

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on July 5, 2011;

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

BETWEEN:

THE UNIVERSITY OF TORONTO

- and -

T [REDACTED] S [REDACTED]

Date of Hearing: December 19, 2011

Members of the Panel:

Ms Lisa Brownstone, Barrister and Solicitor, Chair
Dr. Chris Koenig-Woodyard, Faculty Panel Member
Ms Susan Mazzatto, Student Panel Member

Appearances:

Mr. Robert A. Centa, Assistant Discipline Counsel, Paliare Roland Barristers
Professor John Carter, Department of Electrical and Computer Engineering
Professor Timothy Bender, Instructor CHE213H1S: Organic Chemistry, Department of Chemical Engineering and Applied Chemistry
Professor Yuri Lawryshyn, Instructor CHE22H1S: Applied Differential Equations, Department of Chemical Engineering and Applied Chemistry

In Attendance:

Ms Natalie Ramtahal, Coordinator, Appeals, Discipline & Faculty Grievances

Not in Attendance:

T [REDACTED] S [REDACTED], the Student

Preliminary

- [1] The Trial Division of the University Tribunal was convened on December 19, 2011 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the “Code”) laid against the student by letter dated July 5, 2011 from Professor Edith Hillan, Vice-Provost, Faculty & Academic Life.
- [2] Neither the student nor a representative of the student attended the hearing at the scheduled time and place. The Tribunal waited 15 minutes after the scheduled commencement of the hearing to allow for the student to appear. The student did not advise the University whether he would be attending; in fact, communication from the student had ceased in the recent past.
- [3] The University proposed to proceed in the student’s absence, and therefore, had the onus of satisfying the Tribunal that “reasonable notice” of the hearing had been provided to the student under the provisions of the *Code* and the *Statutory Powers Procedure Act* (“SPPA”). Reasonable notice of the hearing must also include a warning to the student that if he does not attend at the hearing, the Tribunal may proceed in his absence and the student will not be entitled to any further notice in the proceeding (s. 6(3)(b) of the *SPPA*).
- [4] The University filed the Notice of Hearing in this matter dated November 11, 2011 as Exhibit 1, and the Charges dated July 5, 2011 were filed and marked as Exhibit 2. The University also tendered an email and letter to the student dated July 6, 2011, which advised the student that the hearing would occur, and strongly urged the student to consider speaking with a legal representative if he had not already done so. The letter further advised the student that he had the right to be represented before the University Tribunal, and indicated that some students retain Downtown Legal Services to represent them at that hearing. Information about Downtown Legal Services, including a contact telephone number, was enclosed. Information about obtaining a lawyer through the Law Society of Upper Canada’s Lawyer Referral Service was also included with the July 6 material.
- [5] Counsel for the Provost, Mr. Centa, also filed several emails between him and the student from the period between July, 2011 and October 21, 2011. Those portions of the emails which contained privileged settlement information were redacted. In the emails, the student repeatedly responded to Mr. Centa from the student’s University of Toronto email address. The student was told that Mr. Centa would be requesting a hearing date (initially thought to be in September). The student responded to Mr. Centa by email on October 8, 2011, after emails from Mr. Centa advising the student “If I do not hear back from you, I will ask the Governing Council to set this matter down for hearing in October or November” and again “As I have not heard back from you, the Provost will set this matter down for hearing. You will be informed of the date of the hearing by email.”

