

Ms. M W , the Student

1. By letter dated January 25, 2010, the Respondent, M W ("the Student") was advised that she had been charged with two offences concerning an examination that took place in connection with ECMB05 on August 16, 2009 (the "Exam"). Specifically, she was charged with having someone impersonate her at the Exam contrary to section B.1.1(c) and with academic dishonesty contrary to section B.1.3(b) of the *Code of Behaviour on Academic Matters, 1995* ("Code").

#### 1. Procedural Issue

2. At the commencement of the hearing, Mr. Centa, the Assistant Discipline Counsel advised the Panel that the Student was not present. He then asked the Panel to proceed in her absence, observing that the hearing into the matter had been adjourned on a previous occasion, and had been made returnable on a peremptory basis by the Panel that granted that adjournment. This fact had been brought to the Student's attention by Notice of Hearing dated May 17, 2010 (Brief of Documents, Tab 26). That letter set out the date of the hearing (June 3, 2010) and the location, and then stated clearly:

If you do not attend, the hearing may take place without you and you will not be entitled to further notice in the proceeding.

3. This Notice was itself the product of email communications between Mr. Centa and the Student regarding an earlier hearing date of April 20, 2010. This date had been set initially at the Student's request to accommodate her travel plans to and from China, as set out in her emails of January 31 and February 1, 2010. In those emails, she advised that she would be returning to Toronto on April 11, 2010.
4. The April 20 date was adjourned at the Student's request. This request was communicated by email dated April 19, 2010, and was based on the statement that "there are not available flight tickets in this week". No explanation was provided as to why the Student did not already have her flight tickets in hand or why she had waited so long to advise the University of her situation. In any event, the Panel originally scheduled to hear the matter on April 20 granted the adjournment on a peremptory basis. Mr. Centa then attempted, pursuant to the original Panel's direction, to establish a mutually acceptable date, proposing June 3, 2010. By email dated April 26, 2010, the Student stated that "I am still in China now, but I think I would attend the hearing on June 3."
5. Following this, the University attempted by email dated April 30, 2010 to confirm the Student's availability, requiring a response by May 5, 2010. No response was received, and accordingly, Mr. Centa's office asked that the June 3, 2010 date be set and made peremptory. This led to the issuance of the May 17, 2010 Notice of Hearing referred to above.

6. We were advised that the Student's ROSI account had been accessed recently to pay for an exam registration fee, indicating that the Student (in addition to the email traffic described above) can be in contact with the University as required.
7. With the foregoing history, Mr. Centa asked the present Panel to proceed in the Student's absence. The Panel then unanimously decided to proceed in the Student's absence, recognizing that if some unknown factor has intervened in the past few months, the Student may raise this by way of appeal from this Decision.

## **2. Decision on the Merits**

8. Mr. Centa then presented the case on behalf of the University. Evidence was led through Professor Eleanor Irwin, Dean's Designate and Professor Donald McMillan, who had acted as an invigilator at the Exam.
9. Prof. McMillan testified that at the Exam, a male person claiming to be M. W attempted to access the room in which the Exam was to be written. As is standard procedure, Prof. McMillan asked to see a valid U of T Identification Card. The person in question claimed not to have the card with him, whereupon Prof. McMillan directed him to retrieve it. The student returned about thirty minutes later, claiming that his U of T Card was locked in an apartment to which he had no access. He was then told he could write the Exam and produce the card the following week. The student left and returned some time later with a printout of an Academic History (Exhibit 6), as well as a bank card and an International Student OHIP card, both bearing the Student's name. Neither card bore a photograph.
10. By this point (if not before), Prof. McMillan's suspicions were aroused. He asked the male person a number of questions regarding his family background and a few of the courses listed on the Academic History. The person's answers regarding the Academic History demonstrated that the person had not taken the courses. Despite all this, Prof. McMillan re-extended the invitation to write the exam and provide a valid U of T Card the following week. The person declined and left the site of the Exam.
11. The following day, August 17, 2009, Prof. McMillan ascertained through the Office of the Registrar that M. W is a female student. Prof. McMillan then called the Student's home telephone number designated on the Student's records, which happened to be in China. He reached someone who purported to be the Student's mother, who stated that the Student was in Beijing at that moment. Prof. McMillan left a telephone number where he could be contacted.
12. Forty-five minutes later, Prof. McMillan received a telephone call from a person purporting to be the Student. She stated that she was in China. She did not admit at that time to having arranged for someone else to impersonate her, stating only that she had chosen not to write the Exam because she knew that she would have done poorly. When advised that someone had shown up

