

UNIVERSITY OF TORONTO

UNIVERSITY TRIBUNAL – TRIAL DIVISION

IN THE MATTER OF charges of academic dishonesty made on or about July 4, 2007;

AND IN THE MATTER OF the *University of Toronto Act*, 1971, S.O. 1971 c.56 as amended S.O. 1978, c.88;

AND IN THE MATTER OF the *University of Toronto Code of Behaviour on Academic Matters*, 1995;

BETWEEN:

UNIVERSITY OF TORONTO

-and-

MR. T-F. O. K.

Members of the panel:

- Bernard Fishbein, Chair
- Professor Kristina Dahlin, Faculty Member
- Dr. Joan Saary, Student Panel Member

Appearances:

- Ms. Lily Harmer, Assistant Discipline Counsel for the University of Toronto
- Mr. Max Shapiro, Downtown Legal Services Representative for Mr. K., the Student

REASONS FOR DECISION

Background

1. This Panel of the Trial Division of the University Tribunal convened on May 26 and November 26, 2008, to consider charges brought under the *Code of Behaviour on Academic Matters, 1995* (“the *Code*”) against the Student by letter dated July 4, 2007 from the Vice-Provost, Academic, Professor Edith Hillan:
 - (i) Contrary to section B.I.1(d) of the *Code*, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in connection with your paper on Edward Said's "Orientalism", which you submitted on or about November 14, 2006, in partial fulfillment of the course requirements in HIS101H5F.
 - (ii) In the alternative, contrary to section B.I.3(b) of the *Code*, you did knowingly engage 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, by submitting your paper on Edward Said's "Orientalism", which you submitted on or about November 14, 2006, in partial fulfillment of the course requirements in HIS101H5F.
 - (iii) Contrary to section B.I.1(d) of the *Code*, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in connection with your paper on Women in Chinese Buddhism, which you submitted on or about December 4, 2006, in partial fulfillment of the course requirements in RLG372H5F.
 - (iv) In the alternative, contrary to section B.I.3(b) of the *Code*, you did knowingly engage 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, by submitting your paper on Women in Chinese Buddhism, which you submitted on or about

December 4, 2006, in partial fulfillment of the course requirements in RLG372H5F.

Particulars

HIS101H5F

- (v) At all material times you were a student at the University of Toronto. In academic year 2006-2007 you were enrolled in HIS101H5F.
- (vi) On or about November 14, 2006, you submitted a weekly assignment on Edward Said's "Orientalism" in partial fulfillment of the course requirements in HIS101H5F, which was taught by Professor Jens Hanssen.
- (vii) This paper you submitted contained verbatim and nearly verbatim text from another student's paper. You did not properly indicate that your work was taken verbatim or nearly verbatim from other sources. You did not properly acknowledge, cite, or reference the sources from which you obtained this material.

RLG372H5F

- (viii) In academic year 2006-2007 you were enrolled in RLG372H5F.
- (ix) On or about December 4, 2006, you submitted a research paper on Women in Chinese Buddhism in partial fulfillment of the course requirements in RLG372H5F, which was taught by Professor Ihor Pidhainy.
- (x) This paper you submitted contained verbatim and nearly verbatim text from another student's paper. You did not properly indicate that your work was taken verbatim or nearly verbatim from other sources. You did not properly acknowledge, cite, or reference the sources from which you obtained this material.

We note that without objection from any of the parties, Professor Dahlin participated in the November 26, 2008 hearing by way of video tele-conference from France where she was on sabbatical.