- [6] The Panel was advised that attempts had also been made to leave messages with the student, but that these attempts had been unsuccessful.
- [7] It was Mr. Centa's submission that this email correspondence, followed by an email setting out the exact date, time and information about the Charges and the hearing, constituted reasonable notice and was given to the student in plenty of time. The emails were sent to the student to his University of Toronto account, which he had been using to correspond with Mr. Centa and others from the University. Counsel also drew to the Panel's attention the Policy on Official Correspondence With Students, a policy of the University that has been in effect since September, 2006. The policy contains important information. It indicates that students are expected to monitor and retrieve their mail, including electronic messaging accounts issued to them by the University, on a frequent and consistent basis. Further, students have the responsibility to recognize that certain communications may be time-critical. Additionally, students have the right to forward their account to another email service but remain responsible for ensuring that all University electronic message communication sent to the official University issued account is received and read.
- [8] In counsel's submissions, the evidence was clear that there had been emails back and forth from July 2011, that these emails had been received and read by the student at his University of Toronto account, that he engaged in correspondence by email at his University of Toronto email address until October 8, 2011, and that proceeding to use this account to provide notice of the hearing is reasonable notice within the meaning of the *SPPA*. The notice of today's hearing date was given on November 11, 2011. Therefore, the University asked the Tribunal to proceed in the student's absence. Counsel pointed out that the Notice of Hearing, filed, warns the student that the hearing may take place without him.
- [9] The Panel considered the evidence before it and the submissions of counsel. It asked for counsel to advise the Panel of the contents of the October 8, 2011 email, the last email received from the student, which had been redacted. The Panel was advised that in the email, the student told Mr. Centa that he had been without telephone or internet for a period of time, and he referred to the completion of a form which related to a potential settlement. The student advised that once he got a scanner, he would attempt to sign and return the form to Mr. Centa.
- [10] Considering all of the evidence before it, including the student's obligations clearly set out in the Policy referred to above, and the fact that the student was engaging in correspondence from his University email address about this hearing, the Panel concluded that the notice requirements in the *SPPA* were met and that the student had been given reasonable notice of the hearing. Therefore, the Panel agreed to proceed to hear the case on its merits. Students cannot avoid this Panel's processes by suddenly "going silent" on their University issued email accounts.

Hearing on the Merit

[11] The charges facing the student were the following:

- (1) In early March 2011, you knowingly possessed an unauthorized aid, or obtained unauthorized assistance in a term test in CHE 222, contrary to section B.I.1(b) of the *Code*.
- (2) In the alternative, in early March 2011, 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 a term test in CHE 222, contrary to section B.I.3(b) of the *Code*.
- (3) On or about April 28, 2011, you knowingly possessed an unauthorized aid, or obtained unauthorized assistance in an examination in CHE 213, contrary to section B.I.1(b) of the *Code*.
- (4) In the alternative to charge #3, on or about April 28, 2011, 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 an academic examination in CHE 213, contrary to section B.I.3(b) of the *Code*.

[12] Particulars of the charges were as follows:

- (1) At all material times, you were a registered student in the Department of Chemical Engineering and Applied Chemistry in the Faculty of Applied Science and Engineering at the University of Toronto. In the Winter term of 2011, you enrolled in CHE 222 and CHE 213.
- (2) Students in CHE 222 were required to write a term test, which was worth 30% of the final grade in CHE 222 ("Term Test"). In early March, you wrote the Term Test. No aids were permitted, and students were permitted only to have pens, pencils and an approved calculator on their desks.
- (3) You had three sheets of paper on your desk during the test. They contained information relevant to the material covered in CHE 222. You were not permitted to have these sheets of paper with you during the Term Test.
- (4) You knowingly possessed an unauthorized aid, namely, the sheets of paper, or received unauthorized assistance from the sheets of paper during the Term Test.
- (5) Students in CHE 213 were required to write a final examination ("Examination"). On or about April 28, 2011, you wrote the Examination. The Examination was closed book, and

no aids were permitted except for those provided. Only non-programmable calculators were permitted.

