

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL – TRIAL DIVISION**

IN THE MATTER of charges of academic dishonesty made on
April 21, 2008;

AND IN THE MATTER of the *University of Toronto Act*, 1971,
S.O. 1971, c. 56 as amended S.O. 1978, c. 88;

AND IN THE MATTER OF the University of Toronto *Code of
Behaviour on Academic Matters*, 1995;

BETWEEN:

UNIVERSITY OF TORONTO

-and-

Mr. S.M.

Members of the panel:

- John A. Keefe, Chair
- Professor Bruno Magliochetti, Faculty Member
- Ms. Marisa Maharaj, Student Panel Member

Appearances:

- Jennifer Murdock and Michael Hamilton from Downtown Legal Services for Mr. S.M., the Student (the Student not in attendance)
- Lily Harmer, Assistant Discipline Counsel for the University of Toronto.

REASONS FOR DECISION

1. The University Tribunal was convened on Wednesday, September 24, 2008 to hear two charges under the *Code of Behaviour on Academic Matters*, 1995 (the “Code”) laid against the Student, by letter dated April 21, 2008 from Professor Edith Hillan, Vice-Provost, Academic of the University.

2. At the outset of the hearing, the Tribunal was advised that the matter would proceed on an Agreed Statement of Facts dated September 24, 2008 and on an Agreed Statement of Facts on Sanction dated September 24, 2008.
3. The Student through his representative pleaded guilty to count 1 of the charges. On the basis of the Agreed Statement of Facts, the remaining charge was withdrawn.

The Charge

4. The charge upon which the Student agreed to plead guilty (hereinafter referred to as the “Charge”) is the following:

On or about November 8, 2007, you knowingly forged or in any other way altered or falsified a document required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a mid-term exam Scantron answer form, submitted for academic credit in PSYB01, contrary to Section B.i.1.(a) of the Code.

5. The Agreed Statement of Facts was signed by counsel for University and by counsel for the Student with the authority from the Student on September 24, 2008.
6. The Agreed Statement of Facts described the background facts as follows:
 - i. The University of Toronto at Scarborough (the “University”) admitted the Student to its Honours Bachelor of Science Program in the fall of 2005. At the time of the Student’s admission, the University applied 6.5 transfer credits that he had earned during his previous attendance at Brock University. At the end of the Fall 2007 term the Student had accumulated a total of 11 credits (including the transfer credits).
 - ii. In the Fall 2007 academic term, the Student was enrolled in four half-courses, including PSYB01 H3 - Psychological Research Laboratory.
 - iii. The Student has been charged by the University with an academic offence contrary to the Code of Behaviour on Academic Matters, 1995 (“Code”), in Charges dated April 21, 2008, alleging the alteration or falsification of a mid-term test worth 40%

of final grade and the re-submission of the altered and falsified mid-term test for academic credit in PSYB01.

- iv. Professor Mathias Niemeier was the course instructor in PSYB01. He had two teaching assistants for this course. A detailed course outline was provided to students.
- v. The course requirements consisted of a mid-term test worth 40% of the course mark, and an end of term test worth 60%. It is the mid-term test (the "Mid-Term") that forms the subject matter of the allegations of academic misconduct against the Student.
- vi. On or about October 19, 2007, the Student wrote the Mid-Term which consisted of 100 multiple choice questions. Students were required to mark the answers to these questions in pencil on a scantron sheet. Each question was worth the same.
- vii. The Student attended the Mid-Term on October 19, 2007, filled in a scantron sheet with his name and student number, and recorded his answers to the Mid-Term on the Scantron sheet ("Student's Scantron"). He submitted this scantron sheet at the end of the test.
- viii. All of the scantron answer sheets, including the Student's Scantron, were submitted to IITS, the University scanning service, and an electronic record was made of all the answers given on each of the scantron sheets.
- ix. Professor Niemeier made the Mid-Term scantrons available to students in PSYB01 for viewing at special office hours on several days between October 31 and November 8, 2007. These viewing sessions were supervised by one of the teaching assistants for the course, who returned all of the scantron sheets to Professor Niemeier's office after each session.
- x. On November 8, 2007, Professor Niemeier received an email from the Student. The Student stated that:
 - a. he had just looked over his scantron that day (November 8);
 - b. he now knew why he had not passed the Mid-term;
 - c. he did not have an answer for question 45 or 46, and "I must have skipped that question by accident. So all my answers after 45 or 46 is now the answer for the next question or the answer for the question below", so that some of his answers were wrong;
 - d. he wrote the correct # after 45 or 46 on top of the scantron.
- xi. In this same email the Student asked Professor Niemeier to go through the Student's Scantron, to remark it. He further suggested that he expected his mark to go from a failing grade to around 80%.

