- e) The detriment to the University occasioned by the offence: As noted above, such offences pose a serious concern and are detrimental to the academic integrity of the University.
- f) The need to deter others from committing a similar offence: this is an important factor in plagiarism cases. Plagiarism is a constant threat to the University, especially given the increased access to and availability of online sources.

26. As established in that case and other cases to follow, 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. However, the Discipline Appeals Board has stressed the importance of a general consistency in the approach of Tribunals to sanction, so that the students are treated fairly and equitably. (*Discipline Appeal Board, University of Toronto v. D. S.*, Case No 451, August 24, 2007).

27. A review of similar cases provided by Counsel to the University indicates that a student who commits plagiarism usually receives the sanction of a zero grade in the course. With respect to the length of the suspension, a three-year suspension is generally consistent

with the sanctions granted in similar circumstances where there is at least one prior offence, although there have been cases where a suspension of five years was administered.

28. Having regard to the cases, the submissions of the University, and the relevant factors outlined above, the Panel agrees that the recommended sanctions are appropriate.

29. At the conclusion of the hearing, the Panel made the following order:

- That the hearing may proceed in the absence of the Student;
- That the Student is guilty of one count of plagiarism, contrary to section B.I.1(d) of the *Code of Behaviour on Academic Matters*;
- That the Student receive a final grade of zero in CIN101H5F in Fall 2015;
- That the Student be suspended from the University for a period of three years, commencing on February 22, 2017 and ending on February 21, 2020.
- That the sanction be recorded for a period of four years on the Student's academic record and transcript to the effect that he was sanctioned for academic misconduct, commencing on February 22, 2017 and ending on February 21, 2021; and
- That this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed, with the name of the Student withheld.

30. An Order was signed at the hearing by the Panel to this effect.

DATED at Toronto, May 17, 2017.


Michelle S. Henry, Co-Chair