

**THE UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL
TRIAL DIVISION**

IN THE MATTER OF charges of academic dishonesty filed on April 23, 2015,

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

B E T W E E N:

THE UNIVERSITY OF TORONTO

– AND –

Y (H) C

REASONS FOR DECISION

Hearing Date: Monday, June 22, 2015

Members of the Panel:

Ms. Sarah Kraicer, Barrister and Solicitor, Chair

Professor Bruno Magliocchetti, Faculty of Italian Studies, Faculty Panel Member

Ms. Alberta Tam, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Barristers

Ms. Tegan O'Brian, Law Student, Downtown Legal Services

Ms. Nicole Wilkinson, Law Student, Downtown Legal Services

Professor John Carter, Deans' Designate, Faculty of Applied Science and Engineering

Professor Manfredi Maggiore, Instructor ECE311H1: Dynamic Systems and Control

Professor Luca Scardovi, Instructor ECE311H1: Dynamic Systems and Control

In Attendance:

Y (H) C, Student

Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

Ms. Johanna Braden, Incoming Tribunal Co-Chair, Observer

REASONS FOR DECISION

1. The Trial Division of the University Tribunal was convened on June 22, 2015 to consider charges brought by the University of Toronto (the "University") against Mr. Y (H) C (the "Student") under the *University of Toronto Code of Behaviour on Academic Matters, 1995* (the "Code").

The Charges

2. The Charges against the Student are as follows:
1. On or about December 10, 2014, you knowingly used or possessed an unauthorized aid or aids or obtained unauthorized assistance in connection with the final examination in ECE311H1 – Dynamic Systems and Control, contrary to section B.I.1(b) of the *Code*.
 2. In the alternative, on or about December 10, 2014, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation and otherwise described in the *Code* to obtain academic credit or other academic advantage of any kind, contrary B.I.3(b) of the *Code*.

Particulars

The particulars of the offences charged are as follows:

- (a) At all material times you were a student registered at the University of Toronto in the Faculty of Applied Science and Engineering.
- (b) In Fall 2014 you enrolled in ECE311H1, which was taught by Professor. Manfredi Maggiore and Professor Luca Scardovi.

- (c) You wrote the final examination in ECE311H1 on December 10, 2014, which was worth 50% of the course mark ("Exam"). No aids were allowed in the Exam.
- (d) During the Exam you were found in possession of three unauthorized aids in the final exam, being lecture notes, the prior year's final exam, and solutions to a homework assignment.
- (e) At that time you signed an Acknowledgement of Possession of Unauthorized Exam Aid(s) During a Faculty Examination form in which you confirmed that you had been found in possession of the three documents during the exam, and that in doing so you had committed an academic offence under the Code.

Plea to the Charges

3. The Student entered a plea of not guilty to the charges. He also stated that particular (c) was factually incorrect, in that prescribed authorized aids were allowed in the Exam. The University agreed with this correction.

The Evidence

4. The Tribunal heard evidence from the two professors who invigilated the final examination on December 10, 2014 in ECE 311, Professor Manfredi Maggiore and Professor Luca Scardovi, from the Student, and from the Dean's Designate Professor John Carter.

5. Much of the evidence is not in dispute. The Student does not deny that he brought a previous year's examination (questions only), a marked homework assignment, and lecture notes – all unauthorized aids – into the final examination and had them on his desk when the examination commenced. He does not dispute that he was aware of the rules of this examination, and knew that these documents were not

authorized aids. What is in dispute is whether effects of illness or medication prevented the Student from knowing that the unauthorized aids were present on his desk.

6. The Student was enrolled in the Fall 2014 section of ECE 311- Dynamic Systems and Control, a course open to 3rd and 4th year students in the Faculty of Applied Science and Engineering, taught by Professors Maggiore and Scardovi. The final examination in ECE 311H1 was worth 50% of the course grade.

7. The rules for what was allowed to be brought into the examination were set out on the first page of the examination booklet, and were also written by Professor Maggiore on the blackboard of the examination room and announced again by him verbally as the students entered the examination room. Students were permitted a non-programmable calculator, and a one-page handwritten aide sheet. The aide sheet is one sheet of paper on which the student can handwrite his or her own notes of anything the student thinks could be useful during the examination – e.g. formulae, drawings, examples.

