

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on January 15, 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

B E T W E E N:

UNIVERSITY OF TORONTO

- and -

L [REDACTED] S [REDACTED]

REASONS FOR DECISION

Hearing Date: November 29, 2016

Members of the Panel:

Mr. Shaun Laubman, Lawyer, Chair
Professor Graeme Hirst, Faculty Panel Member
Mr. Harvey Lim, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland Barristers
Ms. Lucy Gaspini, Manager, Academic Integrity and Affairs, University of Toronto – Mississauga
Ms. Emma Planinc, Head Teaching Assistant for POL 200Y
Ms. L [REDACTED] S [REDACTED] (the “Student”)

In Attendance:

Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances, University of Toronto
Mr. Sean Lourim, Technology Assistant, Office of the Governing Council

1. The Trial Division of the University Tribunal heard this matter on November 29, 2016.
2. The Student was charged as follows:
 - a. On or about April 1, 2015, you knowingly represented as your own an idea or expression of an idea or work of another in an essay that you submitted in POL200Y5 (the "Course"), contrary to section B.I.1(d) of the Code;
 - b. In the alternative, on or about April 1, 2015, you knowingly obtained unauthorized assistance in connection with an essay that you submitted in the Course, contrary to section B.I.1(b) of the Code;
 - c. In the further alternative, on or about April 1, 2015, 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 an essay that you submitted in the Course, contrary to section B.I.3(b) of the Code. (the "Charges")
3. At the conclusion of the hearing, the Tribunal dismissed the Charges against the Student, finding that the University had failed to establish the Charges on a balance of probabilities based on clear and convincing evidence. The decisions with respect to the charges pursuant to section B.I.1(d) and B.I.3(b) of the Code were by majority, while the decision with respect to the charge pursuant to section B.I.1(b) of the Code was unanimous.
4. These are the reasons for the Tribunal's decision.

Background

The Course

5. The Student was enrolled in the Course during the Fall/Winter 2014-2015 academic year. The Charges relate to the second essay assignment for the Course, which was worth 30% of the final grade.
6. For the second essay assignment, students in the Course were expected to write an eight to ten page essay on one of three assigned topics. The essays were not research papers and the students were expressly discouraged from relying on sources other than the assigned texts for the Course.
7. According to the evidence of the University's first witness, the Head Teaching Assistant for the Course, Emma Planinc, the second essay assignment was designed to incorporate a peer review component where students would meet in small groups to review and comment on the drafts prepared by their peers. Students were to submit their final paper for grading following the peer review process.
8. The original plan for the peer review process was as follows:
 - a. Students were to email a complete first draft of their essay to their teaching assistant by March 6th;
 - b. The teaching assistants would assign each student to a small group for the peer review and then would distribute the draft essay to the peer reviewers;
 - c. Students were to meet in tutorials on March 11th for the peer review process. Ms. Planinc was going to attend all of the tutorials to assist and oversee the peer review process; and
 - d. Students were to use the comments received from their peers to prepare and submit a final paper on April 1st.

9. That was the plan. However, events did not proceed as planned.
10. Teaching assistants at the University of Toronto went on strike during the Winter 2015 term. According to Ms. Planinc, the strike had a disruptive effect on the Course and the plan for the second essay assignment.
11. Instead of being mandatory, the peer review process became optional for students in the Course. If a student did participate in the peer review process, they received an extra grade of 5%. A further change was that Ms. Planinc was no longer involved in coordinating and overseeing the peer review process. Students were told to select their own peer review partners. Students were expected to organize and exchange draft papers amongst themselves.

The Student's Essay

12. The evidence submitted at the Hearing established that the Student submitted her first draft paper to Ms. Planinc by email on March 13th. This was the revised deadline for submitting draft papers.
13. The Student's initial draft paper was based on the following essay topic ("Topic A"):
 - a. Aristotle claims that man is a political animal. Aquinas claims that he is a "social and political" animal. What is meant by each, and is the change significant? Why or why not?
14. Ms. Planinc testified that while she received the Student's draft paper, she did not review it at that time.
15. On March 21st, the Course instructor, Professor Bejan, emailed students enrolled in the Course to advise that the planned peer review process had been cancelled due to the ongoing strike but that there was a new optional process for students to take advantage of.

16. The Student elected to participate in the peer review process and partnered with two other students.
17. The evidence showed that the Student elected to change her Essay topic before her final paper was submitted. The exact time that she elected to change topics was not clearly established in the evidence, although it appears to have happened sometime between March 13th, when she submitted the first draft to Ms. Planinc, and March 31st, the day before the final papers were due.
18. The Student changed her Essay topic to the following topic (“Topic B”):
 - b. Both Aquinas and Machiavelli argue that one must study “nature” in order to understand politics – but with very different results. Explain their different understandings of nature and what it teaches the student of political science. Whom do you find more persuasive?
19. On March 31st, the Student emailed Ms. Planinc to advise that she had changed topics from Aristotle to the topic comparing Aquinas and Machiavelli. She attached a draft of her new Essay to the email and informed Ms. Planinc that the new draft was being peer reviewed. Ms. Planinc responded soon after to say “no problem” and “thanks for letting me know.”
20. It so happened that one of the students (whose initials are “S.D.”) that the Student partnered with for the peer review process wrote her paper on the same essay topic, comparing Aquinas’ and Machiavelli’s understandings of nature. This is significant because the Charges were premised on the allegation that the Student plagiarized from S.D.’s essay.
21. The evidence established that S.D. selected the topic comparing Aquinas and Machiavelli prior to submitting the first draft of her paper to Ms. Planinc. The evidence also established that S.D. then sent a draft of her paper to the Student and the third student involved in peer review process on March 28th.

22. The Tribunal was provided with the original draft that the Student emailed to Planinc on March 13th, the revised paper that she submitted for peer review on March 31st and the final paper that she submitted for grading on April 1st. The final version included the peer review sheets with the comments that S.D. and the third student made on the Student's revised paper.
23. The Tribunal was also provided with the original draft of S.D.'s paper and the version that S.D. gave to the Student for peer review. S.D. emailed her draft paper to the Student for the peer review on March 28, 2015. This draft and the copy of the Student's revised submitted paper had been annotated by Ms. Planinc with a highlighter to indicate the parts of the two essays that she believed to be similar. These were marked as exhibits 12 and 10 respectively.

