

**THE UNIVERSITY TRIBUNAL  
THE UNIVERSITY OF TORONTO**

**IN THE MATTER OF** charges of academic dishonesty made on April 29, 2009;

**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 -

**K■■ K■■**

**Members of the Panel:**

Ms. Kirby Chown, Chair

Mr. Graeme Hirst, Faculty Panel Member

Ms. Nikola Cunjak, Student Panel Member

**Appearances:**

Ms. Lily Harmer, Counsel for the University

Ms. K■■ K■■, the Student, did not appear

**Preliminary**

- [1] A hearing of the Trial Division of the University Tribunal was convened on Tuesday February 10, 2009 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters 1995* (hereafter the "Code"), against the Student. The charges were set out in a letter to the Student dated September 18, 2007.
- [2] The Panel of the Tribunal was made up of Kirby Chown, Chair; Graeme Hirst, a faculty member; and Nikola Cunjak, a student member. Counsel for the University of Toronto was Lily Harmer. The Student was not represented and did not attend the hearing.

- [3] Three minutes after the time at which the hearing was scheduled to begin, the Student had still failed to appear. The University proposed to proceed in the Student's absence and the Panel heard submissions with respect to this.
- [4] Ms. Harmer presented the Panel with the affidavit of Betty-Ann Campbell, a law clerk, which described in detail the extensive efforts made to contact the Student, to notify her of the charges, to advise her of the seriousness of the charges and of the hearing before the Tribunal. As well, the Student was provided with a copy of the Notice of Hearing and the charges along with detailed disclosure of the evidence.
- [5] The Panel had to decide whether the University's attempts to provide the Student with notice were reasonable and whether they met the requirements set out in the *Code* and in the Statutory Powers and Procedures Act (hereinafter the "*SPPA*"). After considering the evidence in the affidavit of Ms. Campbell and the submissions of counsel, the Panel was satisfied that provisions in the *Code* and in the *SPPA* had been met and ruled that the University could proceed with the hearing in the Student's absence.
- [6] In particular, the Panel noted that in December 2008, the Student had responded to an e-mail from Ms. Campbell and provided her a new phone number and address for future correspondence. The Student acknowledged via e-mail on January 24, 2009 that she had received the disclosure brief but indicated she would not be able to return to Canada for the hearing and asked about alternatives. Ms. Harmer corresponded with the Student in January 2009 to review possible options but indicated if the matter could not be settled it would have to be heard by the Tribunal. The Student failed to respond to Ms. Harmer's correspondence or to the correspondence from Ms Campbell about choosing a hearing date. She was notified of the February 10, 2009 hearing date via email on January 6, 2009. Thus the Panel was satisfied that the Notice of Hearing, the charges, and the disclosure and the date for the hearing were brought to the Student's attention in a timely fashion.

### **Hearing on the Facts**

- [7] The charges are as follows:
- (1) On or about June 3, 2007, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by falsely advising Mr. Morteza Memari that you received a passing mark and were entitled to academic credit in ACT466H, contrary to Section B. 1. 3 (b) of the *Code*.

- (2) On or about June 4, 2007, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by falsely advising Professor Sam Broverman that you had written the tests administered in ACT466H and that you were entitled to academic credit for ACT466H, contrary to section B. 1. 3 (b) of the *Code*.
- (3) On or about June 11, 2007, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud, or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by falsely advising Mr. Morteza Memari that you received certain grades in three tests administered in ACT466H, contrary to Section B. 1. 3(b) of the *Code*.
- (4) On or about June 11, 2007, you knowingly forged or in any other way altered or falsified an academic record, and/or uttered, circulated or made use of such forged, altered or falsified record, namely, your purported test results for ACT466H, contrary to Section B. 1. 3(a) of the *Code*.
- (5) In the alternative to 4 above, on or about June 11, 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, and/or uttered, circulated or made use of such forged, altered or falsified document, namely, your purported test results for ACT466H, contrary to Section B. 1. 1(a) of the *Code*.
- (6) On or about June 12, 2007 you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by falsely advising Professor Sam Broverman that you received certain grades in three tests administered in ACT466H and that you were entitled to academic credit in ACT466H contrary to Section B. 1. 3(b) of the *Code*.
- (7) On or about June 12 2007, you knowingly forged or in any way altered or falsified an academic record, and/or uttered circulated or made use of any such forged altered or falsified record, namely your purported test results for ACT466H, contrary to Section B. 1. 3(a) of the *Code*.
- (8) In the alternative to 7 above, on or about June 12, 2007 you knowingly forged or in any other way altered or falsified a document or evidence