8. The students wrote the examination in two adjacent rooms, each of which were invigilated by a professor and by tutorial assistants. The Student was seated in the room in which Professor Maggiore was invigilating.

9. A few minutes after the examination commenced, a teaching assistant in the room approached Professor Maggiore and advised that one of the students had an unusually high pile of papers on his desk. Professor Maggiore went to the Student's desk and observed that there was a neat pile of papers approximately .7 cm thick stacked underneath the Student's examination booklet. Professor Maggiore lifted up the examination booklet and saw 3 stapled documents underneath. He described these documents as being "concealed" under the examination booklet.

10. Professor Maggiore took away the three documents and permitted the Student to continue to write the examination. The documents were 1) solutions to homework

assignment # 3 in the course 2) a final examination from 2013 with no solutions and 3) a photocopy of Professor Maggiore's personal lecture notes for the course (approximately 100 pages). All of these documents were unauthorized aids in the examination.

11. These lecture notes were not meant for distribution for students, and Professor Maggiore could not say how they had ended up in the Student's hands. He found it "a little upsetting" that his personal lecture notes were in the Student's possession. The Student was not asked about this and provided no evidence about how he had obtained these lecture notes.

12. At the conclusion of the examination, the Student spoke to both Professor Maggiore and Professor Scardovi. The Professors stated that the Student was very apologetic, saying he was very sorry, that he realized he had made a mistake, and that he "was not thinking straight". The Student did not mention being on any medication or having an illness. The Student appeared shaken and asked that the Professors not report the incident further. The Student's evidence was consistent with this, saying he apologized for disrespecting the professors and for having "stuff on my desk that I was not supposed to have".

13. The Student testified that he had been ill with food poisoning on the previous day, December 9, 2014. He saw a doctor, who recommended he take over-the-counter medications Imodium and Gravol for his symptoms. The Student had an examination in ECE 314 on December 9 and submitted a petition to the Registrar with a Doctor's note in relation to that examination.

14. On the morning of December 10, 2014, the Student was feeling tired and dizzy, after studying late into the night, and took Imodium and Gravol. He stated that he put "stuff" relating to his course review into his backpack, thinking he might look at it before the examination.

15. The Student did not prepare a handwritten "aide sheet", although he knew that he was permitted to bring such an aide sheet into the examination.

16. Before the examination began, the Student emptied the contents of the backpack onto his desk including the three unauthorized documents. When asked why he did that, he said "I didn't think too much about it". When asked whether he knew the documents were on his desk when the examination began, he stated "I'm not too sure" and "not exactly, I wasn't focusing on it". He also stated at a different point in his testimony that he only realized the documents were there when Professor Maggiore came over and took them away.

17. The Student acknowledged on cross-examination that he knew the rules about what aids were permitted in this particular examination. He agreed that he knew he was not permitted to bring into the examination any lecture notes, previous homework assignment, or prior examination questions. He admitted that he should have known that these documents were not allowed at the examination.

Evidence re Acknowledgement Form and Discussions with Dean's Designate

18. Immediately after the examination was concluded, the Student spoke with Professors Maggiore and Scardovi. Professor Maggiore advised the Student that he was required to report the incident to the undergraduate office, and presented him with a form entitled "Acknowledgement of Possession of Unauthorized Exam Aid(s) During a Faculty Final Examination", that the professor had partially filled out to describe the three documents he had confiscated from the Student's desk.

19. There is no dispute that the Professors advised the student to read the form carefully, that the Student was clearly distressed and upset at the time, and that he hesitated before signing it. The Professors testified that they told the Student that he was not required to sign the form. They advised him that they were required to submit the form to the undergraduate office, and that it was not them but that office that would

make a decision about the consequences. The Student testified that he didn't actually read the form, although he was advised to do so and was given an opportunity to do so. He testified that he was told by the professors "you don't have to sign it, but you should".

