

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on July 10, 2008;

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 -

F. M.

Members of the Panel:

- Mr. Andrew Pinto, Chair
- Professor Annette Sanger, Faculty Panel Member
- Mr. Song Li, Student Panel Member

Appearances:

- Mr. Robert Centa, Assistant Discipline Counsel
- Professor Grant Allen, Vice-Dean, Undergraduate, Applied Science and Engineering
- Ms. Betty-Ann Campbell, Law Clerk, Paliare Roland

Preliminary

- [1] The Trial Division of the University Tribunal was convened on January 12, 2009 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the “Code”) laid against the Student by letter dated July 10, 2008 from Professor Edith Hillan, Vice-Provost, Academic.
- [2] The Student did not attend the hearing and was not represented by counsel.

Notice of Hearing

- [3] Thirty minutes after the time at which the hearing was scheduled to begin, the Student had not appeared. Discipline counsel for the University proposed to proceed in the Student's absence.
- [4] The Tribunal heard submissions with respect to the University's request to proceed in the absence of the Student.
- [5] Ms. Betty-Ann Campbell described the efforts made by discipline counsel to serve the Student. Using the contact information entered by the Student into ROSI (Repository of Student Information) as well as information provided by Ms. Barbara McCann, Registrar, Faculty of Applied Science and Engineering, Ms. Campbell testified that a disclosure brief was prepared and couriered to the Student on July 29, 2008. The courier company did not report any difficulty in delivering the package, nor was the package returned as "undeliverable". Ms. Campbell confirmed that the Student never responded to the disclosure brief.
- [6] Other efforts included emails sent to the Student on October 22, 2008 and December 10, 2008, in which Ms. Campbell requested that the Student indicate preferred dates on which to hold a hearing. The Student did not respond to these emails, nor did they bounce-back as "undeliverable".
- [7] Ms. Campbell identified a third email message dated December 17, 2008 in which Ms. Campbell provided the Student with supplementary disclosure material and reminded him of the upcoming hearing on January 12, 2009. The Student did not respond to this email, nor did it bounce-back as "undeliverable".
- [8] Mr. Centa, upon contacting the family home at the number listed in ROSI, was given an alternate email address for the Student. The panel was shown an email message, also dated December 17, 2008, from Mr. Centa to the Student at the alternate email address. Ms. Campbell, who was copied on the message, testified that the Student did not respond to this message, nor did it bounce-back as "undeliverable".
- [9] Mr. Centa then referred the panel to a Book of Legislation and University Policies. Contained therein is the *Policy on Official Correspondence with Students*, dated May 1, 2006, which places on all University of Toronto students a positive obligation to 1) keep current their mail and email addresses in ROSI; 2) check their utoronto email accounts for official University correspondence; and 3) check their home mailing address for documents that have been mailed or delivered by the University. Students are deemed to have received knowledge of documents delivered by one or more of these methods.
- [10] Members of the panel were also given a copy of the *Statutory Powers Procedure Act (SPPA)* and were directed to Section 6, which deals with Notice, and to Section 7, which permits tribunals to proceed in the absence of a party, provided reasonable Notice has been given. In light of the previous testimony, discipline counsel argued that reasonable

Notice had been given and, therefore, the hearing should proceed in the absence of the Student.

- [11] The panel concluded that it was satisfied that discipline counsel had made all reasonable attempts to provide the Student with Notice of the hearing and, therefore, it permitted the hearing to proceed in the Student's absence.

Hearing on the Facts

- [12] The charges are as follows:

- i. In or about late December 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 examination, submitted for academic credit in ECE302, contrary to Section B.i.1.(a) of the *Code*.
- ii. In the alternative, in or about late December 2007, 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, by altering a mid-term examination you had previously submitted in ECE302, and then requesting a re-evaluation of the mid-term examination, contrary to Section B.I.3.(b) of the *Code*.
- iii. On or about January 21, 2008, 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 term test, submitted for academic credit in ECE334, contrary to Section B.i.1.(a) of the *Code*.
- iv. In the alternative, on or about January 21, 2008, 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, by altering a term test you had previously submitted in ECE334, and then requesting a re-evaluation of the mid-term examination, contrary to Section B.I.3.(b) of the *Code*.

