

THE UNIVERSITY TRIBUNAL  
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on December 13, 2010,

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 -

J. O

REASONS FOR DECISION

Date of Hearing: February 16, 2011

Members of the Panel:

Mr. Jeffrey S. Leon, L.S.M., Chair

Professor Andrea Litvack, Faculty of Social Work, Faculty Panel Member

Mr. Eric Siu, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Barristers

Mr. Mike Canniffe, Legal Case Worker, Downtown Legal Services

In Attendance:

Mr. J. O., the Student

Professor John Browne, Dean's Designate, Faculty of Arts and Science

Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

1. A hearing of the Trial Division of the University Tribunal was convened on Wednesday, February 16, 2011 at 1:00 p.m. in the boardroom (Room 209), Simcoe Hall to consider charges laid against J O under the *Code of Behaviour on Academic Matters*, 1995 (the "Code").

2. Mr. O was in attendance and represented by counsel, a Law Student from Downtown Legal Services.

3. The issue in this case is whether the admitted conduct of Mr. O was a sufficiently serious breach of the Code so as to justify, in addition to a lengthy suspension, a recommendation of expulsion from the University. The Panel carefully considered the evidence, the submissions of counsel and relevant prior decisions of this Tribunal. We have concluded, for the reasons set out below, that Mr. O's conduct demonstrates such a flagrant disregard for and breach of the Code that the appropriate and necessary sanction in this case is:

- (a) A final grade of zero in the course MAT 133Y, which was taken in the Fall/Winter 2010-2011;
- (b) A suspension from the University, commencing February 16, 2011, for a period not to exceed five (5) years; and
- (c) A recommendation to the President of the University that he recommend to the Governing Council that Mr. O be expelled from the University.

#### THE CHARGES

4. Mr. O was charged as follows:

- (a) On October 26, 2010, you knowingly had another person personate you at a term test in MAT 133Y (the "Test" and the "Course"), contrary to Section B.I.1(c) of the Code;
- (b) In the alternative, on October 26, 2010, 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 connection with the Test in the Course, contrary to section B.I.3(b) of the Code.

5. The particulars were as follows:

- (i) You were registered at the University of Toronto and enrolled in the Course at all material times.
- (ii) You were scheduled to write the Test on October 26, 2010.
- (iii) You hired another person to attend and write the Test for you.
- (iv) You gave the other person your University of Toronto student card so that he could pretend to be you at the Test.
- (v) You hired and directed the other person to write the Test for you so that you might obtain an academic advantage in connection with the Test.
- (vi) Your conduct violated the Code.

#### EVIDENCE

6. This matter proceeded pursuant to an Agreed Statement of Facts. The substantive facts admitted are as follows:

##### *MAT 133Y*

- (a) MAT 133Y is an introductory survey of some basic theory and applications of calculus and linear algebra. It is currently taught by Prof. Abe Igefled. The final grade in the course comprised a final examination (50% of the grade), three term tests (worth 40% of the grade) and tutorial quizzes (10%).
- (b) In academic year 2008-2009, Mr. O enrolled in MAT 133Y for the first time. He scored 2 points on the 4 tutorial quizzes that he wrote. He received a grade of 52% on the first term test (of three) and withdrew from the course before the deadline for withdrawal.
- (c) In academic year 2009-2010, Mr. O enrolled in MAT 133Y for the second time. He scored 2 points on the 13 tutorial quizzes that he wrote. He did not

write any of the three term tests, but presented a medical note explaining his absence for the first two term tests. He did not write the final examination. On April 21, 2010, he petitioned for and was granted late withdrawal without academic penalty (WDR).

- (d) In September 2010, Mr. O enrolled in MAT 133 for a third time. He scored two points out on the 4 tutorial quizzes that he wrote.

#### *Advertisements*

- (e) In early September, starting on or around September 7, 2010, Mr. O placed a series of advertisements on free, internet-based classified advertisement websites. The three advertisements below are examples of the advertisements he placed.
- (f) On September 14, 2010, Mr. O placed an ad on the *Craigslist* website. This advertisement read:

Looking for a asian (Chinese, Korean) guy who graduated from or currently attending to U of T who is good at math.  
3 midterms + 1 final  
I will pay you \$1000 + bonus  
Caontact me at 647-300-8478  
(text preferred)

- (g) On September 14, 2010, Mr. O placed a similar advertisement on *Kijiji* website.
- (h) Mr. O also placed an advertisement on the *Telecommute Anywhere* website. The advertisement read as follows:

#### **Seeking a guy who graduated U of T**

Looking for an asian guy who is good at math (undergrad course)  
Undergrad and Graduates from U of T are welcome  
To help write 3 tests and a final  
I will pay you \$1000 and bonus  
Contact me for info  
You can reach me at 647-300-8478...