- (6) You had several sheets of paper on your desk during the Examination. These sheets of paper were relevant to the material covered in CHE 213. You were not permitted to have these sheets of paper with you during the Examination.
 - (7) You knowingly possessed an unauthorized aid, namely, the sheets of paper, or received unauthorized assistance from the sheets of paper during the Examination.
- [13] The University called as its first witness, Professor Y.A. Lawryshyn, an Assistant Professor in Chemical Engineering and Applied Chemistry. Professor Lawryshyn identified his course outline, which was marked as Exhibit 4 and which showed that a mid-term examination would be given on March 8, and would be worth 30% of the final mark in the course. Professor Lawryshyn also identified the mid-term examination itself, which was marked as Exhibit 5. Professor Lawryshyn testified that he first advised the students that faculty approved calculators were the only aid permitted on the mid-term on their first day of class when he went through the course outline with them. He advised the students that an aid sheet would be permitted on the final exam, but not on any quizzes, nor on the mid-term examination.
- [14] Professor Lawryshyn also identified an announcement made on “blackboard”, an electronic system used to post problem sets, solutions, announcements, and mid-term solutions. He testified that students have to check blackboard regularly in order to get their problem sets, solutions, etc. On Sunday, March 6, 2011, details about the mid-term examination were posted on blackboard. A copy of the postings about the mid-term dated March 6 and March 7 were identified by Professor Lawryshyn and filed as Exhibit 6. The March 6 announcement specifically stated “aid sheets are not allowed” for the mid-term. On Monday, March 7, 2011, the day before the mid-term, Professor Lawryshyn repeated this announcement in class. On March 8, 2011 the examination took place. Professor Lawryshyn testified that his usual practice is to hand out examinations face down before the students come in the room and he believes he followed his usual practice on this occasion. Students leave their backpacks at the front or back of the room, turn all cell phones off, and leave their cell phones with their backpacks. He tries to keep the students quiet, gets everyone seated and starts the examination at fifteen minutes after the hour. He testified that he announced again that the students would be allowed a calculator, pens, pencils, a UofT card and “that’s it”.
- [15] At the end of the examination, Professor Lawryshyn testified that the Teaching Assistant said that he had caught the student with three pages of notes. The Professor approached the student and asked what he was doing with the notes and the student advised that he thought they were allowed. Professor Lawryshyn told them they were not and that he had told the students they were not. The student said that he didn’t go to class, and that he

normally doesn't go. The Professor said that he would have to take it up with the department to address it and the student asked him not to go to Professor Norval. Professor Lawryshyn advised that he had to do that and that he also had to meet with the student. The student requested that the meeting between the two of them take place right then. The student did not deny that the notes were his and said that they wouldn't have helped him anyway. Professor Lawryshyn sent an email outlining what had occurred to Professor Norval; this was marked as Exhibit 7.

- [16] In response to a question from a member of the Panel, Professor Lawryshyn testified that the notes would in fact have been beneficial for the mid-term examination.
- [17] The next witness called by the University was Professor Timothy Bender, an Assistant Professor in Chemical Engineering and Applied Chemistry. He identified his course Syllabus for course number CHE 213, which was marked as Exhibit 8. The syllabus indicated that the final examination would be worth 50% of the final course mark. The final examination itself was identified and marked as Exhibit 9; it stated on page 1 that no aids were allowed.
- [18] Professor Bender testified that he did not know the student personally. The Associate Chair of the Department had told Professor Bender that the student wrote the examination at the University of British Columbia.
- [19] The University then tendered the Affidavit of Jane Park and advised the Panel that the information in the affidavit had all been provided in disclosure to the student, and that the affidavit itself had been sent to the student that day. This was accepted by the Panel and marked as Exhibit 10. Ms Park's affidavit stated:
- (i) I am the Undergraduate Counsellor in the Department of Chemical Engineering and Applied Chemistry at the University of Toronto. I have personal knowledge of the facts set out in this affidavit. Where my knowledge is based on information and belief, I will state the source of my information. In all such cases, I believe that the information provided to me is true and accurate.
 - (ii) Because of my position in the Department, I had several dealing with [REDACTED] S [REDACTED].
 - (iii) Mr. S [REDACTED] successfully petitioned to write his University of Toronto examination in CHE213H1S ("Exam") at the University of British Columbia ("UBC") on April 28, 2011. UBC agreed to invigilate the Exam as long as Mr. S [REDACTED] paid a \$75 fee to cover the costs of administering and invigilating the Exam. He agreed to do so.
 - (iv) I coordinated the arrangement with UBC and sent a copy of the Exam to UBC. Sheila Williamson at UBC advised me that UBC would invigilate the Exam in a manner consistent with the instructions on the front of the Exam paper.

