

**UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on April 24, 2018,

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

B E T W E E N:

UNIVERSITY OF TORONTO (the "University")

- AND -

M [REDACTED] A [REDACTED] (the "Student")

REASONS FOR DECISION

Hearing Date: September 19, 2018

Panel Members:

Ms. Roslyn M. Tsao, Chair
Professor Ken Derry, Faculty Panel Member
Mr. Bradley Au, Student Panel Member

Appearances:

Mr. Robert A. Centa, Assistant Discipline Counsel for University, Paliare Roland Barristers

Not In Attendance:

The Student

Hearing Secretary

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

Charges and Appearances

1. The Trial Division of the Tribunal heard this matter on September 19, 2018. The Student was charged on April 24, 2018 as follows:

Charge 1: On or about December 7, 2016, you knowingly represented the ideas of another, or the expressions of the ideas of another as your own work in an essay titled “Why the Principle of All-Affected Interests is Wrong” (“Essay”) that you submitted in partial completion of the course requirements in POL484H1F 2016(9) (the “Course”), contrary to section B.I.1(d) of the *Code*;

Charge 2: On or about December 7, 2016, you knowingly obtained unauthorized assistance in connection with the Essay, which you submitted for academic credit in the Course, contrary to section B.I.1(b) of the *Code*;

Charge 3: On or about December 7, 2016, you knowingly submitted the Essay, which contained concocted references to one or more sources, contrary to section B.I.1(f) of the *Code*;

Charge 4: In the alternative to the charges above, on or about December 7, 2016, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the Code to obtain academic credit or other academic advantage of any kind, contrary to section B.I.3(b) of the *Code*,

the "Charges".

Service on Student

2. Pursuant to the Affidavit of Service of Ms. Susan Murphy sworn May 11, 2018, we are satisfied that a statement of the Charges was sent to the Student by email dated April 24, 2018 to the Student's ROSI email address.

3. Pursuant to the Affidavit of Service of Ms. Krista Osbourne sworn September 11, 2018, we are also satisfied that the Notice of Hearing scheduled for September 19, 2018 was sent to the Student by email dated July 27, 2018 to the Student's ROSI email address.
4. There was also evidence tendered by way of an email from Mike Wiseman the Associate Director, Information Security of Information Technology Services at the University, that the Student's ROSI account was last accessed on August 7, 2018 and that there was no auto-forwarding of messages from that account to another account.
5. The Student did not respond in any way to Discipline Counsel in advance of hearing date and it was not expected that the Student would attend.
6. The Student did not attend for this Hearing.
7. The Panel is satisfied that valid and proper service was effected on the Student pursuant to the Rules and that the Hearing may proceed in the absence of the Student.
8. Though the Student was last enrolled at the University in the Fall 2016 term (the term of the subject Course), there was evidence that his ROSI email account was being checked until as recently as August 7, 2018.

Findings on Charges

Facts

9. The University tendered evidence by way of an Affidavit affirmed September 11, 2018 of Professor Joseph Carens, the professor who taught the Course to the Student. This Affidavit and Exhibits thereto were served on the Student by email to his ROSI email address on September 12, 2018 based on the Affidavit of Service of Robert Centa sworn September 13, 2018.
10. Professor Carens affirmed the following facts:
 - (a) Professor Carens taught the Course, a 4th year course, in the Fall of 2016 to the Student.