*October 25, 2010 – Department of Mathematics met with Mr. O*

- (i) The University learned of these advertisements in September. After some investigation, the University identified Mr. O through the telephone number that appeared in the advertisements, which he had listed in ROSI as his contact telephone number.
- (j) The Department of Mathematics contacted Mr. O and invited him to discuss the matter with them at a meeting. On October 25, 2010, Prof. Catherine Sulem (Associate Chair Undergraduate), Donna Birch (Undergraduate Advisor), and Prof. Igelfield (the "Departmental representatives") met with Mr. O.
- (k) The Departmental representatives showed Mr. O the three advertisements and asked him to explain himself.
- (l) Mr. O said that the advertisements were his attempt to find a private tutor who could communicate well with him to help him get through the course. He told the Departmental representatives that he had previously had difficulty with MAT 133, and that the references to money, the tests and the exam were his attempt to limit the cost of the tutoring.
- (m) The Departmental representatives found Mr. O credible, and by the end of the short meeting had concluded that he was telling them the truth. They encouraged him to make use of all the extra help facilities that the department makes available to students (tutorials, office hours, math aid centres) and to be more careful in the future about how he phrased things.
- (n) The meeting ended on good terms, and the Departmental representatives believed the matter was concluded.

*October 26, 2010 – MAT 133 Term Test #1*

- (o) Term Test #1 in MAT 133 was held from 6:10 to 8:00 p.m. on October 26, 2010, the day after Mr. O met with the Departmental representatives.

- (p) A person purporting to be Mr. O signed into the Term Test using Mr. O's student card.
- (q) The person began to write the Term Test. Prof. Igelfeld later determined that this person answered scored 40 out of 40 on the multiple choice questions, and 10 out of 10 on the long answer questions that he attempted.
- (r) At approximately 6:20 p.m., Prof. Igelfeld went to the room where Mr. O was scheduled to write Term Test #1. Prof. Igelfeld did not recognize Mr. O among the students in the room.
- (s) Prof. Igelfeld asked the teaching assistant collecting signatures to point out where Mr. O was sitting. When the teaching assistant did so, Prof. Igelfeld did not recognize the person sitting at the desk as Mr. O. Prof. Igelfeld asked the person if he had any identification in addition to the student card, which appeared to belong to Mr. O. The person said that he did not have any other identification with him.
- (t) Prof. Igelfeld asked the person if the two of them had met recently. The person said no, and started to pack up his things to leave the room. Prof. Igelfeld told him to continue writing the examination.
- (u) Prof. Igelfeld left the examination room, obtained a digital camera, and returned to the examination room at about 6:55. He then took a picture of the person who purported to be Mr. O.
- (v) The person writing the examination then packed up his things, handed in the Term Test, and left the examination room.
- (w) On October 28, 2010, Mr. O attempted to drop MAT 133. The Office of Student Academic Integrity reinstated Mr. O in the class because the department had a concern that Mr. O may have violated the *Code of Behaviour on Academic Matters*.

### *Admissions*

- (x) Mr. O admits that he knowingly:
- (i) placed advertisements on the internet in an attempt to hire someone to write his term tests and final examination for him in MAT 133;
  - (ii) hired a person going by the name of 'John' (surname unknown) to write the tests and examination in MAT 133 for him;
  - (iii) agreed to pay John a fee of \$1000 in exchange for John writing the term tests and examinations for him;
  - (iv) lied to the Departmental representatives during the meeting on October 25, 2010, regarding why he placed the advertisements;
  - (v) went ahead with his plan to have John write the Term test for him despite his meeting with the Departmental representatives; and
  - (vi) provided John with a copy of his student card so that John would be able to sign into the Term Test as Mr. O and to write the Term Test for him.

7. Mr. O admits that he knowingly had 'John' personate him at the October 26, 2010, Term Test in MAT 133.

8. On November 16, 2010, Mr. O met with Professor John Browne, Dean's Designate for Academic integrity, to discuss the allegation that he had violated the *Code of Behaviour on Academic Matters*. During this meeting, Mr. O admitted that he knowingly had John personate him at Term Test #1 in MAT 133.