- xii. Professor Niemeier reviewed the resubmitted Student's Scantron, and calculated a change in the mark based on the information provided by the Student from an initial score of 41 % to a regraded score of 75%. A comparison of the answers marked on the physical Student's Scantron and the electronic record of the answers scanned by the IITS scanning services after the mid-term showed many differences. In particular, the electronic version did not reflect that the Student had skipped question 46.
 - xiii. Professor Niemeier requested an investigation by IITS. They conducted an investigation, and concluded that:
 - a. there were no problems with the scantron hardware or software;
 - b. more than 50% of the "bubbled answers" on the Student's Scantron did not match the original scantron results, yet comparison of a control student's results were identical to the original scantron; and
 - c. the Student's Scantron does not appear to contain the same answers as the sheet originally scanned for this student.
 - xiv. While viewing his graded Mid-Term, the Student altered and falsified the answers in respect of numerous questions on the Mid-Term. Specifically, the Student enhanced the answers to increase his total grade from 41 to 75.
 - xv. The Student admits that he altered or falsified the Scantron and resubmitted the altered version to Professor Niemeier for academic credit, contrary to Section B.i.1(a) of the Code, and that he did so to improve his grade in the course.
 - xvi. The Student admits that he is guilty of Charge #1 in the charges dated April 21, 2008;
 - xvii. In summary, when the Student appears before the University Tribunal, he will plead guilty to charge #1 of the Charges filed by the University on April 21, 2008.
 - xviii. The Student acknowledges that the University has advised him to obtain independent legal advice before signing the Agreed Statement of Facts and that he has either done so or deliberately waived that right.
7. Counsel for the Student acknowledged on his behalf that the facts set out in the Agreed Statement of Facts were true and that she was authorized by him to sign the Agreed Statement of Facts. On this basis the Tribunal accepted the plea and found that the facts supported the finding of a contravention of the Code as set out in the Charge.

8. Although not expressly set out in the Agreed Statement of Facts, it was acknowledged by both parties that the Student acknowledged his wrong-doing at an early opportunity when confronted with the allegation of academic misconduct.

Joint Submission on Sanction

9. The parties submitted a Joint Submission on Penalty dated September 24, 2008. The following sanctions are recommended in the Joint Submission:
 - i. The University of Toronto and the Student submit to the Tribunal that the appropriate penalty in all of the circumstances is:
 - a. assignment of a grade of zero in PSYB01 H3 in the Fall 2007 session;
 - b. the Student be suspended from attendance at the University of Toronto for a period of 3 years, from the date of the hearing;
 - c. a notation be placed on the Student's transcript from the date of this hearing for a period of 4 years or his graduation from the University, whichever occurs first, to the effect that he was sanctioned for academic misconduct.
 - ii. The University of Toronto and the Student submit that the Tribunal should report this case to the Provost who may publish a notice of the decision of the Tribunal and the sanction or sanctions imposed with the Student's name withheld.
 - iii. The University of Toronto states that but for the mitigating circumstances described in paragraphs 11 to 16 of the Agreed Statement of Facts on Sanction it would be seeking a longer period of suspension and a longer notation.
 - iv. The Student acknowledges that the University of Toronto has advised him to retain independent legal counsel before signing this Joint Submission on Penalty and that he has either done so or deliberately waived that right.

Agreed Statement of Facts on Sanction

10. The parties submitted an Agreed Statement of Facts on Sanction dated September 24, 2008 which described the aggravating and mitigating circumstances which were

submitted to the Tribunal to support the Joint Submission on Penalty. These facts are as follows:

First Offence

- i. The Student admitted to committing an academic offence in a dean's meeting on March 29, 2006 in connection with a term test in the 2005 Fall Session in PSYB65H3F. When the Student attended at the course Tutorial Assistant's office to review his test answers he removed his original answer paper and substituted a different answer paper containing more correct answers. He thereby attempted to increase the mark he received on the term test from 20 out of 44 to a grade of 41 out of 44. The term test was worth 50% of the course mark.
- ii. The Student's explanation was that he had experienced a number of incidents of family distress, including his grandmother's death, his sister's suicide in February 2000, and his father's open-heart surgery.
- iii. The Dean's Designate imposed a sanction of a mark of zero on the test with an additional 50% mark reduction, resulting in a mark of zero for the course. She further placed a notation on the Student's transcript for a period of one year from March 31, 2006.
- iv. The Dean's Designate further advised the Student that a second offence would result in a far more severe penalty, and that all acts of academic dishonesty are taken seriously and cannot be tolerated. The Student was admonished not to do anything similar again.

Second Offence

- v. At a meeting on June 26, 2007 with the Dean's Designate, the Student further admitted to having committed an academic offence in connection with a deferred examination written in April, 2007, in PSYB32H3F. In particular, the Student had been permitted to defer his December, 2006 exam in the course until April 24, 2007. The exam the Student submitted in April was not the correct version for April, 2007, but was instead the version set for December, 2006. The Student brought the December examination booklet into the April examination room, having pre-written some answers in advance. He then took apart the April exam booklet, inserted the December booklet that he had brought with him, and submitted this with the April cover on the front to make it appear as if he had written the answers in the exam room.
- vi. The Student explained to the Dean's Designate that he had been under stress, that his sister had committed suicide, and that his father had health problems. He further advised that he was on medication. He offered to bring supporting letters from a physician and a psychologist, but did not follow through.

