

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on November 25, 2019

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

- and -

Y■■■■ Y■■■■ (the “Student”)

REASONS FOR DECISION

Hearing Date: October 15, 2020 via Zoom

Members of the Panel:

Ms. Ira Parghi, Lawyer, Chair
Professor Richard Day, Faculty Panel Member
Ms. Shirley Deng, Student Panel Member

Appearances:

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

Hearing Secretary:

Ms. Krista Kennedy, Administrative Clerk and Hearing Secretary, Office of Appeals, Discipline and Faculty Grievances

Not in Attendance:

The Student

I. Introduction

1. The Trial Division of the University Tribunal was convened on October 15, 2020 to consider charges brought against the Student by the University of Toronto (“the University”) pursuant to the *University of Toronto Code of Behavior on Academic Matters, 1995* (“the Code”) on November 25, 2019. The charges alleged that, on or about August 14, 2018, the Student represented as his own an idea or expression of an idea or work of another in an assignment submitted in course FAH392H5, entitled Topics in Modern Art and Architecture: Pre-Raphaelite Art in Context.

2. The charges were as follows:

1. On or about August 14, 2018, you knowingly represented as your own an idea or expression of an idea or work of another in an assignment titled “Pre-Raphaelites: Exhibition Catalogue Assignment 2.2” (“Exhibition Catalogue”) that you submitted in FAH392H5, contrary to section B.I.1(d) of the *Code*.
2. On or about August 14, 2018, you knowingly used or possessed an unauthorized aid or aids and/or obtained unauthorized assistance in connection with your Exhibition Catalogue, contrary to B.I.1.(b) of the *Code*.
3. In addition and in the alternative to charges 1 and 2, 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 your Exhibition Catalogue, contrary to section B.I.3(b) of the *Code*.

3. The particulars of the offences charged were as follows:

- a) At all material times you were a student at the University of Toronto Mississauga.
- b) In Summer 2018 you enrolled in FAH392H5, taught by Professor Farrukh Rafiq.
- c) Students in FAH392H5 were required to submit an assignment in which you were to work on your own to create a mini version of an exhibition catalogue in respect of certain art works. You submitted the Exhibition Catalogue to complete this requirement.
- d) You submitted the Exhibition Catalogue knowing that it contained ideas and the expression of ideas of others.
- e) You knowingly represented the work of another person or persons who wrote the Sources as your own. You knowingly included in the Exhibition Catalogue ideas and expressions that were not your own, but were the ideas and expressions of another person, or persons, which you did not acknowledge in your Assignments.
- f) You knowingly obtained the unauthorized assistance of another person or persons to write, or to provide you with significant assistance to help you to write, the Exhibition Catalogue.

II. Conduct of hearing in absence of Student

4. The Student did not appear at the time scheduled for the commencement of the hearing. Nor did any representative of the Student. The Tribunal waited 15 minutes after the hearing was scheduled to commence to allow for the Student to appear. The Student still did not appear.
5. Counsel for the University then sought an order that the hearing be permitted to proceed in the Student’s absence. To proceed in the absence of the Student, the University was required to demonstrate that the Student had been given “reasonable notice” of the hearing.