2. At the outset of the hearing on May 26, 2008, an Agreed Statement of Facts was filed as follows:

I. Background

1. The University of Toronto admitted the Student in the Fall of 2003. The Student registered in the Social Sciences program at the University of Toronto at Mississauga (UTM), and is pursuing a specialist degree in Religion with a major in Diaspora and Transnational Studies. The Student was placed on academic suspension for one year following the 2005 Winter session due to his low grades. To date, he has earned a total of 16 credits with a cumulative grade point average ("GPA") of 1.77. The Student is currently registered in two full credit courses in the 2008 Summer session.
2. On July 4, 2007 the University of Toronto filed charges against the Student under the *Code of Behaviour on Academic Matters*, 1995 ("Code") alleging that on November 14, 2006 and December 6, 2006, he submitted essays containing plagiarized passages for academic credit in HIS101H5F and RLG372H5F, respectively.
3. When the Student's alleged misconduct in the two courses was discovered, the University placed a Grade Withheld Pending Review notation ("GWR") on his academic record in relation to HIS101H5F and RLG372H5F. In the Summer of 2007, the Student re-registered in and successfully completed HIS101H5, earning a final grade of 68 (C+) in the course. The 16 credits that he has earned to date include this half-credit. Accordingly, regardless of the disposition of the charges in relation to HIS101H5, the Student is not eligible for further academic credit for this course.

II. Facts

4. The Student was registered in the 2006 Fall session of HIS101H5 - Introduction to Historical Studies (the "Course").
5. HIS101H5F is a writing-intensive course. Both the Course website and the Course Outline contained information about plagiarism. The Course Outline stated that "copy pasting and inadequate referencing of sources will be punished in accordance with the University's Rules and Regulations", and indicated that sources were to be referenced in endnotes/footnotes in the Chicago Style. Students were also required to visit the University's Academic Skills Centre at least once. The Course website provided a link to related material about plagiarism.
6. The Course requirements included the submission of 5 one-page position papers ("Position Papers"). In preparing their Position Papers students were required to incorporate themes from at least two of the Course's required readings and to include

a summary, an analysis and a brief critique. Students were also required to submit 5 one-half page bi-weekly responses to their classmates' Position Papers ("Response Papers"). In preparing the Response Papers, students were expected to demonstrate their familiarity with at least two of the Course's required readings and present an original perspective on a Position Paper of their choice. Each of the Position Papers and the Position Responses was worth 5 per cent of the total grade in the Course (for a total of 50% in relation to all 10 papers).

7. To facilitate these interactive assignments and promote the exchange of original ideas, students were required to post their Position Papers and Response Papers on the course website at least 36 hours before the relevant class. These postings were accessible to other students.
8. On November 14, 2006, the Student submitted a Position Paper based on the Course's required readings for that week; namely, Edward Said's "Preface Orientalism" and Ranajit Guha's "The Prose of Counter-Insurgency" ("Student's Position Paper").
9. Professor Jens Hanssen, the course instructor, reviewed the Student's Position Paper and determined that it contained multiple passages that were identical to passages in a Position Paper that had been posted on the Course website by another student in the Course ("Source Paper"). Professor Hanssen documented his comparative review in a side-by-side analysis of the Source Paper with the Student's Position Paper, highlighted to identify the passages that were identical.
10. The Student attended a meeting with Dr. Roger Beck, Dean's Designate, on December 18, 2006. At that meeting the Student admitted to plagiarizing the work of one of his classmates. In particular, he admitted that he had copied passages from another student's Source Paper into his Position Paper.

III. Conclusion

11. The Student accepts responsibility for submitting the plagiarized Position Paper in HIS101H5 for academic credit.
 12. He admits that he knowingly represented as his own an idea or expression of an idea, and/or the work of another in connection with the Position Paper he submitted on November 14, 2006, in partial fulfillment of the Course requirements, contrary to section B.I.1.(d) of the Code.
 13. The Student hereby pleads guilty to charge 1 filed by the University of Toronto.
 14. The Student acknowledges that he has been advised to obtain independent legal advice before signing this Agreed Statement of Facts.
3. As a result, the Student pleaded guilty to those charges with respect to HIS101H5F ("the History Course") but disputed the charges with respect to RLG372H5F ("the Religion course").