- (v) On April 28, 2011, Ms. Williamson called me and told me that Mr. S█ had been caught with unauthorized aids during the Exam.
- (vi) Later that day, I received two e-mail messages from Mr. S█. In these messages, Mr. S█ admitted that he had taken his notes and lecture slides into the room where he wrote the Exam.
- (vii) On May 5, 2011, Ms. Williamson sent me an e-mail message. Ms. Williamson attached a series of .PDF files to her message. She advised me that the .PDF files contained images of Mr. S█'s exam and the notes that the UBC invigilator found in Mr. S█'s possession as he was writing the Exam.
- (viii) Sometime between May 11 and May 24, 2011, I received by courier the original Exam and the original notes that were found in Mr. S█'s possession...A true copy of the original Exam is found in the Provost's Book of Documents at Tab 12. A true copy of the notes found in Mr. S█'s possession during the Exam is found the Provost's Book of Documents at Tab 13.

...

- [20] Emails providing details of how UBC found the notes and dealt with the situation were attached to Ms Park's affidavit.
- [21] The University next called Professor Carter, the Dean's Designate, who testified that he met with the student via Skype on May 31, 2011, about the accusations of academic offences in the two courses at issue in this hearing. Professor Carter testified that he had documents with him at the time, one from Professor Lawryshyn and one from UBC. He could not necessarily identify the notes as the ones he had seen, but was certain that there were notes, and that he had them with him at the time he talked to the student. He discussed the allegation and with respect to CHE 222, the student admitted that he had notes. He said that he felt that he was permitted to have them, and thought that the instructor had said on the first day that notes were permitted. He stated that he did not go to lectures or check the website, that his learning style was independent, that he did not go to classes or read announcements. He said he didn't recall an announcement at the beginning of the mid-term exam itself. With respect to CHE 213, he admitted that he had notes. He said that he did not know that it was an examination because the room did not look like an exam room. He came late and therefore in order not to disturb other students, was given his own room. The booklet itself said "exam" and also specified that no aids were allowed, but he thought this did not apply to him. Professor Carter testified that he found the student's explanation bizarre and not satisfactory.
- [22] That was all of the evidence called by the University, who then proceeded to make submissions.

- [23] In his submissions, counsel for the Provost emphasized the broad definition of “knowingly” in the Code of Behaviour, and acknowledged that the burden was on the Provost to prove the offences on the balance of probabilities, in that it must prove that it is more likely than not that the offences occurred. In counsel’s submissions, the evidence was overwhelming that the student knew or ought to have known that he was in possession of an unauthorized aid. He submitted that the course materials in CHE 222 were clear that an aid sheet would be permitted on the final examination only, and not on the mid-term or quizzes. Clear warning had been given to the student and then repeated on the blackboard on March 6th, and at the outset of the examination on March 8th. Whether or not the student was present at classes where this was stated, it is the student’s responsibility to be informed of and compliant with course expectations.
- [24] With respect to the second set of charges related to CHE 213, the test itself indicated that no aids were permitted and the evidence shows that the student does not deny that the notes were his.
- [25] In the Provost’s counsel’s submissions, it is clear that the student ought to have known that he was committing an offence. The University counsel also made submissions about the sequencing of the events, namely that the offence in CHE 213 occurred almost two months after the student had had the conversation with Professor Lawryshyn about unauthorized aids, and the student should have been taking care about what he brought in, given the situation in which he found himself with respect to CHE 222.
- [26] In the University’s submissions, the evidence was sufficient for the Panel to reach and make findings on charges (1) and (3).

Decision of the Tribunal

- [27] The Panel deliberated and concluded that the University had discharged its onus and met the burden of proof of proving the offences on a balance of probabilities in respect of both charges (1) and (3).
- [28] The Panel agrees that the student must take responsibility for becoming aware of and ensuring compliance with course requirements. Students cannot simply absent themselves from the tools used to communicate course and University expectations to them, and then claim ignorance as a defence when they fail to comply with the rules. The student clearly ought reasonably to have known that aids were unauthorized in both cases and he clearly violated this restriction in both cases. Although it may have been preferable, out of an abundance of caution, to have included this limitation directly on the course outline in CHE 222, there were numerous other warnings provided to the student. If he was in the class to receive the course outline, he would have received the information provided orally about what aids are and are not permitted. These warnings were given on

numerous occasions, posted on blackboard, and repeated at the outset of the midterm. In the case of CHE 213, the prohibition on the use of aids was also included in the information on the first page of the examination.