6. The University's *Policy on Official Correspondence with Students* provides that students enrolled at the University must maintain current contact information in their record in the University's record of academic history and student information ("ROSI"), and must update that information if it changes. Pursuant to Rule 9 of the Tribunal's *Rules of Practice and Procedures* ("Rules"), one of the ways in which a Notice of Hearing may be served on a student is via email to the student's email address in ROSI.
7. Under Rule 17 of the *Rules* and sections 6 and 7 of the *Statutory Powers Procedure Act* ("SPPA"), the Tribunal may proceed with an oral hearing in the absence of a student when reasonable notice of the hearing has been given to the student in accordance with the *Rules* or *SPPA* (as the case may be) and the student does not attend.
8. The University's evidence in respect of service and attempts to communicate with the Student was as follows:
 - a) On November 25, 2019, the University's Office of Appeals, Discipline and Faculty Grievances served the Student with the charges issued against him by Professor Heather Boon, Vice-Provost, Faculty & Academic Life. These materials were served via email to the email address that the Student had provided to the University in ROSI (the Student's "ROSI email address").
 - b) On September 3, 2020, an articling student working with counsel for the University sent various additional materials to the Student via email to the Student's ROSI email address. These materials included a letter from counsel, a disclosure brief relating to this matter, and a copy of the University's *Policy on Official Correspondence with Students*. The Student was informed that important documents and correspondence would be sent to his ROSI email address, and that he would be contacted to canvass potential dates for the hearing.
 - c) As of October 5, 2020, the Student had last logged onto the online portal for students to access their student information on September 7, 2020, and had last accessed the email account corresponding to his ROSI email address on September 16, 2020. Both of these dates fell after the materials discussed above were sent to the Student via email to his ROSI email address.
 - d) On September 25, 2020, the articling student working with counsel for the University sent a further email to the Student at his ROSI email address. The email re-attached the disclosure documents, invited the Student to contact counsel's office, and proposed potential hearing dates for October 2020, asking the Student to advise if he were not available on any of those dates.
 - e) Also on September 25, 2020, the articling student called the phone number that the Student had provided to the University in ROSI. A message identified the phone number as belonging to the Student. The articling student left a voice mail message identifying herself and asking that the Student contact her.

- f) On September 30, 2020, the articling student called the same phone number for a second time. Again, a message identified the phone number as belonging to the Student. The articling student left a voice mail message identifying herself and asking that the Student contact her.
 - g) On October 5, 2020, the articling student served the Student with three affidavits and explained to the Student that the University intended to rely on the affidavits during the hearing. She invited the Student to advise University counsel if he wished to cross-examine on any of the affidavits. These affidavits were served via email to the Student's ROSI email address.
 - h) On October 6, 2020, the articling student served the Student with an additional affidavit, again via email to the Student's ROSI email address.
 - i) In connection with a request by the Provost of the University that the hearing proceed electronically, I issued a Direction in which I invited the Student to file submissions as to why the hearing should proceed in person and not by Zoom. I requested that the Student provide any such submissions by October 7, 2020. A copy of this Direction and accompanying email correspondence from the University was sent to the Student via email to his ROSI email address.
 - j) On October 7, 2020, having received no submissions from the Student or anyone on his behalf, I issued a Direction that the hearing proceed electronically. A copy of this Direction was provided to the Student via email to his ROSI email address.
 - k) Also on October 7, 2020, the Student was also served with a Notice of Electronic Hearing and was provided with a Best Practice Guide and instructions relating to the Zoom platform that would be used to conduct the electronic hearing. These materials were sent to him via email to his ROSI email address.
 - l) On October 8, 2020, the articling student working with counsel for the University served the Student with a further affidavit in respect of this matter, again via email to his ROSI email address.
 - m) As of October 8, 2020, the articling student had not received any "bounce back" messages indicating that her emails to the Student could not be delivered.
9. In light of the totality of the evidence regarding the efforts made to provide notice to and otherwise communicate with the Student, the Tribunal concluded that reasonable notice of the hearing had been provided to the Student in compliance with the *Rules* and the *SPPA*. An order permitting the hearing to proceed in the Student's absence was therefore granted.

