

**THE UNIVERSITY TRIBUNAL
OF THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic misconduct made on February 17, 2012

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 -

P [REDACTED] H [REDACTED]

Date of Hearing: March 27, 2012

Members of the Panel:

Mr. Paul Schabas, Barrister and Solicitor, Chair
Professor Nick Cheng, Department of Computer Science, Faculty Panel Member
Ms. Amy Gullage, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel for the University, Paliare Roland Barristers
Ms. Julia Wilkes, Articling Student, Paliare Roland Barristers
Ms. Sierra Robart, Legal Case Worker for the Student, Downtown Legal Services
Ms. Camille Labchuk, Legal Case Worker for the Student, Downtown Legal Services
Dr. Matthew MacKay, Instructor for MIE404: Control Systems, Mechanical Engineering
Mr. Sinisa Colic, Teaching Assistant for MIE404: Control Systems, Mechanical Engineering
Mr. P [REDACTED] H [REDACTED], the Student
Mr. A [REDACTED] A [REDACTED], Student at the University of Toronto
Mr. A [REDACTED] H [REDACTED] A [REDACTED], Student at the University of Toronto
Mr. A [REDACTED] A [REDACTED], Student at the University of Toronto

In Attendance:

Professor John Carter, Dean's Designate, Faculty Applied Science and Engineering
Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances

DECISION

Background

1. The Trial Division of the University Tribunal convened to hear this matter on March 27, 2012. The charges under the *Code of Behaviour on Academic Matters, 1995* (the Code) laid against Mr. P [REDACTED] H [REDACTED] were as follows:

CHARGES

1. On October 27, 2011, you knowingly obtained unauthorized assistance in the Midterm Examination ("Midterm") in MIE 404H1F ("Course"), contrary to section B.I.1(b) of the *Code*.
2. In the alternative, on October 27, 2011, you knowingly engaged in a form of cheating, academic dishonesty or misconduct not otherwise described in the *Code* in order to obtain an academic advantage in the Midterm, contrary to section B.I.3(b) of the *Code*.

Particulars

3. At all material times, you were a registered student at the University of Toronto in the Faculty of Applied Science and Engineering. In Fall 2011, you enrolled in the Course.
4. A [REDACTED] A [REDACTED] was also a registered student at the University of Toronto and also enrolled in the Course in Fall 2011.
5. On October 27, 2011, you wrote the Midterm, which was worth 20% of the final grade in the Course. Mr. A [REDACTED] also wrote the Midterm.
6. Question 3 on the Midterm was a multi-part question which required students to perform calculations and determine if the system could be modified to meet certain criteria.

7. During the Midterm, you engaged in conversation with Mr. A■■■■, which was not permitted. You also repeatedly and knowingly looked at the answers that Mr. A■■■■ had written on his Midterm. You knew, or ought to have known, that you were not permitted to do so.
 8. During the Midterm, you knowingly incorporated information you obtained from looking at Mr. A■■■■'s Midterm answers into your own answers. You knew, or ought to have known, that you were not permitted to do so.
 9. You knowingly received unauthorized assistance from Mr. A■■■■ during the Midterm.
 10. You knowingly engaged in a form of cheating, academic dishonesty, or misconduct in order to obtain an academic advantage during the Midterm.
2. At the commencement of the hearing, a Joint Book of Documents was entered on consent, which included a copy of the mid-term exam Mr. H■■■■ wrote on October 27, 2011, as well as a copy of Mr. A■■■■'s mid-term exam. The essence of the charge, as outlined by Mr. Centa in his opening statement, was that Mr. H■■■■ received unauthorized assistance on the mid-term exam from Mr. A■■■■. This was based on observations of the teaching assistant who invigilated the exam and questions the teaching assistant raised when marking Mr. H■■■■'s exam. On two questions Mr. H■■■■ may have reached the right answer but his answer revealed few of the intermediate calculations necessary to reach the answer. There were some similarities between Mr. H■■■■'s answer and Mr. A■■■■'s answer such that, according to Mr. Centa, there is a strong circumstantial case supporting the allegation that Mr. H■■■■ obtained certain answers from Mr. A■■■■.
 3. At the conclusion of the hearing on March 27, the Tribunal dismissed the charges, finding that the Provost had not proven its case on a balance of probabilities based on "clear and convincing evidence", with Reasons to follow. These are those Reasons.

