

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL – TRIAL DIVISION**

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

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

BETWEEN:

THE UNIVERSITY OF TORONTO

and

Mr. O.M.

Members of the panel:

- John A. Keefe, Chair
- Professor William Weiss, Faculty Panel Member
- Ms. Sujata Pokhrel, Student Panel Member

Appearances:

- Ms. Lily Harmer, Counsel for the University of Toronto
- Mr. Maurice Vaturi, Counsel for the Student

1. The Trial Division of the University Tribunal was convened for a hearing on Thursday, May 29, 2008 to consider two charges under the *Code of Behaviour on Academic Matters*, 1995 (“Code”) brought against the Student on August 15, 2007. A copy of the charges is attached as Appendix A.
2. There were two charges, but it was acknowledged by counsel for the University that if there was a conviction on count one it would not be necessary to proceed on count two.
3. The charges relate to course WDW360H: Law and Psychiatry taught at the downtown campus in the Fall of 2006.
4. The allegation relates to an in-class term test held on Tuesday December 5, 2006. This was the third in-class term test in this course worth 25% of the course mark.
5. The allegation is that the Student brought a completed test booklet to the examination room and substituted this test booklet for the blank test booklet that was handed out by the professor at the beginning of the test.

6. The Student denied that this occurred.
7. The issue at the hearing was a factual issue and, specifically, whether or not the University was able to prove that the Student substituted the completed test booklet for the blank test booklet distributed by the professor.
8. The course was taught by Professor William Watson. The course aims to describe the history and current forms of the involvement of mental health professionals with the criminal justice system. It is an upper year course.
9. At the beginning of the term, Professor Watson distributed an outline of the course to the students. This outline contained a description of the course and it also provided a very detailed description of the method of evaluation.
10. There were three scheduled term tests: Test 1, held on Tuesday October 17, 2006, was worth 5% of the course mark; Test 2, held on Tuesday November 14, 2006, was worth 25% of the course mark; Test 3, held on Tuesday December 5, 2006, was worth 25% of the course mark.
11. In the course outline, the students were advised that for each term test they would be permitted to choose one question from 4 possible topics. The topics that would be on each test were described in the course outline and there was a specimen question under each topic heading. Based on the course outline, students preparing for the test would know well in advance that they could focus on one of the listed topics and they could prepare for the test by preparing an answer to this specimen question.
12. In the first two tests, the questions were similar to the specimen questions in the course outline. The questions on the tests were different, but Professor Watson in his evidence testified that if a student prepared an answer to a specimen question they would be able to pass the test. The difference between a "passing" mark and an "A" paper was in recognizing the subtleties in the test question versus the specimen question.
13. Professor Watson taught the same course in a separate session during the same fall term of 2006. He had been teaching this course for some time and had been using this method of evaluation for some years.
14. In the winter term of 2006, in this course, Professor Watson had an incident with another student who had cheated on one of these in-class tests by bringing a completed test booklet into the test room and substituting it for the blank test booklet distributed at the test. As a result of this incident, Professor Watson had modified his practice and he became very diligent in the way he distributed the booklets during the test.
15. Professor Watson described in great detail his practice in the administering of the tests in this course following this incident. His practice was as follows:
 - (a) The normal class size for a test is approximately 50.