Conflicting Evidence

24. The University's theory was that the Student decided to change her essay topic after reviewing S.D.'s paper. Then, on or about March 31st, the Student changed topics to the same one as S.D. and submitted her revised paper, which the University alleged bore significant similarities to S.D.'s paper.
25. The evidence regarding similarities between the Student's and S.D.'s papers was led through Ms. Planinc. Ms. Planinc testified that after grading both papers, she was struck by the similarities. She stated that she noticed that the use of subject headings and the flow of argument were similar.
26. According to Ms. Planinc, the theses and use of quotes from the texts were similar between the Student's and S.D.'s papers. Ms. Planinc testified that of the eighty papers that she marked (out of a class of approximately two hundred students), no other paper had a similar thesis. She said that the thesis was unique and therefore, she found it unusual that the two papers shared it in common.

27. Ms. Planinc also noted that the use of section headings in both papers stood out to her as generally students did not use subject headings in the papers she graded.
28. Ms. Planinc testified that she reviewed the draft prepared by S.D. and compared it to the final paper submitted by the Student and concluded that the Student had copied from S.D. work. During her testimony, she gave several examples from S.D.'s draft paper and the Student's final paper that she claimed supported her conclusion.
29. The Student also testified at the hearing. She gave very different evidence regarding the similarities between her paper and S.D.'s compared to Ms. Planinc.
30. The Student stated that she decided to switch topics from Aristotle to the topic comparing Aquinas and Machiavelli prior to reviewing S.D.'s paper. She explained that as an English major, she reads assigned works closely and selected the quotes used in her paper from a close reading of the assigned texts.
31. She acknowledged that while her paper and S.D.'s did quote several similar passages from the texts, she explained that she used the quotes and took them in a different direction than did S.D.. She said the use of some similar quotes from the texts was merely a coincidence.
32. During the Student's testimony, she reviewed her final paper and S.D.'s draft paper and identified a number of differences between them.
33. With respect to her use of subject headings in her final paper, which were absent from her earlier drafts, the Student said that S.D. had suggested she use them during the peer review process to add more space to her paper. In draft form, the Student's paper was shorter than the minimum page count.

34. The Student also testified that S.D. did not raise any concern regarding the content of her paper when she reviewed it or suggest that it was copied from her own.

35. S.D. was not a witness at the hearing. Nor was the other student who participated in the peer review process and reviewed both S.D.'s and the Student's papers.

Burden of Proof

36. The Code of Behaviour on Academic Matters places the onus of proof in discipline matters on the prosecutor. To secure a conviction, the University must show on clear and convincing evidence that the student has committed the alleged offence. For a recent discussion of the burden of proof see *University of Toronto v S.H.L.*, (March 24, 2016, Case #786 (paras. 69-75)).

Decision of the Tribunal

37. The evidence against the Student was entirely circumstantial in our view. The Tribunal carefully and thoroughly reviewed the various versions of the Student's Essay that were in evidence as well as the draft of S.D.'s paper that the Student was alleged to have plagiarized from. The Tribunal also reviewed the evidence pertaining to the timing of when the draft and final essays were prepared.

38. The University argued that there were three primary areas of similarity between the Student's and S.D.'s papers:

- a. The introductions and theses of the papers;
- b. The overall structure of the papers, in particular, the use of subject headings; and
- c. The conclusions had similar concepts.

39. There were undeniably some similarities between the papers. In her evidence, the Student did not deny that there were some similarities but explained that they were coincidental and not surprising given the assigned essay topic and the fact the students were drawing from the same source material.
40. A comparison of the papers also revealed significant differences between the papers.
41. The only evidence to rebut the Student's testimony that her Essay was the product of a close read of the assigned texts, her independent work, and the input of her peers via the peer review process was Ms. Planinc's testimony.
42. However, at times during her testimony, it appeared that Ms. Planinc was trying to convince the Tribunal of the Student's guilt rather than giving purely objective evidence. At one point, she testified that it was her assessment the Student had merely replicated S.D.'s paper. A comparison of the papers, and the differences between them, showed sufficient differences and unique content to belie the suggestion that the Student's paper was merely plagiarized from S.D.'s.
43. We were left with the impression that Ms. Planinc saw herself as part of the prosecution. During her evidence, she emphasized similarities between the papers, however minor they were, and downplayed or ignored significant differences. As a result, we have difficulty with her subjective assessment that the Student's Essay was the product of plagiarism.

The Alleged Similarities

44. The University alleged that there were eight broad sections of the Student's Essay that were similar enough to S.D.'s paper to constitute plagiarism. These sections were those featuring highlighting by Ms. Planinc from her review of the two papers.

45. The first section was the two introductory paragraphs of the Student's Essay, which were said to be similar to the two introductory paragraphs of S.D.'s paper. The relevant paragraphs of the Student's Essay read as follows (where underlining indicates Ms. Planinc's highlighting):

In the *Oxford Dictionaries*, the term 'nature' is defined as "the innate or essential qualities or character of a person or animal". This definition can be seen incorporated in numerous political theorists' view of 'nature'. In Thomas Aquinas' *On Kingship* and *The Treatise on Law* in *St. Thomas on Politics and Ethics*, one is given Aquinas' perspective on what the term, 'nature', consists of. Niccolo Machiavelli has also taken the chance to demonstrate his understanding of 'nature' in his writings *The Prince* and *The Discourses*. While both Aquinas and Machiavelli argue that one must study "nature" to comprehend politics, their results can be found to be dissimilar. Aquinas' "nature" focuses more so on order, whereas Machiavelli finds nature to be chaotic.

In this paper, Aquinas and Machiavelli' [sic] understanding of nature will be discussed in detail, including what their interpretations of nature teaches [sic] students of political science and how Machiavelli's "nature" can be seen as more persuasive due to it being more relatable to modern society.

S.D.'s introductory paragraphs read as follows:

"Nature" can be broadly defined as the inherent characteristics of the universe, and of all of the things in the universe, that influence the way in which the universe operates. The way in which political theorists understand "nature" can provide the foundation for their political views. Specifically, Thomas Aquinas presents his understanding of "nature" and how the universe is governed in his works *On Kingship* and *On Politics and Ethics*, providing the foundation for his political views. Similarly, Niccolo Machiavelli presents his understanding of "nature" and the political implications that follow in his works, *The Prince* and *The The* [sic] *Discourses*. Although both Aquinas and Machiavelli suggest that one must study "nature" in order to understand politics and human action, this paper argues that Aquinas conceptualizes nature as ordered, and directed toward some end whereas Machiavelli conceptualizes nature as chaotic, and governed, in part, by fate. Aquinas and Machiavelli's differing ideas on nature are reflected in their views on the appropriate actions of rulers, and the relationship between state and religion.

This paper will begin with a section briefly outlining and contrasting Aquinas and Machiavelli's views on "nature", followed by a section discussing how each theorist's understanding of nature is reflected in their political teachings. Finally, the paper will conclude with a section discussing which set of political views is more compelling.