### **PLEA**

9. Mr. O waived the reading of the charges filed against him and confirmed his plea of guilty to charges #1 and #2. The Panel was advised that if Mr. O was convicted on charge #1, the Provost would withdraw charge #2. The Panel considered the Agreed Statement of Facts and

found Mr. O guilty of charge #1, that he knowingly had another person personate him at a term test in MAT 133Y. Counsel for the University then withdrew charge #2. The hearing then proceeded to the Penalty Phase.

#### EVIDENCE ON PENALTY

10. Counsel for the University did not call any evidence.

11. Mr. O was called as a witness. Mr. O is 24 years of age and came to Canada in 2003 from South Korea to pursue his studies. He attended high school in Nova Scotia. He does not have any family in Canada. He moved to Toronto in order to obtain a degree from what he described as a "world famous" University. It was Mr. O's dream to graduate from the University of Toronto.

12. Mr. O described certain medical issues that he had in 2005. He testified that in 2006, he was the victim of an assault at the Scarborough Campus of the University, as a result of which he transferred to the Downtown Campus. He testified that the assault had a profound effect on him. Mr. O suffered from depression and other mental and social issues. He returned to South Korea for a period of time to "settle down" and then came back to Toronto.

13. Mr. O wanted to pursue studies in Economics. However, he could not do so because of his inability to pass the mathematics prerequisite (i.e., MAT 133Y). Mr. O described his desperation in wanting to pass the course. He acknowledged his conduct was wrong and indicated that he was ashamed. He apologized. At the time, he felt he had no other choice than to proceed with his plan to have someone write the exam for him in order to pass the course.

14. Mr. O expressed the desire to continue with his studies. He testified that he would try his best without taking advantage of others' efforts and would use the other resources available on campus to assist him.

15. Mr. O has no prior academic offences.

16. In cross-examination, Mr. O acknowledged that he had been the beneficiary of a number of prior accommodations on the basis of his illness. He had received extensions and



deferrals. He had been provided with direction through resources made available by the University and was advised more than once to get academic counseling.

17. Mr. O acknowledged that when he enrolled in MAT 133Y, he knew it was going to be a difficult course. He knew there were options available to him through teaching assistance, tutorials and otherwise, but did not seek such assistance. Rather, on the second day of classes, before availing himself of any opportunity to get help, he began to place the ads to find someone to write the examination for him. He acknowledged that this was his only strategy for passing the course.

18. Mr. O agreed that when he met with representatives of the Department of Mathematics, he did his best to persuade them that his intention was not to have someone else write the examination, that he was an honest student and that he was trying to get tutoring. He knew what he was doing was wrong, but he did not change his plans. He knew he could have walked away from the plan or petitioned for a deferral, but he carried on.

19. In response to a question from the Panel, Mr. O indicated that he had learned a lot from this experience. He indicated that he would not lie or take advantage of other people in the future. In his response, he did not indicate that he had any specific plan or strategy for continuing with his studies.

#### SUBMISSIONS ON PENALTY

20. Counsel for the University and for Mr. O agreed that Mr. O should receive a final grade of zero in the course MAT 133Y, which was taken in Fall/Winter 2010/2011. Counsel for the University requested that Mr. O be suspended from the University commencing February 16, 2011 for a period not to exceed five (5) years and that the Tribunal recommend to the President of the University that he recommend to the Governing Council that Mr. O be expelled from the University and that this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed with the name of the student withheld. Counsel for Mr. O proposed that Mr. O be suspended from the University, commencing February 16, 2011 for a period of five (5) years, ending on February 15,

2016 and that the case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed with the name of the student withheld.

21. Counsel also provided the Panel with numerous prior decisions of the Tribunal, including: *University of Toronto and C.* (November 5, 1976); *University of Toronto and M F W* (September 1, 2010); *University of Toronto and F.C.* (April 20, 2009); *University of Toronto and K.N.* (April 18, 2008); *University of Toronto and P.* (2000/01-07); *University of Toronto and C.* (2000/01-08); *University of Toronto and Mr. P.* (2000/01-07); *University of Toronto and K N* (April 18, 2008); *University of Toronto and V.A. and A.H.* (May 17, 2002); *University of Toronto and P.M.* (April 9, 2002); *University of Toronto and V W L S L* (April 6, 2006); *The University of Toronto and Ms. R.W.* (April 18, 2008 #502); *The University of Toronto and R.K.* (July 24, 2007 #494).