required by the University and/or uttered, circulated or made use of any such forged altered or falsified document, namely, your purported test results for ACT466H, contrary to Section B. 1. 1(a) of the *Code*.

[8] Particulars of the charges are as follows:

- (1) All material times you were a student at the University of Toronto in the Faculty of Arts and Science. In academic term Winter 2007 you were enrolled in ACT466H which was taught by Professor Sam Broverman.
- (2) On or about June 3, 2007 you contacted Mr. Morteza Memari, Associate Registrar at St. Michael's College, to question the grade of zero you received in ACT466H. You advised Mr. Memari that you had received a mark above fifty percent and that the recorded grade of zero was incorrect.
- (3) On or about June 4, 2007, you contacted Professor Sam Broverman, instructor for ACT466H, to question the grade of zero you received in ACT466H. You advised Professor Broverman that you had written the three tests administered in the course and that the grade of zero was incorrect.
- (4) On or about June 11, 2007, you contacted Mr. Memari again to question the grade of zero you had received in ACT466H, and you provided him with the purported marks you said you had received on the three tests administered in ACT466H.
- (5) On or about June 12, 2007, you contacted Professor Broverman and again stated that you had written the three tests administered in the ACT466H. You provided him with the purported marks you said you had received in those three tests. You further claimed you had received a passing grade in the course and had therefore earned 0.5 academic credit.
- (6) You did not write any of the three tests administered in ACT466H in the academic term Winter 2007; the marks you provided to Mr. Memari and to Professor Broverman were false; and you did not earn academic credit in ACT466H in that term.

[9] Counsel for the University indicated the University would be proceeding on charges 1, 2, 3 and 6. The other charges were withdrawn.

[10] The University called four witnesses: Professor Sam Broverman, Morteza Memari, Keith Broere and Phillip Ip.

[11] Professor Broverman knew the Student through his role as student advisor and as well because he had taught her in two prior courses. Professor Broverman testified that the entire course mark in ACT466H was based on three term tests written in class. He indicated that the Student was required to pass ACT466H in order to graduate from the specialist program.

[12] Professor Broverman testified that the Student contacted him before the start of the course to indicate she would have to fly over from Hong Kong for the term

tests and inquired whether alternative arrangements could be made to accommodate her. He told her that this would not be possible. Professor Broverman noted that the Student did not attend any of the lectures in ACT466H and was not present for any of the three term tests administered in the course. He confirmed that his teaching assistant, Keith Broere, came to each term test, had each student sign in and then checked the identification card of each student against the sign in list. At the conclusion of each test, the number of test papers was counted and cross checked with the head count and the sign-in list. Mr. Broere marked all three tests and returned them to Professor Broverman who then returned the tests to the students – the first two tests were returned in class and the third was returned after the conclusion of the term.