46. Although there are some similarities between the paragraphs, we observe that these similarities are likely the result of the fact that both papers use the typical structure of an introduction, in which the key term is defined, the thesis

of the paper is summarized, and the structure of the paper is outlined. Moreover, the definitions of “nature” that are given are quite different from one another, and, unlike S.D., the Student has drawn upon the *Oxford [English] Dictionary*.

47. In the second introductory paragraph, Ms. Planinc highlighted as similar the phrase “more persuasive” (the Student) and “more compelling” (S.D.); but this idea is drawn straight from the assigned topic, which asks “Whom do you find more persuasive?” Given the topic, there is nothing surprising about the use of these terms. Ms. Planinc also highlighted “understanding of nature” and “what their interpretations of nature teaches students of political science” (the Student) and “each theorist’s understanding of nature is reflected in their political teachings” (S.D.). Again, these ideas are drawn directly from the assigned essay topic: “Explain their different understandings of nature and what it teaches the student of political science”. The “similarities” highlighted by Ms. Planinc also included the paragraph introductions “[In] this paper” (the Student), and “This paper [will]” (S.D.). However, we view these as standard and obvious ways to begin a paragraph summarizing the paper.
48. For these reasons, we do not see the highlighted language in the introductory paragraphs for the two papers as constituting persuasive evidence of plagiarism.
49. The second alleged similarity between the papers concerned text appearing on pages 2 and 5 of S.D.’s paper and page 6 of the Student’s Essay, where both address Aquinas’ discussion of the purpose and duty of kings in *On Kingship*. The relevant sentences of the Student’s Essay read as follows:

Thomas Aquinas has stated that whatever was in concord with nature was the best way to govern, but it was found that in nature one man rule always dominated (Aquinas On Kingship 17). [... ¶] Aquinas has also stated that if it were possible to get to the final end through the power of human nature, then it was the duty of kings to direct their men towards that end (Aquinas *On Kingship* 27). The king is also expected to rule over all existing human offices and direct them by utilizing his ruling power (Aquinas *On Kingship* 28). The aforesaid could be compared to the following situation: "the navigator who is

responsible for piloting the ship directs the shipbuilder as to the most suitable type of ship to construct and the citizen who bears arms tells the blacksmith what kind of weapons to make" (Aquinas *On Kingship* 27). Similar to how a navigator has to direct a shipbuilder and blacksmith on what to do so nothing goes wrong during the journey, a king has to direct his subjects so that they properly reach the final end.

The relevant sentences of S.D.'s paper read as follows:

[Page 2] In order to achieve this ultimate end, Aquinas holds that men should be governed by a single monarch (Aquinas *On Kingship* 17).

[Page 5] Specifically, in modelling their rule after the rule of God, Aquinas suggests that the monarch should seek to promote the common good, so that their subjects may be able to live virtuously (Aquinas *On Kingship* 16). In describing the actions of a monarch, Aquinas compares a monarch to the pilot of a ship (Aquinas *On Kingship* 27). Aquinas suggests that in the same way that the crew have different responsibilities and work towards achieving different ends, people in society have different individual ends (Aquinas *On Kingship* 26). According to Aquinas, it is the role of the monarch, to act as the ship's navigator, and to steer society toward its final end, which is beyond the private and worldly ends of men, and entails the common good (Aquinas *On Kingship* 26). Aquinas states that, "if a thing is ordered to an end beyond itself, as a ship to its port, it is the duty of one who directs it not only to keep it safe but to bring it to the goal which is beyond it" (Aquinas *On Kingship* 26). Aquinas asserts that, because nature is ordered and directed at some end determined by God's divine plan, it is the role of the monarch to help individuals fulfill their end of living virtuously to be with God. [¶] By using the analogy of the monarch as a pilot of a ship, Aquinas suggests that the monarch can exert some influence on nature, and on the direction of men. The monarch is an active force "steering" men towards their end, as opposed to a passive recipient of what happens in nature.

50. We observe that the Student's Essay contains ideas that, although highlighted, are unique and do not appear in S.D.'s essay. These include the idea that the King is expected to rule over all offices and the use of a direct quotation from Aquinas making an analogy about the relationships between a navigator and a shipbuilder and between a citizen and a blacksmith. (S.D. also uses a navigator analogy, but quite a different one; for her, the navigator is navigating, not specifying the construction of the ship). Although both essays discuss the same section of Aquinas' *On Kingship*, it is clear from the different analysis that the Student has read and interpreted this material herself and has not merely paraphrased S.D.'s material as alleged.

51. The third alleged similarity concerned text appearing on pages 2–3 of S.D.'s paper and page 4 of the Student's Essay, where both discuss Machiavelli's view of nature as chaotic. The relevant sentences of the Student's Essay read as follows:

In comparison to Aquinas, Machiavelli considers nature to be chaotic as it is fortune that guides it. In *The Prince*, Machiavelli compares fortune to "torrential rivers" (Machiavelli 74) in that no individual can resist its "attacks", but still can be "safely kept ... or at least ... not be so unregulated and destructive" (Machiavelli *Prince* 74-75). He further states how fortune "determines one half of our actions", but "leaves us to control the other half" (Machiavelli *Prince* 74). The above demonstrates how nature can be chaotic because fortune is shown to be unpredictable and it is said to control half of an individual's actions as well, which thus, leaves half of our actions with the potential to destroy our lives.

The relevant excerpts of S.D.'s paper read as follows:

In contrast to Aquinas's understanding of nature as ordered, and aimed at some end, Machiavelli understands nature as chaotic, and governed, at least in part, by fate. Machiavelli states that "fortune determines one half of our actions" (Machiavelli *The Prince* 74). This suggests that, at least in part, nature is chaotic, as half of human actions are dictated by chance (Machiavelli *The Prince* 74). Machiavelli's understanding of nature as chaotic is emphasized when he compares fortune to "torrential rivers" (Machiavelli *The Prince* 74) that are "unregulated and destructive" (Machiavelli *The Prince* 75), highlighting the random nature of fortune. [¶] That being said, although Machiavelli states that fortune governs half of human action, he also states that "she leaves us to control the other half" (Machiavelli *The Prince* 74). Thus humans are able to take action to guard against the chaos of nature. In order to control against the "torrential rivers" of fortune, Machiavelli suggests that men can build "banks and barriers" (Machiavelli *The Prince* 75).

52. The mutual citation and analysis of the "torrential rivers" quote was emphasized by Ms. Planinc and the University as evidence of the Student's plagiarism. However, while there are similarities between the two excerpts, we observe that the Student's Essay contains elements that, although highlighted, express ideas that do not appear in S.D.'s essay. These include the use of a longer direct quotation about fortune's control of half our actions (S.D. merely paraphrased it closely); and the use of an additional direct quotation ("safely kept ..."). Moreover, the Student uses the quotation about "torrential rivers" to make a different point from S.D.'s. S.D. uses it to highlight the "random nature of fortune", whereas the Student juxtaposes it

with the “safely kept ...” quotation to highlight the *limitations* of fortune’s destructive nature.

