

Case No.: 923

UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL

IN THE MATTER OF charges of academic dishonesty made on January 26, 2017

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

O [REDACTED] I [REDACTED] E [REDACTED]

REASONS FOR DECISION

Hearing Date: August 9, 2017

Members of the Panel:

Mr. Paul Michell, Chair

Prof. Pascal van Lieshout, Faculty Panel Member

Ms. Sherice Robertson, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel for the University, Paliare Roland Barristers

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

Ms. Alexandra Di Blasio, Academic Integrity Assistant, University of Toronto Mississauga

Mr. Robert Sniderman, Law Student, Downtown Legal Services, for the Student

In Attendance:

Ms. O [REDACTED] E [REDACTED] the Student

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

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

Ms. Breese Davies, New Co-Chair (observing)

A. Charges and Hearing

1. This panel of the University Tribunal held a hearing on August 9, 2017 to consider the charges brought by the University of Toronto against O [REDACTED] E [REDACTED] (the “Student”) under the *Code of Behaviour on Academic Matters, 1995*.
2. The charges were set out in a letter to the Student dated January 18, 2017, as follows:
 1. On or about March 8, 2016, you knowingly represented as your own the ideas or expressions of ideas or works of another an essay, which you submitted in SOC100H5, contrary to section B.I.1(d) of the *Code*.
 2. In the alternative, on or about March 8, 2016, you knowingly obtained unauthorized assistance in connection with an essay, which you submitted in SOC100H5, contrary to section B.I.1(b) of the *Code*.
 3. In the further alternative, on or about March 8, 2016, by submitting an essay in SOC100H5, 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, contrary to section B.I.3(b) of the *Code*.
3. The Student is an undergraduate at the University of Toronto Mississauga (“UTM”).
4. The Student attended the hearing. She was represented by Robert Sniderman of Downtown Legal Services.

B. Agreed Statement of Facts and Guilty Plea

5. Ms. Lie and Mr. Sniderman provided the Tribunal with an agreed statement of facts and a joint book of documents on liability.
6. In the agreed statement of facts, the Student pleaded guilty to charge 1. The University advised that if the Tribunal were to accept the guilty pleas, it would withdraw charges 2 and 3.
7. In Winter 2016, the Student was enrolled in SOC100H5 (Introduction to Sociology), taught by Professor Jayne Baker
8. The course syllabus contained a statement concerning academic integrity, and warned students about plagiarism.
9. Students were required to submit a 700 to 1,000 word essay, worth 20% of the final grade. They could choose from two concepts and apply one of the four theoretical perspectives discussed in the course to the chosen concept. Students were to use only their textbook and course notes, not outside sources, to complete the essay.
10. On March 8, 2016, the Student submitted her essay, “Excessive buying from a Symbolic Interactionism Perspective”, to Turnitin.com, a service that compares the submitted work with works in the Turnitin.com database and available online. The Turnitin.com report identified a 25% similarity between the Student’s essay and another essay submitted to the University by another student in a previous term. Professor Baker determined that the Student’s essay contained verbatim or nearly verbatim passages from that other essay.

11. On May 24, 2016, the Student met with Professor Michael Georges, Dean's Designate for Academic Integrity, to discuss the allegation of academic misconduct. He gave the Student the warning required under the *Code*. The Student entered a "no plea" to the allegation.

12. In the agreed statement of facts, the Student admits that she knowingly:

- (a) included verbatim or nearly verbatim passages in her essay from the other student's essay;
- (b) failed to attribute those verbatim or nearly verbatim passages appropriately in her essay, including through the use of citations, quotation marks or other appropriate means;
- (c) represented the ideas, expression of ideas or work of another as her own in the essay; and
- (d) committed plagiarism in the essay, contrary to section B.I.1(d) of the *Code*.

13. The Tribunal reviewed the agreed statement of facts and joint book of documents. After confirming with the Student that she understood the terms of the agreement, the Tribunal deliberated. We then advised the parties that we accepted the agreed statement of facts and the Student's guilty plea. The Tribunal indicated that it was satisfied that on a balance of probabilities, the elements of charge 1 had been proven.

14. In light of the Tribunal's findings on charge 1, the University withdrew charges 2 and 3.

C. Penalty

15. Counsel for the Provost and the Student provided the Tribunal with an agreed statement of facts on penalty and a joint submission on penalty. They also made oral submissions.