- [13] Prof Broverman testified that he did not receive any marked tests for the Student from Mr. Broere. He did not return tests one and two to the Student in class as there were no such tests to return and the Student was not present. The Student never made any effort to contact him with respect to picking up test number three.
- [14] Professor Broverman submitted the final marks for ACT466H on May 1, 2007. He gave the Student a mark of zero for each of the three tests and a course mark of zero for the whole course.
- [15] Convocation was June 14, 2007. On Monday June 4, 2007, Professor Broverman learned via e-mail from Morteza Memari, Associate Registrar for St. Michael's College, that the Student had contacted Mr. Memari via email to advise that she hoped to graduate on June 14, 2007 and indicated that her zero grade in ACT466 was incorrect. She asserted that she had accumulated a score above fifty percent on the three term tests and expected a passing grade in the course. Professor Broverman advised Mr. Memari that the Student had not in fact written any of the three term tests and as a result had correctly ended up with a mark of zero for each test and zero for the course.
- [16] The Student emailed Professor Broverman directly on June 4, 2007 with the same assertions. Professor Broverman reiterated that the Student's name was not on the two of the three term test sign-in sheets that he had in his possession nor did she ever come to his office to pick up the third test. He indicated that he was prepared to meet with the Student to discuss matters further. They met on June 13 but there was no resolution. Professor Broverman indicated she could discuss matters further with St. Michael's College Registrar, the Dean of Arts and Science if she wished.
- [17] Professor Broverman was shown a document entitled *Degree Request Form* dated March 22, 2007 which was submitted by the Student on or about April 20, 2007 to the Office of the Registrar and Student Services requesting confirmation that she had completed all of the requirements to graduate with an Hon BSc. On the form, her program status was indicated as complete. This was an error on the part of the University as the final marks for ACT466H had not yet been submitted.

- [18] Mr. Memari testified next. His testimony concerned the correspondence between the Student, himself and Professor Broverman over the student's assertions about ACT466H.
- [19] Mr. Memari reviewed the extensive e-mail correspondence between himself and the Student and himself and Professor Broverman. In this email correspondence, the Student repeatedly asserted that she had attended the lectures, had written the three term tests and had passed all three tests. She provided passing grades she alleged she had received for the three tests. Mr. Memari relayed this information to Professor Broverman but accepted Professor Broverman's statement that he had no record of the Student having taken the tests and that the correct mark for the course was zero and so advised the Student.
- [20] Mr. Memari testified that he advised the Student via email that she could speak to Professor Broverman to see if this matter could be resolved but if it could not, she would not be able to graduate on June 14, 2007. He also met with the Student on June 13, 2007 and explained how she could pursue this matter further with the Dean of the Faculty but based on the facts, he told her she could not participate in graduation.
- [21] The Student did not participate in graduation which was held on June 14, 2007.
- [22] The next witness was Keith Broere who was the Teaching Assistant for Professor Broverman in the ACT466H course during the relevant period in Winter 2007.
- [23] Mr. Broere testified that he did not know the Student. He explained the routine he followed for each term test which included handing out the tests, collecting signatures of the students on a sign in sheet, checking the students' identification against the sign in sheet, collecting the tests, counting them and cross checking them against the attendance list. He would then mark the tests and provide the corrected tests and the marks to Professor Broverman.
- [24] Mr. Broere supervised all three tests for ACT466H and followed the above procedures on each occasion. He marked all three tests. The Student did not sign in on the sign in sheet for any of the three tests. He had no exam papers from the Student for any of the three tests and accordingly did not assign her a mark for any of the tests.
- [25] Mr. Broere testified that it was not possible for a student to write a test and not sign in as he counted the number of tests at the end and cross checked that number with the headcount of the room and the sign in sheet. The students are kept in the room until this is reconciled. He had never had a discrepancy between the number of students and the number of tests and did not in Winter 2007.

- [26] He marked the third test in ACT466H in mid to late April and provided the marks electronically to Professor Broverman in a spreadsheet. His computer was password protected.
- [27] The final witness called was Dr. Peter Ip who works in the University of Toronto Computing and Network Services. He attempted to find information on where the Student was located when she logged into her computer and sent the various e-mails to Professor Broverman and to Mr. Memari. He did find that most of the ISP's were based in Hong Kong.
- [28] The Panel was presented with a document brief containing, inter alia, copies of the e-mails referred to above between the student and Mr. Memari and Professor Broverman as well as other University officials; her academic transcript, and her degree request.