53. Importantly, since both papers address the same essay topic, it is not remarkable that both papers cite key relevant excerpts from the assigned readings in certain limited instances. The University did not establish, on clear and convincing evidence, that the common use of “torrential rivers” was the product of the Student’s plagiarism as opposed to merely being an expected by-product of the common assigned readings and limited scope of the essay topic addressed by both papers

54. The fourth alleged similarity concerned material appearing on page 7 of S.D.’s paper and page 7 of the Student’s Essay, which discuss Machiavelli’s idea that rulers should seek to expand their territory. The relevant sentences of the Student’s Essay read as follows:

In addition, Machiavelli stresses the need for rulers to expand their territory (Machiavelli *Discourses* 100). Machiavelli asserts that “it is perfectly natural and normal to want to acquire new territory; and whenever men do what will succeed towards this end, they will be praised” (Machiavelli *Prince* 13). This indicates how Machiavelli believes that man can do whatever he needs in order to attain novel territory because man is “by nature envious” (Machiavelli *Discourses* 82), which explains why man desires to obtain others’ territory in addition to his.

The relevant section of S.D.’s paper read as follows:

Also reflecting his view that nature is chaotic and inconstant, Machiavelli asserts that rulers should seek territorial expansion (Machiavelli *The Discourses* 100). The reason for this assertion is that Machiavelli believes that “in life nothing stands still” and that things “must be either rising or falling” (Machiavelli *The Discourses* 101). By suggesting that things are constantly “rising or falling”, Machiavelli is describing how circumstances are constantly changing, and how nothing is stable (Machiavelli *The Discourses* 101). Accordingly, Machiavelli advises that rulers should “aim high” so that “if circumstances force [expansion] it will be able to hold on to what it has acquired” (Machiavelli *The Discourses* 101). Thus, Machiavelli holds that rulers should be prepared for circumstances to change, as nature is chaotic and governed, in part, by fortune. In order to overcome fortune, one must anticipate the worst, and erect barriers so that changing circumstances do not destroy the state.

55. Except for some minor passing similarity in the first sentence of the kind that would be expected in a sentence introducing this topic (even the word "Machiavelli" and the citation to his work have been highlighted as if these would be expected to differ), the two paragraphs present quite different analyses and conclusions. This is not persuasive, let alone clear and convincing, evidence of plagiarism.

56. The fifth alleged similarity concerned material appearing on page 8 of S.D.'s paper and page 3 of the Student's Essay, concerning Aquinas on natural and eternal law. The relevant sentences of the Student's Essay read as follows:

In addition, so far one has merely seen how God is the only one to create order in nature, but this does not mean that humans cannot aid in producing order for themselves. For example, Aquinas states human beings as [sic] rational creatures that partake in eternal reason, as they have a natural propensity towards their proper actions and ends. He considers this involvement by rational creatures in eternal law as natural law (Aquinas *The Treatise* 46).

The relevant sentences of S.D.'s paper read as follows:

All other forms of law discussed by Aquinas stem from eternal law (Aquinas *On Politics and Ethics* 48). Divine law involves the laws given by God, through his prophets (Aquinas *On Politics and Ethics* 47). Natural law involves the extent to which humans can participate in eternal law through their reason (Aquinas *On Politics and Ethics* 47). Aquinas suggests that natural law is "imprinted upon [humans] through their respective inclinations to their proper actions and ends" (Aquinas *On Politics and Ethics* 46). What is natural to humans as a part of their ends, such as reproducing, stems from eternal law, and is a part of natural law (Aquinas *On Politics and Ethics* 50).

57. The discussions in the two papers contain quite different analyses, and the Student's Essay contains an element that, although highlighted, expresses an idea that does not appear in S.D.'s essay, namely Aquinas's idea of human beings as rational creatures.

58. The sixth alleged similarity concerned material appearing on page 10 of S.D.'s paper and page 8 of the Student's Essay, in which the use of examples in the study texts is discussed. The relevant sentences of the Student's Essay read as follows:

After all, there is a famous saying that states that if one wishes to understand the present, then they must understand the past. Machiavelli is seen to repeatedly utilize historical examples to further his perspective on nature. This not only aids his readers in better understanding his writings, but it is also beneficial for political science students, who can use the historical examples provided to see how politics has evolved over the years.

The relevant sentences in S.D.'s paper read as follows:

By drawing upon real world examples, Machiavelli presents a compelling perspective. [¶]
In contrast to Machiavelli, Aquinas does not use historical examples to illustrate his claims.

59. However, once again, the Student's use of Machiavelli's "historical examples" makes a quite different point from that of S.D.'s description of "real world examples".

60. The seventh alleged similarity concerned material appearing on page 10 of S.D.'s paper and page 9 of the Student's Essay. The relevant sentence of the Student's Essay read as follows:

Therefore, if one presented Aquinas' outlook on nature to an individual in today's time, then they may have a hard time finding Aquinas' arguments to be convincing, as they do not consider themselves to be a religious individual and Aquinas' view of nature is mainly theological.

The relevant text from S.D.'s paper read as follows:

Aquinas's claim that the end of humans is to be with God, reflecting his view that nature is ordered, appears to be based more on theological premises, than on the conditions of the material world.

61. The sentences in the different papers make different points, and the only similarity is the use of the word "theological", which is hardly a surprising word in the context of Aquinas's view of the world.

62. The eighth alleged similarity concerned text appearing on page 10 of S.D.'s paper and page 9 of the Student's Essay, in the concluding summary. The relevant sentences of the Student's Essay read as follows:

Overall, even though both Aquinas and Machiavelli wrote on the notion of nature, they were found to have different perspectives on what the term "nature" entails. Aquinas believed that nature was orderly and that only God was truly capable of creating the order that could be found in nature. He thought that human beings were incapable of independently creating order in nature. In contrast Machiavelli believed that nature was chaotic and it was this way because of fortune. To Machiavelli, fate was unpredictable, which made nature chaotic as half of man's actions were dependent upon fortune and man's capability to control the other half of his actions was unprofitable, as fate was considered stronger by Machiavelli. Nonetheless, in general, a political science student could learn from the aforesaid arguments that Aquinas viewed nature in a more religious manner, while Machiavelli saw nature in a more irreligious manner.

The relevant sentences in S.D.'s paper read as follows:

Although both Aquinas and Machiavelli suggested one must study "nature" in order to understand politics, Aquinas conceptualizes nature as ordered, and directed towards some end, whereas Machiavelli conceptualizes nature as chaotic, and governed, in part, by fate. The differing views of these philosophers are reflected in their views on the appropriate actions of rulers, and the relationship between the state and religion. Where Aquinas holds that rulers must seek to help their subjects realize their final end of being with God, Machiavelli asserts that rulers must work to guard against fortune so that they may hold onto their positions, and build lasting institutions.