- vii. Due to administrative oversight, the Dean's Designate was not aware at the time of this meeting that Mr. M■■■■ had already been sanctioned for the commission of a previous academic offence. She imposed a sanction of a grade of zero in the course, and a six month notation from June 1, 2007. The Dean's Designate also warned that a second offence would automatically result in a far more severe penalty.

Current Academic Status

- viii. The Student has not enrolled in classes at the University since the end of the Fall 2007 session, and has no intention of re-enrolling at this time.

Mitigating Circumstances

- ix. In February of 2000, the Student's sister committed suicide. Following the loss of his sister, the Student began to see a clinical psychologist in 2002 and continued such counseling through 2007. During that time, the Student was diagnosed to be suffering from Chronic Depression and Anxiety due to abnormal grieving. His symptoms included crying spells, low self esteem, loss of interest, poor concentration, social isolation, poor sleep and appetite, lack of motivation, and survivor's guilt.
- x. As a result of his sister's suicide, the Student's family experienced other distress, including the deterioration of his father's health which resulted in open-heart surgery and a continued delicate disposition. The family has continued to struggle and grieve the loss of the Student's sister.
- xi. Due to the Student's psychological condition and family situation, it was difficult for him to cope with stress and his academic commitments. The Student cited both family distress and his psychological condition as reasons for his prior offences. No documentation was supplied by the Student at his Dean's meetings.
- xii. In October and November of 2007, the Student continued to experience a high level of depressed mood and anxiety, and was taking anti-depressant medication prescribed by his medical doctor. The Student was also on academic probation because of his poor academic performance.
- xiii. The Student's prognosis for recovery from his diagnosis is poor given the chronic and severe nature of his problems.
- xiv. A copy of a report from the Student's psychologist, Dr. Godwin Lau, dated August 28, 2008 was provided.
- xv. The Student acknowledges that the University of Toronto has advised him to obtain independent legal advice before signing this Agreed Statement of Facts and that he has done so.

Guidelines on Penalty

11. The Factors to be considered when determining penalty are well established:
- (a) the character of the person charged;
 - (b) the likelihood of a repetition of the offence;
 - (c) the nature of the offence committed;
 - (d) any extenuating circumstances surrounding commission of the offence;
 - (e) the detriment to the University occasioned by the offence;
 - (f) the need to deter others from committing a similar offence.¹

Conclusion on Penalty

12. The Student was not in attendance at the hearing. His counsel advised the Tribunal that he was not able to attend due to the psychological condition described in the Agreed Statement of Facts on Sanction.
13. No witnesses were called to present character evidence.
14. The Tribunal considered the facts set out in the Agreed Statement of Facts on Sanction which indicated that this was not the Student's first offence. In fact, he had been disciplined for committing two prior offences involving similar schemes of academic dishonesty in two prior academic periods. We also took into account the guilty plea and the cooperation demonstrated by the Agreed Statement of Facts and the Student's willingness to acknowledge his wrongdoing and plead guilty.

¹ In the Matter of the University of Toronto Code of Behaviour and an Appeal by Mr. C., November 1976 pg 12.

15. A panel is not obliged to accept a Joint Submission on Penalty. Having said that, we accept the principle set out in the decision of the Ontario Court of Appeal in *R. v. Michael Tsicos*² dated October 6, 2006 that, generally speaking, a joint submission on penalty should be accepted unless it would be contrary to the public interest or bring the administration of justice into disrepute to give effect to the joint submission.
16. It is important to note that, but for the mitigating circumstances described in the Agreed Statement of Facts on Sanction, the penalty would be more severe. This is specifically set out and acknowledged in the Joint Submission on Penalty at paragraph 3. The Tribunal viewed the Student's conduct in question as involving a very serious breach of the University's standards of ethical behaviour which, but for the guilty plea and the other mitigating circumstances, would have called for far more serious sanctions.
17. Overall, the Tribunal was of the view that the agreed sanction was appropriate in the circumstances. We believe it provides a balance between the important interest of the University community in ensuring the highest standards of honesty and integrity while at the same time recognizing the unique circumstances of the Student. We believe the agreed penalty strikes an excellent balance of these interests and we accept the Joint Submissions on Penalty and we so order.

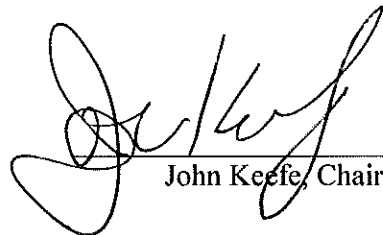
² *Her Majesty the Queen v. Michael Craig Tsicos*, CAO, Oct. 11, 2006, Docket: C45531

ORDER

18. The panel imposes the following penalty:

- (a) Assignment of a grade of zero in PSYBO1H3 in the Fall 2007 session;
- (b) The Student is suspended from attendance at the University of Toronto for a period of three years from the date of the hearing, September 24, 2008;
- (c) A notation is placed on the Student's transcript for the period of four years from the date of this hearing, September 24, 2008 or his graduation from the University, whichever occurs first, to the effect that he was sanctioned for academic misconduct; and
- (d) This case should be reported to the Provost who may publish a notice of the decision of the Tribunal and the sanctions imposed with the Student's name withheld.

October 6/2008
Date


John Keefe, Chair