- purporting to be her and in possession of her bank card and OHIP card, she stated that her purse had recently been stolen.
13. Prof. McMillan then asked the Student to meet with him upon her return to Toronto, and she did so in mid-September. According to the *Code*, no evidence can be received regarding that meeting without the consent of the involved student.
  14. By letter dated September 22, 2009 (Exhibit 7), the Student was instructed to meet with Prof. Irwin regarding the Exam. The Student's attention was drawn to the provisions of the *Code* pertaining to impersonation at an exam and to her right to have legal representation at the meeting.
  15. At this meeting, the Student attended with a friend of her mother and the male person who had attempted to write the Exam for her. After appropriate cautions from Prof. Irwin, the Student admitted to having arranged for the male person to attempt to write the Exam in her place. The Student provided Prof. Irwin with a written statement. In it, she explained that she had become very worried about her ability to pass the exam, particularly upon receiving news from China that her mother "got ill and there was a shadow inside of her lung". She panicked and asked her friend to impersonate her. She said that she blamed herself "thousands and hundreds of times" for having committed such a "horrible and stupid" mistake. She referred to the great pressure to succeed she felt at the hands of her parents and asked the University, in sincere terms, to forgive her "as the first offender". It is a fact that the Student has no prior disciplinary record, although she has been required to serve a four-month suspension due to poor academic performance.
  16. Prof. Irwin testified that despite the written statement, her impression of the Student was that she was not particularly remorseful and did not appreciate the gravity of her offence.
  17. Based upon the foregoing evidence, the Panel found the Student guilty of having someone impersonate her at the Exam contrary to section B.1.1(c) and of academic dishonesty contrary to section B.1.3(b) of the *Code*.

### 3. Sanction

18. The Office of the Provost seeks the following sanctions:
  1. a final grade of zero in ECMB05
  2. an immediate suspension of five years
  3. a recommendation to the President that the Student be expelled
19. The Guidelines on Sanction issued by the Provost call for expulsion in a case of impersonation at an exam. Mr. Centa acknowledged that these Guidelines are

not binding upon the Panel, but argued that the severity of the proposed penalty was justified according to the factors considered in the seminal case of *Mr. C* (1976).

20. Regarding the nature of the offence, Mr. Centa pointed out that impersonation is not an offence that can be engaged in negligently or spontaneously. It is necessarily a deliberate act that requires both planning and the conscious assistance of another. The facts of this case exemplify this concern perfectly.
21. In terms of the detriment to the University, it was argued that impersonation at an exam is even more egregious than a typical act of calculated plagiarism. Except in the most extreme cases, a plagiarized piece of work will contain at least some original material. In a case of impersonation at an exam, the substitution of the ideas and expressions of one for another is total.
22. In terms of general deterrence, the University argued that the strongest possible message was necessary, given the nature of the offence and the detriment to the University. It was also argued that the Student's failure to appreciate the gravity of her offence indicated that the likelihood of re-offence could not be discounted. In terms of her character, while the Student ultimately confessed her guilt to Prof. Irwin, she attempted to conceal her involvement when first contacted by Prof. McMillan. Given her failure to attend the hearing, and despite the letter she provided to Prof. Irwin, it is difficult to draw conclusions that are of assistance to her.
23. Perhaps most controversially in the Panel's estimation, it was argued that the Student's failure to appear before the Panel reflected a lack of respect for the University and its governing processes, and therefore should be considered an exacerbating factor. The Panel has difficulty embracing this submission uncritically. The University's standard Notice of Hearing gives an accused student a great deal of information regarding procedure. It goes so far as to indicate that if the accused student fails to attend, the hearing may proceed in his or her absence. However, nowhere is it stated that a further consequence of a student's failure to attend may be the imposition of a penalty more severe than would have been imposed had the student simply attended the hearing and made no submissions. The Office of the Provost may wish to consider including this information in future notices.
24. While equivocal, an unexplained failure to attend can certainly support an inference of lack of respect or concern regarding the outcome of the hearing. The party in the best position to assist a panel in interpreting such an absence is, of course, the student. In our case, while the Student has evidently been in a position to respond to emails from the University, she has (we infer) chosen to essentially disregard the process. Put another way, we are not prepared to speculate in a manner that excuses the Student's non-attendance in this case.

25. Under the circumstances, therefore, we are prepared to treat the unexplained absence of the Student as an exacerbating factor. Naturally, and consistent with our determination to proceed in her absence, if the Student can, on appeal, present compelling evidence (subject to the Terms of Reference of the Discipline Appeals Board) to explain what, before us, was left unexplained, a different outcome regarding sanction may be considered appropriate.
26. We accept the submissions of Discipline Counsel regarding the nature of the offence and its detrimental impact on the University. The cases put before us show a predictable range of sanctions for the offence of impersonation, ranging from three year suspensions to expulsion (see *Mr. C*, (November 17, 2007)). We note that in the cases where suspensions were imposed, the student was invariably present and took steps to persuade the panel that a penalty less severe than expulsion would achieve the necessary personal deterrence.
27. As noted, that did not occur in our case. Had we heard from the Student, we might well have arrived at a less serious sanction, and indeed that may be the consequence of an appeal. However, under the circumstances of this case, we hereby order:
1. that the Student receive a final grade of zero in ECMB05
  2. that the Student be immediately suspended for a period of five (5) years from the date of this decision
  3. that a notation be placed on the Student's transcript for a period of seven years from the date of this decision or her graduation, whichever occurs first, to the effect that the Student was sanctioned for academic misconduct
  4. that a report of this decision be made to the Provost for publication in the University's newspapers, with name withheld.

We further recommend to the President that he recommend to the Governing Council that the Student be expelled from the University.

Dated at Toronto, September 1, 2010.



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Michael A. Hines, Co-Chair