63. Given that the two papers address the same topic and draw from the same assigned texts and with a similar overall thesis, it is not surprising that the concluding summaries of the paper would have some similarities. However, we again note that the Student's Essay contains elements that, although highlighted, express ideas that do not appear in S.D.'s paper. These include Aquinas's view that only God could have created the order found in nature and that humans could not have done so; a recapitulation of Machiavelli's idea of man's limited control of fortune; and the idea that Aquinas views nature in "a more religious manner" (S.D.'s text uses the word "religion" in quite a different context). When viewed in the overall context of the sections and the papers, the highlighted words and sentences are not clear and convincing evidence of breaches of the University of Toronto *Code of Behaviour on Academic Matters, 1995*.

Absence of Clear and Convincing Evidence of Plagiarism

64. Since the assigned texts were not in evidence, the Tribunal had no way of determining how probable it was that more than one student could use particular quotes from the texts given the focus of the assigned question.
65. Ms. Planinc testified that it was improbable; however, she also conceded that she did not review all, or even a majority, of the papers that were submitted in the Course. This limited her assertions that the quotes and theses of the Student's and S.D.'s papers were unique and could only be the result of plagiarism.
66. The University's allegation that the theses of the papers were unique was not supported by any evidence other than Ms. Planinc's assertion. The Tribunal was not presented any independent evidence of the range of theses in the papers written on Topic B, nor any quantification of the possibility that at least one pair of students in a large class might independently hit upon similar theses.
67. Furthermore, while neither S.D. nor the other student in the peer review group were called as witnesses at the hearing, the Tribunal had the benefit of their written comments on the peer review sheets. Both were complimentary of the Student's draft Essay and neither identified or indicated any surprise or concern regarding the similarities between the Student's and S.D.'s papers.
68. If the theses and selected quotes were as unique or strikingly similar as the University alleges then one would have reasonably expected S.D. to have raised an issue with the Student at some stage. That did not happen.
69. The dissenting opinion suggests that this evidence should be disregarded since the other students were not called as witnesses. However, there was no suggestion that the other students were unavailable and could not have been called by the University if they had contradictory evidence.

70. There was also direct evidence that S.D. saw no issue with the Student's Essay. The Student testified that S.D. never commented or indicated that her Essay was problematic or strikingly similar to S.D.'s paper. That evidence was left unchallenged at the Hearing. Moreover, as described above, the Student's evidence was corroborated by the peer review sheets.
71. We see no basis to disregard the evidence of the peer reviewers' lack of concern regarding the Student's Essay and it is a relevant consideration that weighs against the assessment and evidence of Ms. Planinc that the similarities between the papers were likely the product of plagiarism.
72. Similarly, the University's reliance on the Student's use of subject headings in her final Essay was not persuasive evidence of plagiarism. The evidence demonstrated that the Student's addition of subject headings was the product of comments made by the peer reviewers that the Essay required both more structure and more space. The subject headings were only added by the Student to the final version of the Essay after she had received feedback and comments from her peers. The simple use of a suggestion by another student that subject headings can be used to effectively expand the size of an essay does not constitute plagiarism, the representation of another's idea as one's own, or any kind of academic dishonesty.
73. The very point of the peer review process was that students would incorporate the comments and suggestions of their peers in order to improve their papers. When the course assignment encourages students to share ideas and suggestions, it would be unfair to criticize a student for incorporating an idea arising from the peer review or to characterize the process as unauthorized assistance.
74. Unfortunately, the teaching assistants strike prevented the peer review process from proceeding in the organized fashion that was originally intended. It also prevented Ms. Planinc from participating and overseeing the process according to the original plan. As a result, there was not clear and convincing

evidence presented to the Tribunal that the Student had plagiarized from S.D.'s paper.

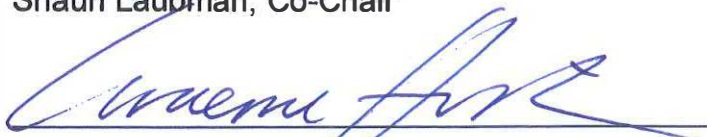
75. While the University attempted to attack the Student's credibility and her evidence that she did not plagiarize from S.D.'s paper, these attacks did not undermine the substance of the Student's evidence or compensate for the lack of direct evidence in the University's case. The evidence established that the Student's explanation for why she changed topics and how she prepared the Essay has been consistent since when she was first confronted with the University's allegations at a meeting with the Dean's designate in the summer of 2015.
76. The University relied on the email that the Student sent to Ms. Planinc, informing her of the decision to change essay topics, as evidence of the Student's dishonesty. In the email, which was marked as exhibit 8, the Student informs Ms. Planinc that the paper had already been sent to the peer reviewers for review. In the version of the email marked as exhibit 8, the time stamp shows the email as sent at 6 pm on March 31, 2015. The University contended that the Student did not actually send the draft paper to the peer reviewers until almost 10 pm, four hours later.
77. However, the same email was included in the email chain marked as exhibit 9. That version of the email shows the email as sent at 9 pm. Exhibit 9 also shows Ms. Planinc responding at 6:28 pm. It is obvious that the emails at exhibits 8 or 9 use various time zone settings. It was never established when the Student's email was actually sent.
78. Ultimately, whether the Student sent her email to Ms. Planinc at 6 pm, 9 pm or some other time, the fact that she may have sent the draft paper to the peer reviewers shortly thereafter, despite what the email indicated, is not evidence of plagiarism. It is also too tangential and innocuous to rely on this as a basis to discredit the Student's evidence at the hearing.

79. After careful and thorough consideration of the documentary and oral evidence presented during the hearing, a majority of the Tribunal determined that the University had not met the requisite burden of proof. We could not say that it was more likely than not that the Student had knowingly represented as her own ideas or expressions taken from S.D.'s paper.
80. The Tribunal could not say that the similarities that existed between the Student's and S.D.'s papers were more likely the product of the Student knowingly representing S.D.'s ideas as her own rather than the natural product of the fact the students were writing on the same essay topic and relying on the same source material. The fact that the peer review process encouraged students to incorporate comments from their peers also made it impossible to conclude on a balance of probabilities that the Student had obtained unauthorized assistance with her Essay.
81. None of this is to say that the Tribunal concluded with certainty that the Student did not commit plagiarism. Like *University of Toronto v. R.D. and K.U.*, Case #00-01-02, April 25, 2001 (see paras. 19-21), this was a case determined on the burden of proof. Since the burden lies with the University, we are required to carefully consider the evidence before us and whether it is sufficient to establish the Charges. In this case, we were unable to confidently say that the University had proven the Charges and satisfied its burden. Accordingly, we must dismiss the Charges.