The Writing of the Exam

4. The mid-term exam in the course MIE404 H1F – Control Systems I, was held on October 27, 2011. The lecturer in this Mechanical Engineering course was Dr. Matthew Mackay. Dr. Mackay described the course as being intended for fourth-year engineering students. He said it deals with control systems, math and the details behind a process or system. As he put it, there was a lot of math, with theory behind it. The real focus is upon applying different concepts.
5. The mid-term exam was worth 20% of the mark. Dr. Mackay confirmed that the examination was 90 minutes in length, and was open book. In addition, students were allowed to have calculators and to make notes on scraps of paper. The exam consisted of four questions and instructed students to “clearly highlight all final answers, and show all appropriate intermediate workings.”
6. The exam was written in three different classrooms, with staggered starts for the three rooms, by 10 minutes each. Dr. Mackay moved from room to room.
7. Mr. H [REDACTED] and Mr. A [REDACTED] wrote the exam in one of the rooms, and sat next to each other. A graduate student, Mr. Sinisa Colic, was the invigilator in the room where Mr. H [REDACTED] and Mr. A [REDACTED] wrote the exam. Mr. Colic said that the classroom had just enough spots for the students, and that there were about 30 or 32 in the room. He said that the students were “very close” and their papers were scattered. He conceded the room was probably not ideal for the exam. He said that about half-way through the exam two students wanted to go to the washroom, and he accompanied them once Dr. Mackay entered the room to invigilate in his absence.
8. When Mr. Colic returned to the room, he said that he observed Mr. H [REDACTED] facing half-way to Mr. A [REDACTED] and talking, “like he was looking out”. Mr. Colic said that he promptly

went to that student and warned him not to talk. He said that Mr. H [REDACTED] and Mr. A [REDACTED] were sitting approximately a metre apart and said that they were "slightly closer than other students". Like all the students, their papers and notes were spread out in circles around them. Some students had papers that were overlapping with one another. After consulting with Dr. Mackay, Mr. Colic asked the students for their ID and noted their names, which he provided to Dr. Mackay. Mr. Colic said the rest of the exam went smoothly. He said that the students seemed "a little stunned" when he approached them, that they might have given a nod and confirmed that they heard him and continued with the exam. After this, Mr. Colic said he kept a close watch on Mr. H [REDACTED] and did not see him look at Mr. A [REDACTED]'s exam.

9. Mr. Colic agreed that Mr. H [REDACTED] and Mr. A [REDACTED] might have been "perhaps a foot closer" than other students, but this was not enough to say that they were intentionally closer, and he agreed that he could not do anything about it. At no time did he see Mr. H [REDACTED] looking at Mr. A [REDACTED]'s exam. Indeed, in an email written to Professor John Carter in December, Mr. Colic simply said that Mr. H [REDACTED]'s "mouth was moving". He agreed that he could not hear him speak, that he was at least ten metres away from Mr. H [REDACTED], and that he only saw the "speaking" when he re-entered the room and that it "lasted only a second or two".
10. Dr. Mackay did not observe or hear any talking, and said that during the exam Mr. Colic approached him to say he had noticed someone talking, or "talking to himself". Dr. Mackay then observed from the front of the room Mr. H [REDACTED] and Mr. A [REDACTED] sitting, as he put it, "perhaps closer than others" and "certainly close enough to see their papers if they looked." He said he asked Mr. Colic to get their names and student numbers and to have them move further apart. Dr. Mackay agreed that he did not either see or hear the students talking, nor did he observe Mr. H [REDACTED] looking at Mr. A [REDACTED]'s papers.
11. Mr. Colic's role following the exam was to mark sections (b), (c) and (d) of Question 3. In marking section 3(b) of Mr. H [REDACTED]'s test, he wrote the comment, "Where do your answers come from?", because the student did not show how he arrived at an equation. He also circled the number 0.8, as the correct figure within the equation was 0.9. His

initial reaction was that he assumed it was a “careless mistake”, noting that he had done it before, thinking one number and writing another. He did not think much of his comments on subsection (b), however, until he turned to sub-section (d). There, he gave Mr. H [REDACTED] marks for having the right equations, but again the test was missing steps which he found “suspicious”. He raised these issues with Dr. Mackay. Mr. Colic said that when he marked the exam and gave it to Dr. Mackay he had forgotten about the alleged talking during the exam.