20. The Student signed the "Student Acknowledgement" on the form. His evidence was that Professor Maggiore said sign it, "so I did". The form states "I agree that the above statements are correct and true and that, by bringing an unauthorized aid into a Faculty final examination, I have committed an academic offence under the University's Code of Behaviour on Academic Matters. If this is my first offence, I understand that I will receive a formal written reprimand for this offence for the Vice Dean of the Faculty. I acknowledge that the unauthorized aid was returned to me at the end of the examination".

21. This was the first time that these Professors had had to report an unauthorized examination aid, and both they and the Student were unfamiliar with the form and with the precise procedure to be followed. While the Tribunal finds that the Professors did not tell the student that he had to sign the form, given the Student's distress, and the general lack of familiarity of the parties with the process and the form, it is plausible that at the time he signed the Acknowledgment the Student did not understand he was admitting having committed an offence under the Code of Behaviour. The Tribunal therefore does not rely on this form as evidence of an admission by the Student that he committed the offence.

22. The Student subsequently met with Professor John Carter, Deans' Designate-Academic Affairs in mid-December 2014 to discuss the incident. Professor Carter stated that the Student advised him at that meeting that he was admitting to the academic offence. The Student offered the explanation that he was ill with food poisoning, had been to see a Doctor the previous day, was taking over-the-counter medications which affected his judgment about the aids he had brought into the area.

23. Professor Carter then wrote to the Student to advise that he was imposing a penalty of a mark of zero in the course. Because of his cumulative low academic standing, this mark in this course meant that the Student's grades were too low to permit him to continue his studies with the Department of Applied Science and Engineering.

24. The Student subsequently revoked the admission of guilt he made with the Dean's Designate.

25. The fact that the Student admitted and later revoked the admission of guilt made at the meeting of the Dean's Designate was not relied on by the University in argument. The Tribunal has not relied on the Student's interactions with the Dean's Designate in making its decision regarding the Charges.

Decision of the Tribunal on the Charges

26. The onus is on the University to establish on clear and convincing evidence on a standard of probabilities that the academic offence charged has been committed.

27. The Student is charged under Charge 1 with knowingly using or possessing an unauthorized aid or aids in connection with the final examination in ECE 311. Under the Code, the offence of "knowingly possessing" an unauthorized aid is deemed to have been committed if the person knew or reasonably ought to have known that he or she possessed the unauthorized aid.

28. In the view of the Tribunal, the following undisputed facts around the circumstances of the examination support the inference that the Student knowingly possessed unauthorized aids during the examination. (There is no evidence and it is not suggested by the University that the Student actually used those aids during the examination):

- (a) The Student acknowledged that he knew the applicable rules for permissible aids in the final examination for ECE 311.
- (b) The Student admitted that he knew that he was not permitted to have the professor's lecture notes, a previous homework assignment, or a prior examination question paper on his desk.
- (c) He also admitted to bringing those documents into the examination and placing those documents on his desk at the outset of the examination.
- (d) In addition, the Student must have handled the documents after he removed them from his knapsack, as they were observed in a neat pile under his examination paper.
- (e) Since the Student did not prepare a study aid, he could not have mistaken the unauthorized documents on his desk for a permissible study aid.

29. In addition, the Student gave vague and somewhat contradictory answers when asked whether he knew the documents were on his desk at the outset of the examination. He said he dumped the contents of his knapsack onto his desk. He said he was "unsure" and "didn't focus" on whether the documents were there or not, but also said that he only became aware of the documents when they were taken away by Professor Maggiore.

30. The explanation the Student gave for having the unauthorized aids on his desk was that he was feeling ill since the previous day and had taken over-the-counter Imodium and Gravol which impaired his judgment. It is difficult to understand how the illness or medication he described would have affected his judgment to the extent that, despite knowing the rules, he was unaware of the fact that he placed documents on his desk under his examination booklet and that those documents were not permitted aids in this examination.

31. Further, there is minimal evidence to support this explanation. The Student did not provide any further details of what he was thinking or how he was feeling when he

placed the documents on his desk. The Student led no evidence from any doctor or health professional about his health on December 10 or about the possible effects of the Imodium or Gravol on his mental state on that day. While he stated that he filed a petition and doctor's note regarding an examination the previous day, no evidence about that petition or that note was before the Tribunal. Moreover, in his discussions with the Professors immediately after the examination on December 10, the Student did not mention any illness or medication, just that he was "not thinking straight" at the time and was sorry.