16. The agreed statement of facts on penalty indicated that the Student had three prior plagiarism offences. The first and second concerned an assignment and essay in the same biology course in Fall 2013. The third was incurred in another biology course in Winter 2014.

17. The Student met with Professor Georges on April 2, 2014 regarding the first and second offences. She admitted guilt. Later that month, Professor Kelly Hannah-Moffat, Vice-Dean Undergraduate at UTM, imposed zero grades for both the assignment and essay, a further 10 mark reduction in the course grade, and a nine month transcript annotation. She warned the Student about the likely consequences of a future offence.

18. The third offence was committed in March 2014, before the Student's meeting with Professor Georges regarding the first and second offences. The Student met with Professor Georges on July 24, 2014 regarding the third offence. Once again, the Student admitted guilt. Professor Georges said he would recommend to the Vice-Dean that she impose a zero grade for the course, a four-month suspension, and an 18 month transcript notation. In an August 8, 2014 letter, the Student appealed the suspension that Professor Georges had indicated he would recommend to the Vice-Dean. In an August 20, 2014 letter, the Vice-Dean advised that she was imposing the sanction that Professor Georges had recommended. The Vice-Dean encouraged the Student to seek counselling and to obtain assistance to put a strategy in place to assist her with her future academic work and goals, and warned her about further academic offences.

19. The Provost led no other evidence. Mr. Sniderman for the Student introduced three documents into evidence with no objection, but led no other evidence:

- The Student's study permit from Canada's Ministry of Citizenship and Immigration issued in July 2016. The document indicates that the Student was born in Nigeria and is a Nigerian citizen.
- An account invoice from the University, stated to be accurate as of July 21, 2017. It shows that the Student had incurred tuition and related charged in the 2015-2016 academic year of more than \$33,900, plus service charges of \$2,586.07, and that the Student had made a payment of \$9,000.
- Two October 2016 emails to the Student from the University's School of Continuing Studies appearing to confirm that she had completed a course there.

20. Mr. Sniderman made submissions based in part on these documents. The documents assisted the panel to some extent, but as we indicated at the hearing, without further evidence—from a witness or otherwise—our view was that they did not provide an adequate basis for some submissions the Student sought to advance.

21. The joint submission sought the following sanction:

- (a) a final grade of zero in course SOC100H5 in Winter 2016;
- (b) a suspension from the University from the day the Tribunal made its order (August 9, 2017) to August 31, 2021;
- (c) the sanction be recorded on her academic record and transcript for five years from the day the Tribunal made its order (August 9, 2017) to August 31, 2024, or until graduation, whichever is earlier; and
- (d) the decision be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed in the University newspapers, with the Student's name withheld.

22. Under the agreement between the Provost and the Student setting out the joint submission on penalty, the Student undertook to complete at least six “Writing Plus” workshops offered by the St. George Campus College Writing Centre within the first two terms in which she is next registered for a course at the University. In the event that such workshops are not available at the time the Student attempts to complete them, the University agreed, acting reasonably, to propose alternate and equivalent programs that the Student shall complete to fulfil her undertaking.

23. The Student further agreed and accepted that she will not be eligible to graduate from the University until she fulfils this undertaking, and that the University may rely on her undertaking to deny her the ability to graduate until it is fulfilled.

24. In response to a question from the Chair about the Tribunal’s jurisdiction regarding the undertaking, the Provost confirmed that no order was sought from the Tribunal with respect to it, and that it was essentially a separate agreement between the Provost and the Student. The *Code* provides no authority to the Tribunal to order a Student to give such an undertaking. How, then, should the Tribunal consider an undertaking given by a student to the Provost in evaluating a joint submission on penalty?

25. The panel accepts Provost’s submission that the undertaking here is not the “centrepiece” of the joint submission on penalty, distinguishing it to that extent from *O.O.* [Case No. 651; June 13, 2012], at para. 22. The undertaking is a factor which the parties intended the panel to consider as a factor supporting the joint submission on penalty. It appears to be the *quid* given by a student for the *quo* of a more lenient sanction to be recommended to the Tribunal, as in *S.A.* [Case No. 591; May 13, 2011]. Indeed, as we note below, both parties submitted that the panel should regard the undertaking as a mitigating factor.

26. We reviewed the agreed statement of facts on penalty and the joint submissions on penalty, and considered the three documents and the parties' submissions. After deliberation, we accepted the joint submission on penalty, and signed an order accordingly. These are the panel's reasons for doing so.