4. This Panel then heard evidence from a number of witnesses with respect to the charges in the Religion course. In particular, the University called Professor Pidhainy, the instructor of the Religion course, Ms. A. B. (“Ms. B”) another student in the Religion course, and Professor Cary Shinji Takagaki, the instructor in RLG206, a summer course (“the Summer Religion course”) taken both by the Student and Ms. B, prior to their taking the Religion course. The Student testified on his own behalf. The University then called in reply (without objection) Leonard Paris, the Manager of Campus Police at UTM, Terry Johnston, a counselor in the Department of Historical Studies at UTM at the material times with respect to these charges, Professor Roger Beck, the Dean’s designate with respect to these charges, and Lucy Gaspini, the Academic Affairs Officer at UTM at the material times with respect to these charges.

What is Not in Dispute

5. Both the Student and Ms. B were registered students of UTM. Both were enrolled in the Summer Religion course. They did not and do not know each other.
6. As part of the requirement of the Summer Religion course, Ms. B submitted a paper entitled “Women in Buddhism – Buddhism Gives Women a Choice”. The Student submitted a different paper on a different subject.
7. In the fall of 2006, both the Student and Ms. B. were enrolled in the Religion course. This religion course also had an essay requirement. To fulfill this essay requirement in the Religion course, Ms. B again submitted her essay “Women in Buddhism – Buddhism Gives Women a Choice” with approximately one to two pages of revisions to fit the different topic of the Religion course and with some of the errors noted on the essay when it was first submitted to the Summer Religion course, corrected.
8. In order to meet the essay requirement in the Religion course, the Student submitted an essay entitled “Chinese Buddhism – Women in Chinese Buddhism” which was virtually identical to the essay that Ms. B had submitted in the Summer Religion course. It had virtually all of the same errors as in the original essay (without the corrections having been made).

9. Professor Pidhainy observed the similarities between the two essays and initiated the investigation of possible academic misconduct.
10. The Student denied any wrongdoing with respect to the Religion course.
11. Ultimately, Ms. B, in the investigation stage prior to charges under the *Code* being filed against her, confessed to altering her essay for the Summer Religion course and re-submitting this essay with the alterations in the Religion course. Ms. B received academic sanction for this misconduct. Ms. B could offer no explanation for how the Student could have obtained a copy of her essay that was submitted in the Summer Religion course.

What was in Dispute and Our Findings

12. Although the University could offer no explanation of how the Student obtained a copy of the essay Ms. B submitted in the Summer Religion course, it asked us to conclude in these circumstances (including the fact that the essay the Student submitted in the Religion course had virtually the same errors as Ms. B's essay when it was submitted in the Summer Religion course) that the Student had filed Ms. B's essay in fulfillment of his essay requirements in the Religion course contrary to the *Code*.
13. The Student's explanation of these circumstances was ultimately not particularly credible. He asserted that he had written the essay for the Summer Religion course initially (although he had not asserted this during the investigation) on his computer but that his USB key had gone missing from the computer lab while he had briefly left the computer lab. During the investigation, the Student asserted that the USB key was stolen; however, during his testimony he was less clear whether it was stolen or lost. In any event, he stated that he reported this to the UTM Police. The essay being irretrievable without the USB key, the Student asserted that he then chose to start another essay which he ultimately submitted to fulfill the essay requirement in the Summer Religion course.
14. According to the Student, in the fall of 2006, while he was taking the Religion course, he discovered his draft of that essay on his sister's laptop (which he said he had borrowed in the summer to conduct some research for that essay). The essay now being "found", he therefore submitted it to fulfill the essay requirement in the Religion course.