- (b) Evaluation in the Course was based on two papers worth 40% and 60%. The first paper was due on October 26, 2016 and the second paper was due December 7, 2016. The students were required to submit their papers in Word format and not through the "Turnitin.com" platform.
- (c) The Student submitted his first paper on October 25, 2016 and Professor Carens graded the paper with a 65% mark.
- (d) On December 4, 2016, the Student emailed Professor Carens seeking input as to how he could improve his grade on his second paper. Professor Carens referred the Student to his detailed comments on the Student's first paper.
- (e) On December 8, 2016, the Student submitted his second paper via e-mail and explained that the tardiness of his paper was due to an unexpected Toronto Hydro shutdown. Professor Carens accepted the paper without late penalty.
- (f) Professor Carens reviewed the second paper carefully, including the footnotes and citations therein. Professor Carens noted that a number of cited sources made no sense given the topic of the paper and he was careful to review the actual sources in the paper where he could locate same electronically.
- (g) In particular, Professor Carens cited 15 footnotes which he found to be concocted references for the following range of reasons:
 - (i) the cited source material lacked any relevance to the portion of the Student's paper (or otherwise);
 - (ii) the footnotes lacked any pinpoint references to support the Student's argument and such cited article did not provide any support for Student's argument as a whole in Professor's opinion;
 - (iii) some pinpoint citations did not support the proposition advanced by the Student; and
 - (iv) a footnote incompletely cited an article.

- (h) Professor Carens also noted that the Bibliography cited an article though there were no footnotes referring to same in the text.
- (i) In addition, in Professor Carens's opinion, there were passages in the Student's paper that were "uncharacteristically sophisticated" in style.
- (j) As a result of his concerns, Professor Carens emailed the Student on December 23, 2016 to request a meeting by phone or in person. Professor Carens wrote:

"I have some questions about your essay. I'd like to talk with you about this either by phone or in person...Which would you prefer?"

- (k) On January 2, 2017, Professor Carens sent another email to the Student informing him that he would have to give him a temporary grade of zero on his second paper as the class marks were being delayed pending a mark for the Student. The Student was again invited to meet with Professor Carens to discuss. In particular, Dr Carens stated:

..."This is not a permanent resolution of the matter, however. If you can satisfy me that my concerns are unfounded, I will be able to assign a normal grade for your paper and revise the final grade on emarks to reflect that. If I continue to have these concerns, I will have to initiate a formal process with the Office of Student Academic Integrity..."

- (l) On January 15, 2017, Professor Carens emailed the Student once more to advise that he would be entering a notation of "NGA" (no grade available) for the Course instead of a zero grade as he learned of this alternative pending method of addressing the situation so that the class grades could be submitted. Professor Carens invited the Student yet again for a meeting to discuss matters.
- (m) The Student did not contact Professor Carens. On January 23, 2017, Professor Carens submitted a formal notification of his concerns regarding academic dishonesty to his department chair.

11. In response to a question from the Tribunal, the Tribunal was advised that the delay between the January 2017 investigation and the hearing date (September 2018) was due, in part, to Professor Carens dealing with a loss in his family.

Analysis of Charges

12. The University has charged the Student based on three distinct modes of academic dishonesty: plagiarism, use of unauthorized assistance and concoction of references. Although the University is proceeding on a concurrent basis, it is open for the Tribunal to consider these charges in the alternative to each other.

Professor's Concern That Reference Material Was Not Relevant or Did Not Support the Student's Argument

13. In a case such as this, the Tribunal must be careful to balance the "red flags" raised by the professor who has a subject-matter expertise **of the course material** which informs his/her determination of "relevance" of cited material to the student's work against the possibility that the student is a poor student unable to properly interpret the material or formulate a sound argument. Concluding that there is "concoction" may be understandable when viewed through the lens of the professor but may not meet the burden of demonstrating academic dishonesty that the University must discharge.
14. Since members of the Tribunal may not have the expertise in the particular subject matter of the course in question, the exercise of determining culpability will be based on the quality of the instructor's review of the matter and his/her articulation and explanation of the "red flags".
15. In general, the Tribunal is not required to conclude that the University's version is the **only** version of the facts but some common sense testing is warranted to satisfy the Tribunal that the University's version is more likely than not.
16. When there is no Student or defence presented, as in this case, the Tribunal must still objectively weigh the University's evidence.