22. Counsel for Mr. O also provided a chart of "Representative Impersonation Cases".

23. Counsel agreed that impersonation for purposes of writing an examination is an extremely serious offence under the Code. Mr. Centa pointed to Appendix C of the Code, the Provost's Guidelines on Sanctions Offences and Suggested Penalties for Students, which provides that "for personating, or having an individual personate on a test or examination, the recommended sanction shall be expulsion from the University". The Panel recognizes it is not bound by this Guideline. However, the Panel agrees that knowingly having another person personate a student on an academic examination is one of the most serious offences under the Code.

24. In advocating for a recommendation of expulsion, Mr. Centa emphasized the planning process that was involved in this offence. This was not impulsive or spontaneous conduct. The course of conduct began on the second day of classes. It involved a commercial element, namely, an offer to pay someone to write the exam, with the potential for a "bonus". This was not a momentary lapse in judgment.

25. As aggravating conduct, Mr. Centa pointed to the meeting with the representatives of the Mathematics Department on the day prior to the exam. Mr. O could have changed his mind,

but instead, when confronted, he talked his way out of the allegations and proceeded with his plan.

26. The Panel agrees with Mr. Centa that this is aggravating conduct that makes Mr. O's pattern of conduct all the more serious. Although this is a "first offence", Mr. O, on these facts, has already been given another chance. Rather than taking advantage of that second chance, Mr. O lied, rejected any opportunity to find another means of passing or withdrawing from the Course and, in effect, flaunted the benefit of doubt he was given at this first stage of the academic process. It is difficult to conceive of a more egregious way to engage in this offence. Mr. O's conduct showed a total disregard for the academic process and the need for honesty in order to preserve the integrity of that process.

27. Mr. Canniffe urged the Panel to view this as a first offence. The Panel accepts that Mr. O ultimately admitted the offence, cooperated with the University, and plead guilty to the offence in accordance with an Agreed Statement of Facts. He also urged the Panel to consider Mr. O's circumstances in terms of his depression, desperation, family pressures and remorse.

28. Mr. Canniffe also argued that Mr. O would be unlikely to repeat the offence. He also argued that the lengthy suspension would meet the goals of both general and specific deterrence and would permit Mr. O's rehabilitation. A five-year suspension would be a significant sanction that would deter others and would recognize the importance of academic integrity. It would also allow Mr. O to attempt to complete his studies on his own merit by taking advantage of the resources offered to him by the University. He urged the Panel to not view this conduct as being in the same category as serial cheating.

29. As indicated, the Panel regards this particular course of conduct by Mr. O to fall within the most serious category of conduct involving personation of a student at an examination. The meeting on the day before the examination and Mr. O's determination to proceed with his plan notwithstanding what took place at that meeting, brings this case into that most serious category. In our view, anything less than a recommendation for expulsion would not indicate sufficient condemnation of this flagrant conduct and would not send the requisite, clear signal to both Mr. O and other students regarding the seriousness of this conduct.

30. Also, this was a proposed commercial transaction. It involved the payment of money and the prospect of a "bonus". The internet, social media sites and other relatively new electronic exchange services that are difficult to monitor create a proliferation of opportunities to advertise and recruit individuals who are prepared to, and able to, participate in schemes of personation in writing exams on a commercial basis. A forceful message that such conduct will not be tolerated is necessary to promote general deterrence.

31. Mr. O's conduct in lying his way through the initial meeting, spurning the options that were available to him at that point to take a different course of action and bring the scheme to a halt and his evidence at the hearing, which demonstrated no real appreciation of a plan for approaching his studies in the future, both support the recommendation of expulsion for purposes of specific deterrence, in addition to general deterrence. These factors also outweigh, in this particular case and on this evidence, the considerations identified by Mr. O's counsel which he argued supported a lesser sanction for the purpose of rehabilitation.

32. Respect for the University as an academic institution and respect for the integrity of the academic process require the sanction directed by this Panel.

## ORDER

33. The University Tribunal finds and orders:

- (a) THAT Mr. O is guilty of the academic offence of having another person personate him at an examination, contrary to section B.I.1(c) of the *Code of Behaviour on Academic Matters*;
- (b) THAT the following sanctions shall be imposed on Mr. O :
  - (i) he shall receive a final grade of zero in the course MAT 133Y, which was taken in Fall/Winter 2010-2011;
  - (ii) he be suspended from the University commencing February 16, 2011, for a period not to exceed 5 years.

- (c) THAT the Tribunal recommends to the President of the University that he recommend to the Governing Council that Mr. O be expelled from the University;
- (d) THAT this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanction imposed, with the name of the student withheld.

DATED at Toronto, August 25, 2011.



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Jeffrey S. Leon  
Co-Chair