III. Liability

10. Because the Student was not present, the hearing proceeded on the basis that he denied the charges against him. The onus was on the University to establish on the balance of probabilities that the Student had committed the offences charged.
11. The Tribunal received evidence from Professor Farrukh Rafiq, a Sessional Instructor in the Department of Visual Studies at the University, who taught the course during which the Student allegedly committed the offences at issue. Professor Rafiq's evidence was as follows:
- a) The syllabus for the course expressly discussed the importance of academic integrity and the issue of plagiarism in writing assignments. It cited the portion of the *Code* that identifies as potential academic offences the acts of “[u]sing someone else’s ideas or words without appropriate acknowledgement” and “[o]btaining or providing unauthorized assistance on any assignment”. It also stated: “If you have questions or concerns about what constitutes appropriate academic behaviour or appropriate research and citation methods, you are expected to seek out additional information on academic integrity from your instructor or from other institutional resources”.
 - b) The assignment in respect of which the alleged offences occurred involved the preparation of an exhibition catalogue. Students were asked to create a small-scale version of an exhibition catalogue containing an introductory essay and entries on two works of art. Students were required to read, sign, and attach an Academic Integrity Checklist to their exhibition catalogue.
 - c) The Student submitted his Academic Integrity Checklist when he submitted his exhibition catalogue assignment on August 14, 2018. On his Academic Integrity Checklist, he confirmed that he had appropriately cited the source(s) of the idea(s) in his exhibition catalogue and that any proofreading by another was limited to indicating areas of concern that he then corrected himself. The Student’s exhibition catalogue assignment contained 30 endnotes.
 - d) The Student’s exhibition catalogue assignment contained an introduction and conclusion, neither of which were required. This surprised Professor Rafiq, because neither the instructions for the exhibition catalogue assignment nor the sample exhibition catalogue that he had provided to his students included an introduction and conclusion.
 - e) The sophistication and high quality of the Student’s exhibition catalogue assignment also surprised Professor Rafiq, who by this time had seen and graded several of the Student’s previous assignments. In Professor Rafiq’s assessment, there was a significant difference between the writing style shown in the Student’s earlier assignments and that displayed in his exhibition catalogue assignment. Professor Rafiq’s evidence on this point was concrete and replete with specific examples, including the following:
 - i. An earlier essay that the Student submitted on July 16, 2018 contained spelling or grammar mistakes in most of its sentences, whereas the exhibition catalogue assignment contained virtually no such errors.

- ii. The Student's earlier work demonstrated a simplistic writing style, which the exhibition catalogue assignment did not. Professor Rafiq pointed to specific examples of this in his evidence.
 - iii. The Student's earlier work relied on what Professor Rafiq characterized as basic and superficial analysis and observations, whereas the analysis and observations in the exhibition catalogue assignment were much deeper. Again, Professor Rafiq pointed to specific examples in his evidence.
 - iv. The quality of the Student's writing in the exhibition catalogue assignment was, in Professor Rafiq's assessment, above average for a third-year course such as this one, and was of a much higher quality than the Student's previous work.
 - v. After reading the Student's exhibition catalogue assignment, Professor Rafiq felt that it was "more likely than not" that parts or all of it had not been authored by the Student.
- f) Based on the Student's performance in the course overall, a mark of zero on the exhibition catalogue assignment would have yielded a final mark in the course of 39%.

12. The Tribunal also received the evidence of Professor Charles Elkabas, a Professor in the Department of Language Studies at the University and the Dean's Designate in this matter. Professor Elkabas met with the Student to discuss the exhibition catalogue assignment on December 10, 2018. Professor Elkabas' evidence regarding this meeting was as follows:

- a) At the start of the meeting, he provided the Student with the standard warning, which included a warning that, if the Student made any statement or admission in the meeting, it could be received in evidence against him in the hearing of these charges.
- b) The Student initially advised Professor Elkabas that he worked harder on the exhibition catalogue assignment than he had on previous course assignments, and finished the exhibition catalogue assignment early. He showed it to a friend who told him that the grammar was not good. He showed it to a second friend who pointed out sentences that the Student changed on his own over the span of 10-20 minutes. The Student also used the free version of Grammarly to check the grammar in the exhibition catalogue assignment.
- c) Professor Elkabas then asked the Student why he did not go to the Academic Skills Centre. The Student stated that he did not have enough time to do so. Professor Elkabas noted that the Student had indicated that he had finished the exhibition catalogue assignment early. The Student then responded that he does not go to the Academic Skills Centre and that he still had 30% of the exhibition catalogue assignment to finish when he met with his friend.
- d) Professor Elkabas also asked the Student to explain the meaning of some of the words used in his exhibition catalogue assignment, and the Student was unable to do so. The specific examples that Professor Elkabas cited in this regard included the following:
 - i. When asked about the word "relegated" in the context of the statement "Women in the Pre-Raphaelite movement society were often relegated to roles that were

considered 'craft' as opposed to full-blown artists," the Student stated that "relegated" meant "strong connection."