32. In the view of the Tribunal, the Student's explanation that illness and/or medication resulted in him not knowing that he possessed the unauthorized aids is not plausible, and is not supported by any cogent evidence. To the contrary, there is clear and convincing evidence from the University witnesses and from the Student himself that he knew the rules for this examination, knew that he was not permitted to have lecture notes, a homework assignment or the previous year's examination paper with him at the examination, and that he nevertheless brought those documents into the examination and placed them on his desk under his examination paper.

33. The Tribunal finds that the Student knowingly possessed unauthorized aids at the examination.

34. The Tribunal finds that the Student is guilty of Charge 1.

35. Charge 2 was withdrawn by the University.

Decision of the Tribunal on Sanction

36. The University sought the following sanctions:

- (a) a final grade of zero in the course ECE 311;

- (b) a suspension from the University of Toronto from the date of this order for a period of two years;
- (c) a notation of the sanction on his academic record and transcript from the date of this order for a period of three years, and,
- (d) that this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with the Student's name withheld.

37. The Student sought the following sanctions:

- (a) A grade reduction in the course ECE 311 to 50%. This grade would allow him to continue in the Applied Science and Engineering program;
- (b) A suspension from the University of Toronto from the date of this order for a period of two years;

38. The University led additional evidence at the sanction stage that in January 2011, the Student admitted to committing the academic offence of plagiarism with respect to a lab in a first year course in APS105H1F, worth 3% of the final mark in that course. The Student received a penalty of a mark of zero for the lab, and was advised that in the event of a 2nd offence, the penalties would be much more severe.

39. The Tribunal has considered the principles and factors relevant to sanction set out in *University of Toronto and Mr. C* (Case No. 1976/77-3; November 5, 1976). These factors include the character of the person charged, the likelihood of repetition of the offence, the nature and seriousness of the offence and the detriment to the University occasioned by the offence, any extenuating or mitigating factors surrounding the commission of the offence, and the need for specific and general deterrence. The determination of an appropriate penalty in every case by the Tribunal will depend on an assessment of these principles and factors in the individual circumstances of the case. At the same time, it is important that there is general consistency in the approach of Tribunals to sanction, so that students are treated fairly and equitably. (Discipline

Appeal Board, *University of Toronto v. D.S*, Case No. 451; August 24, 2007).

40. The Student took a degree of responsibility for his own conduct, admitting that he knew the rules of this examination, that he had documents in his possession during the examination (after they had been discovered) and that these documents were not authorized aids. He also expressed genuine regret and remorse and apologized for this conduct immediately to the Professors and to the Dean's designate, and to some extent, also in his testimony before the Tribunal. He did not, however, demonstrate any insight into the reasons for his misconduct, other than attributing it unconvincingly to illness and/or medication. This is also not an isolated incident, but the second academic offence committed by the Student.

41. The Student committed a second offence after receiving a relatively lenient penalty for a prior offence and after receiving a strong warning that future misconduct would be subject to severe penalties. The fact that the warning did not deter him from committing a second offence increases the likelihood of repetition. On the other hand, the prior offence was over three years ago, in the first term of his first year of studies, and involved a different form of misconduct (plagiarism, not using an unauthorized aid). These circumstances moderate somewhat the risk of repetition of the offence.

42. The presence of mitigating or extenuating circumstances is another factor. For the reasons set out in its decision on the charges, the Tribunal does not consider the limited evidence it has received regarding the Student's illness and use of medication on the day of the examination to amount to an extenuating or mitigating circumstance for the commission of this offence.

43. The misconduct is serious and causes serious detriment to the University. The Code provides that the University has a responsibility to ensure that academic achievement is not obscured or undermined by cheating, and both the University and students have a responsibility to ensure that conditions that might enable cheating not be tolerated. Bringing an unauthorized aid into a final examination threatens the

academic integrity of the University and breaks an important rule that guards against cheating in final examinations. The Student was aware of the rule, yet brought three unauthorized aids into the examination, two of which could potentially have provided him with assistance in the examination. While he did not use the aids during the first minutes of the examination before they were confiscated, which would have been even more serious, they were potentially helpful and were available to him on his desk under his examination booklet.