Dated at Toronto, this 13th day of March, 2017



Shaun Laubman, Co-Chair



Professor Graeme Hirst

DISSENT

The following is the dissenting opinion written by the student panel member, Harvey Lim.

I: INTRODUCTION

82. I've had the opportunity to review the decision of the majority, and respectfully, I disagree on their conclusion. Taking into consideration the totality of the evidence, I am satisfied that the University discharged its burden in establishing the Student's guilt on two of the three Charges.

II: FINDINGS

A. Similarities Between the Two Essays

The thesis topic

83. Of the three essay topics that students in POL200Y5Y could choose from for their second essay assignment, the Student and S.D. both submitted their final essays on Topic B. Topic B is reproduced as follows:

Both Aquinas and Machiavelli argue that one must study "nature" in order to understand politics – but with very different results. Explain their different understanding of nature and what it teaches the student of political science. Whom do you find more persuasive?

84. Ms. Planinc testified that the essay topics assigned, including Topic B, were sufficiently broad in scope such that students were free to choose from a range of theses within each essay topic. While I can appreciate how Topic B, in and of itself, does not define the thesis, I don't think that the scope of Topic B is overly broad as suggested. Topic B required students to narrow their discussion to 1) a comparison of Aquinas and Machiavelli's views of nature, 2) how these

views inform a political science student, and 3) a finding of whose view is more persuasive.

85. The specificity of Topic B is important in this case because not only did the Student and S.D. choose the same essay topic, but within this chosen essay topic, they chose the same thesis topic as well. In light of the somewhat limited scope of Topic B, I agree with the majority that it is entirely possible that the convergence of the two thesis topics occurred by chance.
86. Ms. Planinc further testified that upon reading the Student's final essay, she thought that the thesis was creative. Without undermining Ms. Planinc's opinion, I have some difficulty accepting the creativity of the thesis topic in the absence of clear and convincing evidence. To Ms. Planinc's credit, Ms. Planinc did not want, nor did I think it was necessary, to turn the trial process into a lecture on the political theories of Aquinas and Machiavelli. Notwithstanding, a sample of the diversity of the thesis topics submitted for Topic B would have been helpful in appreciating the apparent creativity and uniqueness of the Student and S.D.'s chosen thesis.
87. Based on the evidence, I am not convinced that the mere fact that the Student's thesis is the same as S.D.'s is a product of plagiarism. I find that there is some but limited flexibility in Topic B such that the Student and S.D.'s idea for this particular thesis topic could well have arisen independently.
88. While I accept that the arrival at the same thesis topic might have been coincidental, I do not accept that having the same thesis topic or drawing on the same source material adequately explains the similarity in the overall content of the two essays.

The essay structure

89. The University highlighted the similarity in the structure of the two essays, namely the use of headings and the method of going back and forth between “X” and “Y” as a way to contrast Aquinas and Machiavelli. They further noted that both these structural features were absent in the Student’s first essay draft where she had chosen to write on Topic A. According to Ms. Planinc, the use of headings was uncommon in the context of the essay that was assigned to the students.
90. In response to the addition of headings in the Student’s final essay, the Student testified that her draft essay was too short and she used the headings as a way to extend the page count. I find this to be a completely legitimate explanation. Indeed, the need to increase the page numbers was noted in S.D.’s feedback and peer evaluation of the Student’s final draft essay. The Student did what was expected of her from the peer-review process, to improve her essay through the comments that she received.
91. Even if the Student was inspired to use headings from reviewing S.D.’s draft essay, I have a hard time seeing the wrong in this. Headings serve a functional purpose. I am not convinced that the “idea” expressed in section B.I.1(d) of the *Code* captures the idea to use headings. I also have difficulty accepting that the idea to use headings belonged to S.D., a necessary element in order to make out the plagiarism offence.
92. With respect to the method used to compare Aquinas and Machiavelli, I also fail to see the wrong in the Student’s application of this methodology, even if the idea was derived from S.D.’s essay. Again, I would hesitate to characterize this comparison technique as an “idea” within the meaning of section B.I.1(d). Even if it could be considered an “idea”, it is one that is commonly applied and again, not one that I think belonged to S.D.

93. I think that the University highlighted the similar use of headings and comparison technique not as examples of alleged plagiarism *per se*, but to support an inference that many elements of the Student's final essay were drawn from S.D.'s essay. If so, I would agree.
94. The similar use of headings and comparison technique has resulted in the two essays having a high degree of similarity in their *form*. Notwithstanding my opinion that this is insufficient to constitute plagiarism, I do think that the similarity in overall form is a relevant consideration in evaluating where other elements of the essay, which could potentially have been plagiarized, may be derived from. More specifically, I think that the similarity in overall form between two essays may be an indicator that the allegedly plagiarized elements from the Student's essay were plagiarized from S.D.'s essay.

The selection of quotes

95. Ms. Planinc directed the Panel's attention to one particular paragraph in the Student's final essay where a number of highly selective and short quotes were used. Many of these same quotes were also found concentrated in a particular section of S.D.'s draft essay. This similarity corresponds to the third alleged similarity outlined by the majority. Ms. Planinc further testified that the Student's final essay showed a creative use of sources and more specifically, that the short quotes used were not obvious choices.
96. In response, the Student repeatedly testified that she is an English major, and thus has "an eye for words". In my opinion, her emphasis that she identified the quotes because of the fact that she is an English major actually bolsters Ms. Planinc's assertion that the quotes selected were indeed non-obvious choices to the average student.

97. However, I find the suggestion that the Student is trained to pay close attention to words to be an inadequate explanation for why the quotes she selected turned out to be the same as S.D.'s. Even with "an eye for words", it does not necessarily mean that the Student picked those words out from the original text – the Student could just have come across those same words in S.D.'s draft essay.
98. In my opinion, I find it more likely than not that the quotes were derived from S.D.'s essay. On cross-examination of the Student, it was revealed that the text used as the original reference was at least 75 pages long. This is in comparison to S.D.'s essay which was only 10 pages long, double-spaced, and perhaps most notably, precisely on topic. Thus, if all else is equal, it is more probable that the quotes were pulled from S.D.'s essay than the original text.
99. I am mindful of the fact that within any literary work, there will be texts that are more commonly quoted. However, as discussed above, the evidence does not support that this is the case here as the quotes selected appear to have been non-obvious choices. What also appears to be non-obvious is how some quotes (i.e. "torrential rivers") were taken out of context from the original text, then used in the same context in both essays.
100. The Student, who was unrepresented, did not assert, as a defence, that quotes are not ideas or expression of ideas that belonged to S.D. (as they belong to the original author) and as such, could not be the subject of plagiarism so long as they have been properly referenced. If such an assertion had been made, I might have agreed but only to the extent of *individual* quotes. Notwithstanding, I think that the *selection* of particular quotes to articulate an idea, even if that idea is unoriginal, can collectively represent an *original expression* of that idea. In this case, the *same* idea was similarly expressed by using the same set of highly selective quotes.