- ii. When asked what "patrons" meant, he stated that he did not know.
 - iii. When asked what "shackles" meant, he stated that he did not know.
 - iv. When asked to explain the difference between the terms "emigrant" and "immigrant", both of which he used in the exhibition catalogue assignment, he could not.
- e) Professor Elkabas asked the Student a number of substantive questions about the discussion and analysis contained in the exhibition catalogue assignment. In Professor Elkabas' assessment, the Student's responses to these questions were not appropriate and did not reflect the sophisticated nature of the work contained in the exhibition catalogue assignment. Professor Elkabas gave a number of examples of this in his evidence, including the following:
- i. When asked to explain the concept of "Victorian ideals of life", the Student stated that "Victorian time in 19th century is different and at that time they had some thought about what life should be like. It is high class life."
 - ii. When asked "who is Elizabeth?" the Student stated, "PRB [Pre- Raphaelite Brotherhood]. This brotherhood was founded by some gentleman so they influenced men and women so they were brotherhood and sisterhood. We always mentioned other guys work."
 - iii. When asked to explain the concept behind the sentence "he demonstrates her power while also showing her release (hence the title) from the patriarchal bonds of a terrible marriage", he stated that "because this painting is all about the strong man and another way, it all..." but did not finish his explanation.
 - iv. When asked to explain what he meant by the sentence "Yet the reality is that emigrants were keenly selected as young and married people, as opposed to deviant vagabonds", he stated that it meant "immigration".
 - v. When asked to explain the concept of a "sexualized idealization", he stated that "in those times sex is now different."
- f) Professor Elkabas asked the Student to explain the bibliography of the exhibition catalogue assignment. The Student stated that he did not find all of the sources contained in the bibliography; rather, he found only sentences and paragraphs from the sources. The Student further stated that he did not remember whether he used every item listed in the bibliography and that he did not study the content of each such item.
- g) The Student confirmed that he understood and was familiar with the academic offence of obtaining unauthorized assistance and that he was familiar with the *Code*. He denied having committed an academic offence.

- h) In Professor Elkabas' assessment, the Student's responses to him during the meeting were entirely inconsistent with the high quality of the exhibition catalogue assignment that the Student had submitted.
13. No evidence was tendered on behalf of the Student, either by way of affidavit or in person at the hearing, which the Student did not attend.
14. The Tribunal found the evidence proffered by the University as to the stark differences between the Student's earlier course work, on the one hand, and the exhibition catalogue assignment, on the other, to be highly compelling. These differences are readily apparent along a number of dimensions, including the depth and quality of the analysis, the sophistication of expression, the organization of thought, proper spelling, and correct grammar.
15. The Tribunal was also struck by the evidence regarding the Student's inability, during his discussion with Professor Elkabas, to explain or even loosely describe many of the concepts and terminology that were so central to the analysis contained in the exhibition catalogue assignment.
16. Having considered all of the evidence in the hearing, the Tribunal concluded that, on the balance of probabilities, the Student was guilty of one count of plagiarism and one count of unauthorized assistance, contrary to sections B.I.1(d) and B.I.1(b) of the *Code*, respectively.
17. In light of the Tribunal's finding on this charge, the second charge, relating to 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, contrary to section B.I.3(b) of the *Code*, was withdrawn.

IV. Penalty

18. On the issue of sanction, counsel for the University requested the following:
- a) that the Student receive a final grade of zero in FAH392H5 in Summer 2018;
 - b) that the Student be suspended from the University for a period of three years;
 - c) that the sanction be recorded on the Student's academic record and transcript to the effect that he was sanctioned for academic misconduct for a period of four years; 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.
19. The Tribunal received evidence from Professor Elkabas regarding the Student's history of academic offences at the University. His evidence was as follows:
- a) In connection with a fall 2016 course, he admitted to obtaining unauthorized assistance in an assignment. By way of sanction, in March 2017 he was given a grade of zero for the assignment in question and a notation on his transcript for 12 months.