- (b) He attended at an office in the Woodsworth College building where the blank test booklets are stored.
 - (c) Professor Watson would take a bundle of test booklets from the storage area. The bundles were in batches of 125.
 - (d) The test booklets come in two different colours: one is pure white; the other is off-white with a shade of green.
 - (e) Professor Watson would take the bundle of 125 booklets and place it on his desk which was cleared for this exercise. He would remove 25 booklets from the pile of 125 booklets and put the 25 booklets in his desk drawer, leaving 100 booklets on his desk.
 - (f) He would then count out 60 booklets.
 - (g) He would then apply the same random stamp number to each of the 60 booklets. The random stamp number was different for each test.
 - (h) As he was stamping each booklet, he would count the booklets again. After the 60 booklets were stamped and counted, he would put the 60 booklets into a bag which he described as a plastic shopping bag. He would then place the remaining 40 unstamped booklets in a separate plastic bag and he would put the stamp marker in the same bag as the 40 unstamped booklets.
16. Professor Watson described that he was meticulous in the way in which he counted the booklets because he acknowledged that it would be extremely unfair to falsely accuse a student of bringing a completed test booklet into the test.
17. Professor Watson did not always retrieve a batch of 125 bound booklets for each test. On occasion, he would have enough booklets from his desk drawer so that it would not be necessary for him to attend at the storage room. Professor Watson acknowledged that sometimes the booklets in his drawer were not all from the same batch and may not all have been of the same colour.
18. Professor Watson testified that, with respect to the test in question, he recalls going to the storage room and obtaining a new batch of pure white booklets. He said that he did not retrieve the booklets from his bottom drawer for this test.
19. The test in question was held on Tuesday December 5, 2006. Professor Watson was teaching the same course during the same term on Wednesdays. Test 3 for the Wednesday class was being held on Wednesday December 6, 2006. Professor Watson had no specific recollection of the practice he followed with respect to the retrieval or numbering of the test booklets for the Wednesday test.
20. Professor Watson described in detail what happened on December 5, 2006:
- (a) The test is conducted in a classroom at Woodsworth College.
 - (b) The class room has long tables.
 - (c) The Student was seated in the back row at the right corner of the classroom immediately adjacent to an aisle. There are three aisles – two at each end and one in the middle.
 - (d) At the beginning of the test, the stamped test booklets were distributed by Professor Watson and a teaching assistant. They gave the booklets to the students

on the end of the aisles and the students then hand them to the other students along the same table.

- (e) The teaching assistant was present throughout the test.
- (f) Students from the Wednesday class were able to take the test with the Tuesday class. The Wednesday class students were instructed to write "Wednesday" on their test booklets.
- (g) Professor Watson did not count the total number of Tuesday students taking the test, but he testified that it was approximately 50.
- (h) Professor Watson did not count the Wednesday students that were taking the test on Tuesday.
- (i) Professor Watson did not count the number of stamped booklets that were initially distributed to the students at the beginning of the test.
- (j) Students wanting a second booklet during the test would put up their hand and a second booklet would be distributed to them out of the booklets remaining from the stamped 60 booklets.
- (k) During the test, Professor Watson would take unstamped booklets from the plastic bag where the 40 booklets were placed and he would stamp them at the front desk. He did not count the number of the booklets that he stamped during the test.
- (l) Professor Watson did not count the number of books that were distributed after the initial 60 booklets were distributed. He did not count the total number of booklets that were distributed or the total number of unstamped booklets remaining in the bag.
- (m) Professor Watson did not count the total number of test booklets that were returned at the end of the test. He did not count the number of Tuesday and Wednesday test booklets that were returned at the end of the test.
- (n) At the end of the test, the Wednesday test booklets were separated from the Tuesday booklets.
- (o) When the test booklets were returned to Professor Watson, he noted that one test booklet had a slightly different coloration. It was off-white with the green tint. He then noticed that it did not have a number stamp on it. All of the other booklets were stamped. The one test booklet in question was the one submitted by the Student.
- (p) Professor Watson also noted that the ink and penmanship on page 1 of the Student's test booklet was different from the remaining pages of the test. Page 1 of the Student's test booklet was written with a ballpoint pen in cursive penmanship. The remaining pages of the booklet were written with a black felt-tipped pen and the penmanship was in a print form. This corroborated Professor Watson's belief that the Student's test booklet had been brought into the test by the Student.
- (q) Professor Watson also noted that there were pencil marks on parts of the Student's test booklet that had been written over in black felt tipped ink pen. Professor Watson inferred from this that the Student had written the answers to the specimen question in the test booklet in pencil and that he had used the black felt-tipped marker pen to write over the pencil marks during the test.
- (r) During the test, Professor Watson noted that the Student had placed a coat on the desk. Prior to the commencement of the test, the Student was asked to remove the coat from the desk. He placed it on the chair beside him. Otherwise, Professor Watson did not notice any unusual behaviour by the Student during the test.