Other “ideas” or “expression of ideas”

101. The University also provided evidence of other examples throughout the Student’s final essay that were mirrored in S.D.’s draft essay. These alleged similarities include those that have been outlined by the majority. Upon reading the two essays, I find that there is indeed a striking parallel between the two essays. Many of the same ideas are found in the two essays or similarly expressed including the use of the exact same examples (i.e. piloting a ship). Further, for some parts, the level of detail expressed does not appear to necessarily follow from the thesis topic, yet the details are the same (i.e. discussion on eternal and natural law). I simply cannot accept that this striking similarity arose by chance.

The “persuasive” section

102. As part of the instructions for Topic B, students were required to discuss whose view of nature, Aquinas or Machiavelli, they found more persuasive. Both the Student and S.D. found Machiavelli’s view to be more persuasive. The alleged similarities here are featured as sixth and seventh on the majority’s list.

103. I don’t think this agreement on Machiavelli’s view as being more persuasive is, in and of itself, problematic. After all, the choice was either Aquinas or Machiavelli. I, however, take issue with the reasons provided for selecting Machiavelli.

104. In the Student’s final essay, she reasoned that Machiavelli’s view of nature was more persuasive because Machiavelli utilizes “historical” and “realistic” examples. These reasons were also reflected in S.D.’s draft essay. After completely reading through the Student’s final essay, I do not find that this rationale logically follows from the rest of the essay. In other words, the opinion formed in the “persuasive” section of the essay does not appear to be intimately

linked to the thesis. Yet, both the Student and S.D. arrived at the same rationale for their conclusions.

105. I would think that there may be many reasons why Machiavelli's view of nature is more persuasive just as there may be many reasons for why Aquinas's view is more persuasive. The fact that both the Student and S.D. arrived at the exact same opinion is an understandable concern.

106. In S.D.'s "persuasive" section, one citation was used to provide an example of the historical examples used by Machiavelli. Other than that, no other references were cited to support this opinion that Machiavelli's view is more persuasive. In the Student's "persuasive" section, no references were cited at all and no examples were provided. Thus, it does not appear that the rationale for why Machiavelli's view is more persuasive was derived directly from an external reference. Together with evidence of the surrounding circumstances discussed below, I am inclined to believe that S.D. first formulated this common opinion.

The "conclusion" section

107. Another similarity that the University directed the Panel's attention to was the "conclusion" section of the two essays. The similarity is duly noted. However, considering the Student and S.D. had chosen the same thesis topic, I think that a certain degree of similarity is to be expected in how each will conclude their essays.

B. Differences Between the Two Essays

108. During the Student's testimony, she attempted to distinguish her essay from S.D.'s essay by pointing out a few differences between the two. With respect, I am not persuaded that this changes how similar I find the two essays to be. I accept that there are notable differences between the two essays, but these differences do not make those parts of the essay that are similar any less similar. Further, minor difference in the expression of the same idea is still expression of that particular idea.
109. I do not doubt that the Student made independent contributions to her own essay. Indeed, there are parts of the Student's essays that are not found in S.D.'s essay. Likewise, there are parts of S.D.'s essay that are not reflected in the Student's essay. However, for the purpose of determining whether the charges laid against the Student have been made out, I think the analysis should primarily focus on where there is overlap. This is not to say that the differences are irrelevant, but as counsel for the University pointed out, even if 5% of the work has been copied, this may be sufficient for a plagiarism conviction.
110. In my respectful view, in dismissing the similarities between the two essays, the majority undertook an analysis that focused on the differences. This narrow focus on what elements of the Student's essay do not appear in S.D.'s overlooks the similarities that exist between the two. Even if the Student and S.D. diverged in their ideas, this is not incompatible with the same idea being used as the foundation. The same idea can be elaborated on to introduce a new idea or make a different point, but it does not change the fact that the original idea was the same.

C. Access to S.D.'s Essay

111. As part of the University's allegations, the Student is alleged to have plagiarized from S.D. If so, then it follows that at some point prior to the submission of the Student's final essay, she must have had access to S.D.'s essay. The University provided clear and convincing evidence that the Student obtained a copy of S.D.'s essay prior to the final essay submission deadline.
112. The University adduced evidence of email correspondence between the Student, S.D. and another student where it was revealed that S.D. sent a copy of her essay to the Student on March 28th, 2015, as part of the peer-review process. This essay draft that the Student received was largely similar to the draft S.D. submitted to Ms. Planinc on March 12, 2015. Thus, it is clear that S.D. expressed the ideas in her final essay as early as March 12, 2015.
113. It was not until the evening of March 31st, 2015 that the Student sent her draft essay on Topic B to Ms. Planinc and her peer-reviewers. Thus, the Student retained a copy of S.D.'s draft essay three days before anyone had seen her own essay on Topic B and four days before the essay was due. Based on the comments the Student made in S.D.'s essay document and her peer-review evaluation form, it is clear that the Student reviewed S.D.'s essay in its entirety.
114. Under cross-examination, the Student admitted that she had not sent out her draft essay on Topic B to anyone prior to receiving S.D.'s essay. In the absence of evidence showing that the Student came up with the elements of her essay alleged to have been plagiarized before receiving S.D.'s essay, I find it more likely than not that S.D.'s essay was the source of the alleged plagiarism.

D. Surrounding Circumstances

The uncovering of the similarity

115. Ms. Planinc testified that she first graded the Student's essay before S.D.'s essay. Upon reading S.D.'s essay, she was struck by the familiarity of many of the quotes used as well as how the arguments moved in a way similar to an essay that she had read before. She then discovered that this essay that she had read before was the Student's essay. Ms. Planinc further testified that she made this finding before knowing that the Student and S.D. were peer-reviewers of each other's papers. I find this evidence of Ms. Planinc's first impression of reading each of the two essays to be compelling. The similarity appears to have been discovered without a pre-judgment either based on the peer-review process or a turnitin.com output report.

The topic change

116. Prior to the submission of the final essay, students in POL200Y5Y were required to submit a draft essay to their TAs. The Student submitted an electronic copy of this draft essay to Ms. Planinc on March 13, 2015. At that time, she had chosen to write on Topic A. On March 31, 2015, the day before the final essay was due, the Student informed Ms. Planinc via email that she had decided to change her essay topic from Topic A to Topic B.