- b) In connection with a second fall 2016 course, the Student admitted to obtaining unauthorized assistance. In March 2018, he was given a sanction of a grade of zero in the course and a notation on his transcript for 24 months. This was approximately five months before the events at issue in this matter.
 - c) In both cases, the Student was informed that he was being treated leniently because he had shown remorse and was truthful regarding his conduct. He was urged to seek assistance from the Academic Skills Centre. He was also warned that any subsequent allegations of misconduct would usually be referred to this Tribunal.
20. The Tribunal considered previous decisions it had rendered in cases involving academic misconduct of this nature. In those decisions, the sanctions handed down were consistent with the one sought by the University in this case. Of note, the Tribunal's decisions offer considerable support for the proposition that a first-time plagiarism offence generally results in a two-year suspension and a second offence of plagiarism generally results in a three-year suspension (e.g. *University of Toronto and Mr. L.* (December 3, 2015), *University of Toronto and B.S.* (January 17, 2014), *University of Toronto and S.B.* (November 14, 2007), *University of Toronto and M.H.H.* (January 12, 2009), *University of Toronto and D.O.S.* (October 7, 2009), *University of Toronto and M.S.D.* (June 24, 2020), *University of Toronto and G.Z.* (December 3, 2019), *University of Toronto and R.W.* (February 22, 2017)).
21. The Tribunal therefore concluded that the sanction sought by the University was consistent with the case law and would further some sense of uniformity or proportionality so that similar penalties are imposed on offences committed in similar circumstances.
22. The Tribunal also considered the principles and factors relevant to sanction as articulated in *University of Toronto and Mr. C.* (November 5, 1976, Case No. 1976/77-3). The Tribunal determined that these factors supported the imposition of the usual three-year suspension in cases of repeat plagiarism, as was the case here. The Tribunal observed the following:
- a) Because the Student did not participate in the hearing, there was no evidence before the Tribunal as to any extenuating circumstances that might have weighed in the Student's favour by mitigating or explaining his conduct.
 - b) Likewise, because the Student did not participate in the hearing, there was no evidence before the Tribunal as to the character of the Student, other than the facts relating to this offence and the Student's two prior offences.
 - c) The Student has a prior record of academic offences, in the second of which he received his sanction letter only months before committing the offence now at issue. The Tribunal accepted the University's submission that the Student did not appear to have learned from his mistakes.
 - d) The offence is serious in nature and causes great detriment to the University and its students. A number of Tribunal decisions (e.g. *University of Toronto and Y.G.* (September 28, 2015), *University of Toronto and R.W.* (February 22, 2017)) have observed that plagiarism corrodes academic integrity at the University and undermines the relationship

of trust between the University and its students. For these reasons, plagiarism is considered in the cases to be a very serious offence that warrants a serious penalty.

- e) There is a strong need to deter others from committing a similar offence, for many of the reasons noted above. This type of offence poses a grave threat to the integrity of the University's processes for evaluating students, is profoundly unfair to other students, and jeopardizes the University's reputation.

23. In all of the circumstances, the Tribunal was satisfied that the appropriate sanction was the one sought by the University.

VI. Order

24. At the conclusion of the hearing, the Tribunal made the following order:

- a) that the hearing may proceed in the absence of the Student;
- b) that the Student was guilty of one count of plagiarism and one count of unauthorized assistance, contrary to sections B.I.1(d) and B.I.1(b) of the *Code*, respectively;
- c) that the Student will receive a final grade of zero in FAH392H5 in Summer 2018;
- d) that the Student will be suspended from the University for a period of three years, from the date of the Order to October 14, 2023;
- e) that the sanction will be recorded on the Student's academic record and transcript to the effect that he was sanctioned for academic misconduct for a period of four years, from the date of the Order to October 14, 2024; and
- f) 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.

Dated at Toronto, this 13th day of January 2021.



Ira Parghi, Chair