44. Specific deterrence was the primary factor relied upon by the Student in arguing that he should receive a mark reduction in the course to 50%, rather than to 0%. He argues that a mark of zero would have a disproportionately severe impact on him, because it would result in him being required to permanently withdraw from the engineering program due to low overall grades. If he were to receive a mark of 50%, he could continue in this program after the period of any suspension. The University does not disagree that these would be the consequences of the grade of zero sanction it seeks, but argues that the Student's poor academic record is not grounds for leniency but instead should have made him more cautious about contravening the Code.

45. The Student was on academic probation after the Fall 2010 session. He failed and was required to withdraw for 8 months after the Fall 2011 session. He was permitted to proceed again in the Fall of 2012. In Fall 2014 his cumulative GPA (not including a grade for ECE 311) was 1.81 and his sessional GPA was 2.1. The Tribunal was advised that the Student's examination was marked, and if no penalty at all were assigned to it, he would have received a mark of 56% in ECE 311. Therefore, if the grade in the course were lowered to 50% as requested by the Student, this would amount to a 6% grade reduction in the course.

46. The Student relies on *University of Toronto v. P.T.* (Case No. 655; September 26, 2012). In that case, a Tribunal reduced a course grade to 50% rather than zero on the charge of possessing an unauthorized aid, where it was the last course the student needed to complete his degree requirements. That case had different circumstances

than the present one, in that the student admitted misconduct at an early stage, had no discipline history (although he admitted to 3 incidents of misconduct in the proceedings before the Tribunal). Most significantly, the 50% grade sanction was agreed to by the University and the student in a joint submission on penalty. The Tribunal itself commented that the penalty was low, stating "absent the joint submission the Tribunal would have considered a more serious penalty". We agree with the Tribunal's comment in that decision that this penalty appears low, and we do not consider that the different circumstances of the case before us, including the fact that it is a second offence, warrant a similar penalty.

47. The Tribunal recognizes that a grade of zero in this course is a penalty that would have a severe impact on the Student's ability to continue in the engineering program. However, it is the view of the Tribunal that a grade reduction of 6% is far too little to reflect the seriousness of the misconduct in this case or to serve as deterrent to other students. Further, the fact that the Student already has a poor academic record is not a principled reason for granting leniency in a mark reduction penalty. Indeed, reducing a penalty to cushion a student from the cumulative effect of that penalty on his overall grades would run contrary to the principles of general deterrence, as it would give students with a poor academic record less of a disincentive to cheat than those with a good record.

48. The University relies on a number of Tribunal cases dealing with sanctions for possession of an unauthorized aid on the examination. In all of these cases, in contrast to the *University of Toronto v. P.T.* case, a mark of zero in the course was imposed as one of the sanctions to denote the seriousness of the misconduct and the need to deter other students who might be tempted to cheat.

49. Many of these Tribunal cases, including *University of Toronto v. P.T.*, also imposed a suspension and a notation of the suspension of 1-3 years. The Student did not object to the University's proposed suspension of two years. In the view of the Tribunal, the fact that this was a second offence, together with the other factors

reviewed above, warrants a suspension of two years and a notation of three years in addition to the reduction of the course mark to zero.

Order of the Tribunal

50. The Tribunal issued the following Order on June 22, 2015:

1. **THAT** Mr. C [REDACTED] is guilty of one count of unauthorized aid / assistance, contrary to section B.I.1(b) of the *Code of Behaviour on Academic Matters*;
2. **THAT** Mr. C [REDACTED] receive a final grade of zero in ECE311H1 in Fall 2014;
3. **THAT** Mr. C [REDACTED] be suspended from the University for a period of 2 years, commencing on June 22, 2015 and ending on June 21, 2017;
4. **THAT** the sanction be recorded on Mr. C [REDACTED]'s academic record and transcript to the effect that he was sanctioned for academic misconduct, for a period of 3 years from the date of this Order, to June 21, 2018, or until his graduation from the University, whichever is earlier;
5. **THAT** this case shall 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.

Dated at Toronto this 10 day of August, 2015



Ms. Sarah Kraicer, Co-Chair