117. The University accepts that, in and of itself, there is nothing inherently wrong with students changing their essay topic as they were not prohibited from doing so. However, they point to this last minute announcement of her intention to change topics as being highly suspect especially in light of the fact that this announcement came after reviewing S.D.'s essay. I agree.

118. Considering the timeline and the fact that the Student already had an essay that was more or less complete on March 13, 2015, I find this decision to

change essay topics supports the inference that it was only after seeing S.D.'s essay which motivated the Student to change essay topics.

The rough work

119. The Student testified that she had considered both essay Topics A and B at the time that she had written and submitted her draft essay on Topic A. At the Dean's Designate meeting, the Student was asked if she was able to provide copies of her rough work for her two essays. The Student only provided her rough notes that she made for Topic A.
120. At trial, the Student testified that she had made rough notes with respect to Topic B, which she had emailed to herself, but claimed that this email has since been deleted.
121. In my respectful view, this proposed explanation for why she is unable to produce her rough work for Topic B lacks credibility for three reasons. First, by retaining and producing a copy of her rough work for Topic A, the Student has demonstrated at least a limited interest in keeping her rough work. This is in contrast to a claim or a tendency to never keep rough work. I find it questionable that she is able to produce the rough work for the essay that is not in doubt, but not the essay that is allegedly plagiarized. Further, since Topic B was ultimately the final essay that was submitted for credit, I would think that the Student would have a greater interest in keeping her rough work for Topic B as compared to Topic A.
122. Secondly, even if the email that the Student sent to herself was deleted, a copy of that email should presumably have been reproduced in her "sent folder". The Student provided no compelling reasons why both the received and sent copies of this supposed email were deleted.

123. Lastly, based on the email correspondences, the Student was found to be untruthful on at least one occasion regarding emails that she had supposedly sent out. In an email sent to Ms. Planinc on March 31, 2015 at approximately 6:00 PM, she informed Ms. Planinc that she had *already* sent her new essay draft with the changed essay topic to her peer-reviewers. However, in a separate email the Student later sent to her peer-reviewers, it was revealed that the Student had not yet sent out her draft essay to her peer-reviewers. Contrary to what the Student told Ms. Planinc, the Student sent her draft essay to her peer-reviewers approximately 4 hours after informing Ms. Planinc that her draft was already sent.

The reaction of the peer-reviewers

124. In their written reasons, the majority draws an inference from the two peer-reviewers' lack of surprise or concern regarding the similarities between the two essays. I do not hold the same view.

125. The Student's testimony that her peer-reviewers did not raise any concerns with her is unreliable evidence of the fact that there were no concerns. The essays were exchanged over email, not in person, so the Student did not have the opportunity to witness the reactions of her peer-reviewers upon reading her essay. Therefore, the fact that no concerns were brought to her attention is no indication that there were no concerns at first read.

126. It's also worth noting that there was very limited opportunity for the two peer-reviewers to bring any concerns that they might have had. The Student emailed her essay to her peer-reviewers the night before it was due, after a courtesy request by one of the peer-reviewers. Once received, they still had to review it and provide comments. At that point, raising any concerns would have put additional responsibilities on themselves to explain what their concerns were – something that they may not have been prepared to undertake in the late hours

of the night. Further, any concerns raised would have been a suggestion to the Student that she should make substantial changes to her essay – an awkward position to put the Student in given that the essay was due the next day.

127. The only other evidence on the potential viewpoints of S.D. and the other student was limited to email correspondence and the peer-review evaluation forms. It is also not at all surprising that there were no concerns raised in the physical evidence. I would think that students who wanted to express their concerns over plagiarism - a serious allegation - would be considerate in their choice of forum. Students may feel uncomfortable in expressing their concerns over email or in a peer-review evaluation form that they know would likely be reviewed by the course administrators. The nature of the forum also explains why the feedback from the peer-review evaluation form was generally positive.

128. There may be other reasons why concerns were not brought forward including the nature of the students' relationship with each other, and the desire to avoid conflicts or getting involved. The probative value of this evidence is greatly diminished by the many unknown variables surrounding this issue.

129. Absence of any expressed concerns should not be taken as meaning that there were no actual concerns. We should also be careful in not equating the absence of any expressed concerns as the students affirming that they had no concerns.

130. Since S.D. and the other student were not available to testify and were not cross-examined, I will reserve making any factual findings or drawing any inferences on what their reactions might have been.

E. The "Knowing" Element

131. On a number of occasions throughout the POL200Y5Y course, students were informed about the University's policy on plagiarism. A warning on plagiarism

is found in the course syllabus wherein Professor Bejan explicitly expressed her “dim” view on plagiarism. On the last page of the syllabus, the policy was stated again in further detail. Ms. Planinc further testified that Professor Bejan reiterated the plagiarism policy in class and at the beginning of each assignment. According to Ms. Planinc, the policy was brought up regularly.

132. Additionally, students were required to submit their essays to turnitin.com. Thus, students ought to have known what plagiarism entails and how to avoid submitting plagiarized work.

133. The Student did not assert that she was uninformed of the plagiarism policy. I am satisfied that the Student knew, or at least ought to have known, about the academic offence of plagiarism.

III: DISPOSITION

Charge #1 (section B.I.1(d) of the Code)

134. With respect to the first charge laid against the Student, I find the Student guilty. The University has proven, on a balance of probability, that there were plagiarized elements in the Student’s essay on clear and convincing evidence.

135. I find the two essays to be too strikingly similar to have arisen by chance or as a product of the chosen essay topic. Further, the University clearly and convincingly showed that the Student retained a copy of the very essay that she is alleged to have copied from. Taking into consideration the surrounding circumstances, I find it more likely than not that the similarity arose from the Student’s reference to S.D.’s essay. I cannot reconcile the facts of this case and arrive at a conclusion that the similarity was purely coincidental.

136. Although I don't think all the similarities identified between the two essays amount to plagiarism, I do think that there are ideas or expression of ideas that nonetheless belonged to S.D. and were represented as the Student's. Specifically, I find the section with highly selective quotes, certain ideas expressed throughout the essay, and the "persuasive" section to be plagiarized.

Charge #2 (section B.1.1(b) of the Code)

137. Section B.1.1(b) makes it an academic offence for a student to obtain unauthorized assistance. I simply cannot find that the assistance the Student received from S.D. was unauthorized. Not only did the University sanction the peer-review process, but students were incentivized to participate in it by receiving extra credit. I think it would be unjust to punish the Student for taking part in the peer-review process which facilitated the assistance she received.

Charge #3 (section B.1.3(b) of the Code)

138. For the same reasons as Charge #1, I find the Student guilty of Charge #3.

Dated at Toronto, this 13th day of March, 2017



Harvey Lim