15. Leaving aside how incredible the story was generally, the University called several witnesses in response to specifically rebut elements of the Student's testimony. In particular, the Manager of the UTM police testified that if the Student had reported the USB key stolen (as he originally asserted in the investigation according to various witnesses), a report would have been filed (since this would involve possible criminal conduct) and no such report was ever filed. As well, the University called various participants in the investigation process to assert that contrary to the Student's evidence in chief, during the investigation, not only did he never assert that the USB key could have been lost as opposed to stolen, he never asserted that the essay was prepared in the summer of 2006 (for the Summer Religion course and not prepared for the Religion course in the fall) and had never asserted he had fortuitously found the essay on his sister's laptop. As well, the University called extensive evidence to demonstrate that much of the reference material footnoted in the original Ms. B essay and in the essay that the Student submitted in the Religion course was not available from the Metropolitan Toronto Reference Library where the Student asserted he had done the research. As well, the documents that the Student provided during the investigation to substantiate that he had performed the research himself on the essay were not only not available in the Metropolitan Toronto Reference Library but, although available through the University library system, did not even match the footnotes or quotes actually contained in the paper. In contrast, the library records at the University in the summer of 2006, showed that Ms. B had borrowed the relevant books footnoted in the essay at the relevant time.
16. As a result, it appeared clear to us, that however the Student obtained a copy of the Ms. B essay, he clearly did not write it and his explanation was not true. In argument, counsel for the Student suggested that somehow Ms. B had obtained a copy of the essay from the Student and submitted it as her work in both the Summer Religion course and later in the fall Religion course with some alterations. Other than counsel's conjecture, there appeared to be absolutely no evidence to support any such inference or conclusion.
17. As a result, we concluded that the University, even in the absence of any direct evidence of how the Student had obtained the Ms. B essay, on the balance of probabilities, had established that contrary Section B.I.1(d) of the *Code*, he had knowingly represented as his

own the work of another. As a result, it was not necessary to make any finding with respect to the charge under Section B.I.1(d) of the *Code* (“cheating”).

Penalty

18. After announcing our findings, the parties met briefly and then made a joint submission with respect to penalty. In view of the Student’s prior plagiarism offence a number of years before, they submitted that:
 - (i) The Student be given zero (0) credit for both the History and Religion courses for the Fall 2006 term;
 - (ii) he be given a suspension of three (3) years
 - (iii) this be noted on his file for a period of four (4) years; and
 - (iv) this result be published with the name withheld.
19. However, the parties did not agree and left for us to determine the effective date of that three (3) year suspension.
20. The difficulty was that the Student was currently enrolled at the University at the time of the hearing. He was completing a number of half courses which would conclude at the end of the fall term of 2008 and a number of full year courses which would not conclude until spring of 2009. Recognizing that the Student ought not to lose the work in the half courses which were virtually completed at the date of the second hearing (November 26, 2008) the University proposed that the date of suspension commence January 1, 2009.
21. However, the Student opposed that proposal since it would also mean the loss of his work in the full year courses (which would not conclude until the end of the spring semester in 2009). The Student argued that this essentially turned the three (3) year suspension into a *de facto* greater suspension because he would not be able to conclude the courses required to complete his degree when the suspension ended in January 2012 (if the University’s position was accepted.) More significantly, the Student argued that if the tribunal deliberations had concluded earlier (the first hearing was on May 26, 2008), he would not have enrolled in all of these courses in the fall of 2008. In other words, the Student argued that the delay in the

tribunal process worked to make the impact of the penalty the University sought to impose more severe than it appears at first blush.

22. This Panel of the Tribunal was troubled by the Student's argument. In fact, but for the agreement of the parties that a three (3) year suspension was appropriate, the Panel would have been inclined to a suspension of greater duration. This was not the Student's first offence with respect to similar misconduct. Moreover, he not only displayed little significant remorse or contrition over his academic misconduct, but vigorously resisted any admission of his academic misconduct throughout the hearing until the sentencing portion. However, the Panel was equally troubled with the prospect that, having accepted the agreed upon suspension, the actual impact of the suspension would work to an even greater effect because of the delay in the Tribunal process. The delay in the Tribunal process could not be attributed to the Student in any way and, as a result, the Panel unanimously was of the view that it ought to accept his position (and reject the position of the University about the date the suspension would be effective). In other words, the suspension is to commence on May 1, 2009.

DATED at Toronto this _____ day of _____, 2009.

Bernard Fishbein, Chair