12. Dr. Mackay also discussed the answers to Question 3. He noted that while the question in subsection (b) is in the correct form, the presence of the number 0.8 did not accord with the resulting number of 1.9375, which requires 0.9 to be there. He also said that the final answer must show that the lower range for K is not 0, but positive. Dr. Mackay said that several steps were missing, and that Mr. H [REDACTED] only showed the very final step and only one-half of the current range. As Dr. Mackay put it, “personally, I would at least need to write an intermediate step to solve that range.” He contrasted Mr. H [REDACTED]’s answer with Mr. A [REDACTED]’s paper, which has intermediate steps and which used the correct number of 0.9. He also noted that Mr. A [REDACTED]’s exam failed to reflect that K was greater than 0, but later agreed that this is a “common error”.
13. With respect to the answer to 3(d), while Dr. Mackay gave Mr. H [REDACTED] 3 out of 3 for this answer, he stated that there were steps missing. Dr. Mackay said that he would have expected students to write down intermediate steps to solve the solutions. Again, he contrasted this with Mr. A [REDACTED]’s exam which included more intermediate steps (though it received the same mark).
14. In cross-examination, Dr. Mackay admitted that several of the calculations could have been done with a calculator, although not all of them. He conceded that mistakes could have been made in transcribing numbers, and that different students showed different intermediate workings, and that one wouldn’t expect to see the same intermediate steps as in the model answer.

Defence Evidence

15. Mr. H■■■■ testified. He described lacking confidence prior to the exam, said that he gets nervous writing tests and that his test-taking skills are "bad". He arrived at the exam with A■■■■ A■■■■, and they chose the first two seats that were available. He agreed that he was about a metre or a metre and a half away from A■■■■, the same as others. Mr. H■■■■ said that towards the end of the exam Mr. Colic came over to him and said that he was not supposed to speak. Just prior to that, Mr. H■■■■ said he had his hand up trying to ask Dr. Mackay a question, but Dr. Mackay could not see him because he was behind him. Mr. H■■■■ said he often asks questions during examinations. He does not recall moving his mouth. When Mr. Colic approached him, he simply said he was not talking and continued with the test. He said he did not think it was a big deal. He had seen this happen in other mid-terms, he was just writing his exam and wanted to continue.
16. Mr. H■■■■ said that the encounter with Mr. Colic happened with about 20 minutes left in the exam. He said at this point he had approached all the questions in the exam, had done what he knew, and was back working on Question 2. He said that he had finished Question 3 earlier because it was the easiest question on the test.
17. Mr. H■■■■ said that he approached the questions in his scrapbook and believes he miswrote the number 0.8 in his exam paper. He compared his test to Mr. A■■■■'s, noting that some of the calculations were very easy. He noted that he did not write some of the intermediate steps. He noted that some of the differences between his exam and Mr. A■■■■'s could be a result of different approaches to rounding numbers. Mr. H■■■■ said that he thought that he had put in the appropriate intermediate workings, though he conceded that Mr. A■■■■ had shown more intermediate steps. He noted, however, that in one case Mr. A■■■■ had many more intermediate calculations, but they both were given the same mark. There was considerable questioning around the issue of rounding, as there was similarity in the final answers between Mr. H■■■■ and Mr. A■■■■, suggesting

they both rounded at the same stage, or, as Mr. Centa's theory of the case suggests, Mr. H■■■■ might have copied Mr. A■■■■'s answer.

18. Mr. H■■■■ stated that he did not look at Mr. A■■■■'s test, and that he did not cheat. Mr. H■■■■ was only confronted with the allegation that he had cheated on the exam at the conclusion of the course in December. By that time, almost two months after the mid-term, Mr. H■■■■ had thrown out the work that he had done on scrap paper.
19. Mr. A■■■■ also testified. He is an honours student in Mechanical Engineering. He said that he knew P■■■■ H■■■■ simply as a classmate for the past two years. Mr. A■■■■ did not notice anything unusual during the test. He said that at some point Mr. Colic spoke to him and told him to stop talking, to which he responded that he was not talking. He said that no one was talking to him and he had no interaction with Mr. H■■■■ during the exam. He confirmed Mr. H■■■■'s testimony that the interaction with Mr. Colic occurred in approximately the last 20 minutes of the test. He said that he had not yet begun answering Question 3 when Mr. Colic approached him about talking during the test.
20. Mr. A■■■■ said that he approached Question 3 (b) by writing down all intermediate steps, and writing everything he knew. He confirmed that he often used scrap paper, especially doing the math. He noted that the first step of the question was an easy calculation.
21. Mr. A■■■■ was also accused of participating in academic misconduct in February 2012, although charges were laid but subsequently withdrawn.
22. Mr. H■■■■ called two other classmates to testify, A■■■■ A■■■■ and A■■■■ A■■■■, both of whom have high standing in Mechanical Engineering. Both students were taking the test in the same room. Neither of them saw anything unusual during the course of the test, other than Mr. Colic approach Mr. H■■■■ and Mr. A■■■■. A■■■■ A■■■■ was sitting next to Mr. A■■■■. He confirmed that it was approximately 15 minutes before the end of the test that he saw Mr. Colic speaking to Mr. A■■■■ and Mr. H■■■■. He also confirmed that shortly before Mr. Colic approached them, he saw Mr.