21. There was no direct evidence that the Student brought a completed test booklet into the test. No one observed the Student switching the test booklet. No one found the blank test booklet that was allegedly handed to the Student at the beginning of the test.
22. The teaching assistant was present throughout the test. The teaching assistant did not testify at the hearing.
23. The Student testified. He denied that he had brought a completed test booklet into the classroom. He testified that he prepared for the test and then wrote his answers during the test period. He testified that he did the readings. He submitted the readings with his highlighting and margin notes. He could not explain why the test booklet he submitted was of a slightly different colour and did not have a stamp on it.
24. He explained the difference in ink and penmanship in the test booklet. While the change in ink and penmanship at first looked very unusual, the panel was presented with tests completed by the Student in this and other courses. We noted that in many cases the Student frequently switched his penmanship. In some cases he did so even in the course of a single sentence. We find the Student's explanation credible and we accepted his evidence on this point.
25. He explained the pencil marks in the test booklet. He stated that he had a practice of writing certain important portions of the test in pencil in order to get it right, after which he would write over the pencil in ink. We looked at other tests submitted by the Student in other courses and noticed that he engaged in this practice in other completely unrelated test booklets. We concluded that no inference could be drawn from the pencil marks on the test booklet. We found the Student's explanation credible and we accepted his evidence on this point.
26. No inference could be drawn from the substance of the test answer in the test booklet that he was responding to the specimen question versus the test question. In fact, it is arguable that the answer to the question in the test booklet is more responsive to the test question than to the specimen question. Professor Watson acknowledged that he could not draw an inference from the substance of the answer.
27. Overall, there is no direct evidence that the Student brought a completed test booklet into the test and switched it for the blank test booklet that was distributed during the test. No one observed him switching the booklet. No one observed any unusual behaviour during the course of the test.
28. The issue for the panel was whether, taking all the evidence into consideration, the fact that the Student submitted an unstamped booklet of a slightly different colour was sufficient to warrant a conviction. These facts are circumstantial evidence that would permit an inference to be drawn that he did bring a completed test booklet into the test. The question was whether this circumstantial evidence is sufficient to satisfy the onus of proof on the University. We were called upon to examine the evidence very carefully, including all the inferences that could be drawn from the surrounding circumstances, to

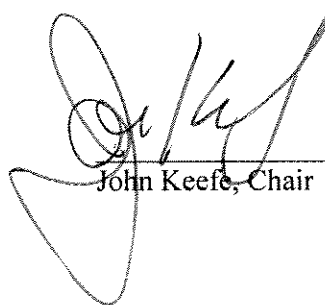
determine if we were satisfied that the University had established sufficient proof that the Student had cheated in this way.

29. The onus of proof on the University is set out in the *Code of Behaviour* at paragraph C.ii.(a).9:

“The onus of proof shall be on the prosecutor, who must show on clear and convincing evidence that the accused has committed the alleged offence.”

30. We recognize that these are serious allegations which have serious implications for the Student.
31. The Student is a student in criminology. The course in question is an upper-year course. The Student had achieved reasonably good grades in the prior tests in this course. He had also achieved good grades in his other courses. There were no other academic offences in his academic career. There is no indication of anything improper or unusual in his other academic activities.
32. The Student testified that he intends to apply to law school and that a conviction for this academic offence would have a significant impact on his future.
33. Having considered all the evidence and weighed all the available inferences from the circumstantial evidence, the panel concluded that the University had not satisfied the onus of proof in this case.
34. Although Professor Watson was meticulous in counting and stamping the 60 booklets, he did not count the total number of booklets that were distributed and returned. Without such a count being done it cannot be determined conclusively or by necessary inference that the booklet submitted by the Student had not been handed out by Professor Watson during the test.
35. Professor Watson testified in a clear manner and we do not question his credibility. However, there is no independent corroboration of his evidence.
36. Without all the booklets distributed and returned being counted, there are many possibilities that are inconsistent with an inference of guilt.
37. In the circumstances, we concluded that the Student should be found not guilty.

DATED this 11th day of August, 2008



John Keefe, Chair