27. Both Ms. Lie and Mr. Sniderman emphasized the high standard that must be satisfied for a panel to disregard a joint submission on penalty. Ms. Lie referred us to two decisions of the Discipline Appeals Board, *M.A.* [Case No. 837; December 22, 2016], and *S.F.* [DAB Case No. 690; October 20, 2014]. I discussed these decisions recently in *Z.Z.* [Case No. 918; March 28, 2017]. They emphasize the key role that joint submissions play in the University's discipline process and the narrow circumstances where the Tribunal may depart from them.

28. Counsel for both the Provost and the Student addressed the *Mr. C.* [Case No. 1976/77-3; Nov. 5, 1976] factors in their submissions. In our view, those factors would, but for the joint submission on penalty, likely have led the panel to impose a more stringent penalty:

- ***Student's character.*** There was little evidence before the tribunal as to the Student's character. The Provost and the Student pointed to the Student's admission of guilt, her co-operation with the Provost in this process, and the undertaking noted above. But we were left with no explanation for this offence, or any evidence of the Student's expression of remorse or regret. We accept that an undertaking may be considered as a mitigating factor. However, as in *O.O.*, an undertaking to complete writing courses in an effort to avoid future plagiarism offences seems rather late in the day where a student has already committed three plagiarism offences and has now pleaded guilty to a fourth.
- ***Likelihood of repetition.*** The Student's repeated commission of the same offence, despite the leniency shown to her for the previous offences, and repeated warnings given to her, leaves the panel with little confidence that she would not

commit a similar offence again. Ms. Lie submitted that the three prior offences had been committed within a few months, and that there have been an interval between them and this fourth offence where the Student had been offence-free. That might have been persuasive if we were considering a penalty for those prior offences, but by the time of a fourth offence committed more than a year later, it cannot be given much weight. Although the Student pleaded guilty to the previous offences (and to this one), that appears to have had little effect on her conduct.

- ***Nature of the offence / deterrence / need to deter others.*** The Provost grouped these factors together for the purpose of her submissions. The parties agreed that the offence was serious. In our view, while plagiarism may rank lower in the hierarchy of offences than some others (such as purchased-essay plagiarism, forgery, or personation), a fourth offence is serious and the appropriate sanction should reflect this.
- ***Extenuating circumstances.*** There was little evidence before us of such factors. Mr. Sniderman contended that the Student faced challenging circumstances, but as noted above, the three documents the Student placed in evidence provided a very thin evidentiary basis for these claims. Foreign students who come to Canada to attend the University may face various challenges. However, without concrete evidence about the particular challenges facing particular students, such arguments lack cogency. Mr. Sniderman emphasized the consequences that the sanction would have on the Student, but that is distinct from evidence of extenuating circumstances that would weigh in favour of mitigation.

29. We are uneasy about the sanction set out in the joint submission on penalty. This is the Student's fourth offence. Had the case come before us without a joint submission on penalty it is doubtful that the factors set out above would have led us to consider a four-year suspension to be adequate. Just as in *K.P.* [Case No. 660; February 6, 2012] (two plagiarism offences: prior plagiarism offence), *O.O.* (plagiarism offence: two prior plagiarism offences), and *S.A.M.* [Case No. 657; September 11, 2012] (plagiarism offence: two prior plagiarism offences), this is a case

where a recommendation for expulsion would have been within a reasonable penalty range had there been no joint submission. But in our view, the narrow circumstances that would permit us to depart from the joint submission were not present here. Mere disagreement with a joint submission is not enough. We cannot say that the penalty the parties recommended would “bring the administration of justice into dispute,” is “fundamentally offensive”, or “truly unreasonable or unconscionable”: *M.A.*, paras. 24-26.

D. Conclusion on Penalty

30. For these reasons, the Tribunal accepts the joint recommendation on penalty, and holds that the following sanction be imposed on the Student:

- (a) a final grade of zero in course SOC100H5 in Winter 2016;
- (b) a suspension from the University from the day the Tribunal made its order (August 9, 2017) to August 31, 2021;
- (c) the sanction be recorded on her academic record and transcript from the day the Tribunal made its order (August 9, 2017) to August 31, 2024, or until graduation, whichever is earlier; and
- (d) the decision be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed in the University newspapers, with the Student’s name withheld.

Dated at Toronto, this 30th day of August, 2017.



Paul Michell, Chair