17. In this case, the Tribunal reviewed the Student's (11 page) Essay and was provided with 10 articles/papers (9 of which were referenced by the Student in his Essay) to consider in assessing Professor Caren's conclusions that the references/footnotes referred to irrelevant and/or unsupportive material. These articles/papers ranged from 2 to 41 pages in length.
18. Although the members of the panel are thoughtful and have attained varying degrees of matriculation to date, a certain reliance upon Professor Caren's suspicions about academic dishonesty is required given that the panel cannot substantively digest the subject matter and thesis of the Essay in the course of the hearing.
19. A detailed review of the examples advanced by Professor Carens was conducted by the panel during a recess. Although some of the cited footnotes could have been a product of misinterpretation or poor argument on the Student's part, when all examples were considered together and in the context of a 4th year student, the panel found that there was clear and convincing evidence of concocted references. The cited material, in many of the cases, was clearly not on point (even to a non-subject expert).
20. The conclusion is that the cited references were, as submitted by Mr. Centa, included to provide a "patina of academic rigour".
21. In so finding, there can also be no doubt that the concoction of offending references/footnotes was done "knowingly" by the Student or that he ought to have known that they were concocted.

Plagiarism and Unauthorized Aid Not Established

22. The evidence of Professor Carens above does not, however, establish that the Student plagiarized or used any unauthorized aids in completing the Essay. Indeed, Professor Carens indicates in his letter to his faculty chair of January 23, 2017 that he regrets not requiring the students to submit their essays using turnitin.com nor assigning any formal weight to class participation.

23. There was no evidence that any part of the Essay was plagiarized from another original source or that the Student had unauthorized assistance from another person as set out in the Charges.

Conclusion on Charges

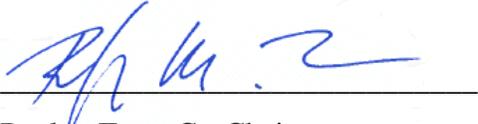
24. The Student is found guilty of Charge 3 relating to "concoction".
25. The Student is found not guilty of Charges 1 and 2 relating to "plagiarism" and "use of unauthorized aid", respectively.
26. The University withdrew Charge 4.

Penalty

27. The University sought the following penalty:
 - (a) a final grade of zero in the Course;
 - (b) a suspension from the University for two years commencing from the date of the Order;
 - (c) a notation of the sanction on his academic record and transcript for three years from the day the Tribunal makes its order; and
 - (d) that this case 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.
28. In determining penalty, the Panel is directed to consider the C [REDACTED] factors (Case No. 1976/77-3, November 5, 1976), to achieve the goals of reformation, deterrence and protection of the public. None of these three goals has priority over the other but the Panel may consider how the facts of each case may demand that one has more relevance over the other.

29. The Student has no prior discipline history and, in his 4th year of studies at the University, had earned 19 credits. As stated above, the Student last attended at the University in the 2016 Fall Term.
30. In this case, the goal of individual rehabilitation is of minor importance given that the Student has been inactive at the University since 2016. Discipline Counsel acknowledged that it was important to fashion a sanction that would allow the Student to return to the University to complete his degree if he desired.
31. A review of other decisions of the Tribunal with similar circumstances confirms that a recommendation for a two year suspension is in keeping with this body of cases.
32. However, there has been a significant delay from January 2017 until the hearing date. The University has advised that the file was referred to Discipline Counsel on April 18, 2018. As such, the file appears to have been appropriately and reasonably moved forward by Discipline Counsel from that time to hearing in September, 2018.
33. As for the delay between January 2017 to April, 2018, some of the delay was explained by an aborted Dean's Designate meeting but a significant portion of that period, some 6-8 months, was not explained and was not, in any event, attributable to the Student.
34. The panel was of the view that, had there been less delay in moving this case forward, this hearing might have been heard in January of this year instead of September. To be clear, the panel is not attributing blame or being critical of the University in this matter but is simply noting the unexplained delay in bringing this matter to a hearing in a reasonable time.
35. The panel agrees with the recommendation of the University on sanction except that the two year suspension is to commence on January 1, 2018.
36. An Order with the above relief was signed by the Panel on September 19, 2018.

Dated at Toronto, this 28th day of November, 2018



Roslyn Tsao, Co-Chair