H ■ raise his hand attempting to get Dr. Mackay's attention. Mr. A ■ said that he also asked a question during the exam and saw others asking questions during the exam.

Findings

23. The Tribunal accepts that the Provost need only prove her case on a balance of probabilities, albeit on clear and convincing evidence. The burden is simply on a balance of probabilities. The requirement of clear and convincing evidence simply illuminates the civil standard.
24. Mr. Centa acknowledged that the case against Mr. H ■ is circumstantial. There is no direct evidence that Mr. H ■ looked at Mr. A ■'s paper. Rather, Mr. Centa relies on the answers to the questions in the exam book to support his case.
25. Mr. H ■ did very poorly on the exam, although his best marks were on Questions 3(b) and 3(d). With respect to 3(b), Mr. Centa noted that both H ■ and A ■ got the answer "a little bit wrong". However, as Dr. Mackay acknowledged, the mistake that they made in failing to say that K was greater than 0 is a "common error", and writing the figure 0.8 instead of 0.9 is the type of transposition mistake Mr. Colic said that he has made in the past. In light of this evidence, the Tribunal has no basis to conclude, even on a balance of probabilities, that Mr. H ■ obtained assistance from Mr. A ■ on this question.
26. With respect to the answer to 3(d), Mr. Centa relied on Dr. Mackay's assertion that one cannot do some of the calculations in one's head, and despite the fact that students round numbers differently, Mr. H ■ and Mr. A ■ reached the same conclusion. Mr. Centa asserted this could only arise from copying Mr. A ■'s answer, and he said this was supported by the absence of intermediate steps contained in Mr. H ■'s answer.

27. With respect to Question 3(d), similarities in the answers raise suspicion because of the coincidence resulting from potentially different approaches to rounding numbers. However, the absence of any direct evidence that Mr. H████ copied answers, or was ever observed looking at Mr. A████'s answers, and the evidence of Mr. H████ and Mr. A████ as to when they completed their answers to Question 3, leaves the Tribunal unsatisfied, on the balance of probabilities, that Mr. H████'s answer arose from cheating.
28. The Tribunal was also influenced in its decision by the somewhat ambiguous instructions in the test that students should "show all appropriate intermediate workings" [emphasis added]. There is clearly room for interpretation and it was conceded as part of the Provost's case that different students will show different degrees of intermediate workings. Further, the allegation of cheating, which in part relied on the lack of evidence of intermediate workings, was only brought to Mr. H████'s attention long after the mid-term, and long after he had disposed of his scrap papers. An allegation like this, which might be rebutted by a student if the matter is raised shortly after the test, should be brought promptly.
29. Further, the testimony of Mr. H████, Mr. A████, and the two other classmates who testified, was given in a straightforward manner and was consistent, both internally and with one another. No one saw Mr. H████ do anything unusual during the test. The students approached the answers differently. There was consistent evidence that the approach to the students by Mr. Colic occurred towards the end of the exam, after Mr. H████ said he had completed his answer to Question 3, and before Mr. A████ had begun his answer. And, as noted earlier, Mr. Colic testified that he watched Mr. H████ and Mr. A████ more closely after approaching them, and at no time saw Mr. H████ looking at Mr. A████'s exam paper.
30. Accordingly, the Tribunal was not satisfied, on the civil standard of a balance of probabilities, that either charge against Mr. H████ was made out, the charges were dismissed.

Dated at Toronto, this 27th day of April, 2012

A handwritten signature in blue ink, appearing to read "Paul Schabas", is written over a horizontal line.

Mr. Paul Schabas, Chair