### **Decision of the Tribunal**

- [29] After hearing the submissions of counsel and considering all the evidence, the Panel was satisfied that counsel for the University had proved the charges on the basis of clear and compelling evidence.
- [30] The Panel agreed that this was a unique case in which the Student had completely fabricated her involvement in an entire course in order to suggest she had taken the course and had completed three term tests with a passing grade in order to get her degree. Despite the Student's assertions in her e-mails that she had attended class, had written the term tests and had passed the course, the Panel found that there was overwhelming evidence that she did not attend class nor write any of the three tests. The Panel was persuaded by the careful and thorough procedures that Mr. Broere carried out in each of the three tests which supported the University's case that the Student in fact was not there and did not write any of the three tests.
- [31] The Panel did not place any weight on the evidence of Mr. Ip who attempted to discern where the Student was when she sent various e-mails to the University.
- [32] The Panel was satisfied on the evidence before it that the Student is guilty of the charges at paragraphs 1, 2, 3, and 6 and has committed the serious act of academic misconduct.

### **ADJOURNMENT OF HEARING**

- [33] The Panel adjourned the hearing after making this finding. The hearing was to be rescheduled at a future date for evidence and submissions re sanction. The hearing was subsequently adjourned to May 25, 2009.

[34] The Student did not attend the penalty phase of the hearing nor was she represented by Counsel.

### SANCTION

[35] On May 25<sup>th</sup> the hearing resumed for the penalty phase. The University argued that the appropriate sanction in this matter was:

- (a) recommendation to the Governing Council that the Student be expelled from the University.
- (b) in the interim, a five year suspension until Governing Council has considered the recommendation for expulsion, with notice of the suspension to be placed on the Student's record for six years or until graduation, whichever comes first.
- (c) that the Office of the Provost publish a notice of this decision in the University newspaper with the name of the Student withheld.

[36] The Panel considered the submissions by Counsel for the University and the principles for deciding the appropriate sanction as set out in the reasons for decision in the case of *The University of Toronto and Mr. C (November 5, 1976)* in the dissent of Mr. Sopinka, as he then was, which principles have been adopted consistently by Panels of the University Tribunal.

[37] The Panel considered the nature of the offence in this case. The Student did not attend any of the classes in ACT466, did not write any of the three mandatory tests yet asserted to the Associate Registrar and to her Professor that she had indeed been present, had indeed written the tests and had indeed passed and should therefore be allowed to graduate. Her conduct in June 2007 represented a prolonged series of misrepresentations and falsehoods as she attempted to persuade more than one individual at the University of these untrue assertions in order to graduate. The University responded to her assertions by actively trying to investigate the matter given her rapidly approaching graduation date. They did so in good faith but were unable to substantiate her claims.

[38] The Student's conduct was a direct assault on the academic integrity of the University. She attempted to get credit for a course she had not taken and to graduate based on false pretences. This clearly is in dramatic contrast to other students who have worked hard and legitimately to complete their courses and their degree requirements.

[39] The Student did not appear. As a result, the Panel was not provided with any information about any mitigating or extenuating circumstances that may have led



her to engage in this course of deception. As well, the Panel had no evidence relating to her character. We do however note that there is no record that the Student had committed any prior academic offences.

[40] The Panel was struck by the fact that at no point in this course of conduct did the Student admit to any mistake nor evidence any remorse over her actions. Although the Student initially co-operated with Counsel for the University with respect to this hearing, that co-operation and any communication soon ceased.

[41] Accordingly the Panel was unanimously of the view that the sanction requested by the University was appropriate.

[42] Therefore the Panel determines that the appropriate sanction is as follows:

1. recommendation to the Governing Council that the Student be expelled from the University. In the interim, that the Student to be suspended and that suspension be noted on the Student's record for a period of six years or graduation, whichever comes earlier.
2. that the Student receive a grade of zero in the course.
3. that the Provost publish a notice of this decision with the name of Student withheld.

I certify that this is the decision of the Panel

Nov 3, 2009  
Date

Kirby Chown  
Kirby Chown, Barrister and Solicitor (Chair)