- [29] Therefore, the Panel made findings on charges (1) and (3) and the Provost withdrew charges (2) and (4).

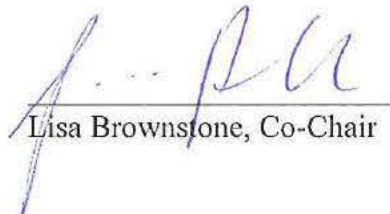
Penalty Phase

- [30] In respect of the penalty phase, no additional evidence was called. The Provost sought an order that Mr. S█ receive a final grade of zero in both courses, that he be suspended from the University from the date of the Order until December 18, 2014 (a period of three years), that his academic record and transcript bear a notation of the sanction until December 18, 2015, and that the case be reported to the Provost for publication of a notice of the decision of the Tribunal and sanction imposed, with the student's name withheld.
- [31] In his sentencing submissions, counsel pointed out that when the student does not participate, it is difficult to have any information or evidence of any mitigating factors, extenuating circumstances, or external pressures that might support a reduced penalty. Similarly, there is no opportunity to see whether there is any demonstration of insight or remorse. In the Provost counsel's submission, these absences make it difficult to calibrate the likelihood of repetition of the offence because we do not know much about the student. In his submission, what we do know is that on March 8 and April 28 two very similar types of offences occurred.
- [32] Counsel referred the Panel to a number of cases on which it relied in support of the penalty the Provost was seeking. The Panel specifically reviewed the previous University discipline cases of *LM* (Case 607; February 17, 2011), *SK* (Case 595; September 24, 2010) and *HB* (Case 599; June 2010). Counsel noted that in the instant case, although the student is not a true repeat offender because the first offence had not been through the system at the time the second offence occurred, there had been an intervention with a Professor about the first offence before the second offence occurred. Thus, in the instant case, there were two separate offences involving unauthorized aids, and nothing that would support a decreased penalty.
- [33] The Tribunal considered the facts of the case and the precedents referred to by University counsel and agreed that the proposed penalty was appropriate. There was adequate warning to the student in both courses that aids were not permitted in the two evaluations at issue, the student had on two occasions brought in unauthorized aids, and the student knew or ought to have known that the aids were unauthorized. The student cannot simply say that he does not pay attention to course requirements, or to information provided

about what is and is not permitted, and then rely on that ignorance in defence of bringing aids into an examination.

- [34] The Panel notes that it is important for the core values of the University to be respected, and for a message to be sent to this student and to all students that conduct of this nature will not be tolerated and will have profound effects upon the student. Students must be actively engaged with the University and its rules and expectations in order for the institution to function effectively. Just as students must take responsibility for monitoring communications to their University email accounts, so too must they take responsibility to make themselves aware of and compliant with course expectations and requirements.
- [35] Therefore, the Panel signed the Order on December 19, 2011 ordering:
- 1) that T [REDACTED] S [REDACTED] is guilty of two charges of the academic offence knowingly possessed an unauthorized aid, or obtained unauthorized assistance contrary to section B.1.1(d) of the *Code of Behaviour on Academic Matters*;
 - 2) that T [REDACTED] S [REDACTED] receive a final grade of zero in the course CHE 222;
 - 3) that T [REDACTED] S [REDACTED] receive a final grade of zero in the course CHE 213;
 - 4) that T [REDACTED] S [REDACTED] be suspended from the University for three years, to commence on December 19, 2011, and to end December 18, 2014;
 - 5) that the sanction shall be recorded on his academic record and transcript from the date of the Order until December 18, 2015; and
 - 6) that this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the name of the student withheld.

Dated this 8th day of February, 2012



Lisa Brownstone, Co-Chair