- [13] Particulars of the charges are as follows:

ECE302

- i. You were, at all material times, a student in ECE302 taught by Professor Shahrokh Valaee.
- ii. In or about late December 2007, you submitted to Professor Valaee for re-

marking a forged mid-term examination which you altered to reflect a higher grade than that which you had originally received.

iii. At no time did you disclose that you had altered the examination.

ECE334

iv. You were, at all material times, a student in ECE334 taught by Professor Glenn Gulak.

v. On or about January 21, 2008, you submitted to Professor Gulak for re-marking a forged term test which you altered to reflect a higher grade than that which you had originally received.

vi. At no time did you disclose that you had altered the test.

[14] Professors Liang and Valaee, co-instructors of ECE302, were called to testify before the Tribunal.

[15] Professor Liang testified that Professor Valaee approached him about a mid-term examination booklet that Professor Valaee had discovered under his office door and to which had been affixed a Post-It note from the Student. In the note, the Student requested that his mid-term examination be re-graded.

[16] Professor Liang cross-checked the marks noted on the cover of the examination booklet with those recorded on the course spreadsheet and noted significant discrepancies. On the course spreadsheet it was recorded that the Student had earned 18 out of a possible 50 marks; whereas, the examination booklet submitted by the Student indicated that the Student had earned 38 out of 50 marks. Professor Liang then consulted with the teaching assistants (TAs) who had marked the examinations. The TAs informed Professor Liang that the markings on the examination booklet were not their own, although they had been crafted to appear similar.

[17] The panel was given the opportunity to review the exam re-grade request that had been given to Professor Valaee by the Student.

[18] Discipline counsel showed Professor Liang a string of email exchanges he had had with the Student, beginning with his email to the Student on January 14, 2008, in which he asked the Student to meet with him and Professor Valaee to discuss the mid-term re-grade request. The Student, in his response dated February 6, 2008, denied that he had asked for a re-grade of his mid-term. Instead, the Student claimed that he had requested a re-grade of Quiz #8.

[19] Professor Liang was asked if he had the original mid-term examination booklet, to which he responded that he did not. The original had been returned to the Student. Professor Liang further testified that he had been present at the Dean's Designate Meeting on

February 8, 2008, at which time the Student denied making a re-grade request. During that February 8 meeting, the Student stated that the handwriting on both the exam booklet and the Post-It note was not his own and, furthermore, that the original booklet was at his home. Professor Liang was asked if the Student ever produced the original exam booklet, to which Professor Liang responded that he had not.

- [20] Professor Valaee testified that he found an examination booklet slid under his office door to which had been affixed a Post-It note from the Student asking that his mid-term examination be re-graded and his mark on CCNet be revised. Professor Valaee was asked to describe CCNet to which he responded that it is a web-based interaction application that allows instructors and students to communicate with one another. Typically, course materials, past tests and grades are uploaded to CCNet. Students can view their own grades, but not other students' grades. Students are not able to alter the grades posted to CCNet.
- [21] When Professor Valaee received the booklet and the re-request for a re-grade, he conferred with Professor Liang. Since Professor Liang was the course coordinator and was responsible for student grades, Professor Valaee explained that he had had no further dealings with the issue until his preparation for the Tribunal hearing.
- [22] Professor Gulak, the instructor for ECE334, was also called to testify before the Tribunal. He explained to the panel that the mid-term tests were worth 20% each. Professor Gulak testified that on December 21, 2007 he received an email from the Student's UTOR email account. In that email the Student indicated that there were discrepancies between the marks that he had attained on the test and those posted on CCNet. The Student wrote that he would drop off his mid-term test that day at Professor Gulak's office, so that the discrepancy could be corrected. Sometime between December 21, 2007 and when the University re-opened early in January 2008, the Student submitted his second mid-term test to Professor Gulak by sliding the test under Professor Gulak's office door. A Post-It note was affixed to the exam.
- [23] On January 21, 2008 the Student sent a second email message to Professor Gulak to inquire about his "mark update on CCNet". In this note the Student explained that he had had a kidney operation after the mid-term test and, so, was unable to pick-up his test until the last day of class in December 2007. For this reason, the Student explained, he had not been able to make the re-grade request until the end of the course.
- [24] Mr. Centa inquired whether Professor Gulak would have been able to alter the grade on CCNet at such a late date. Professor Gulak replied that it would not have been possible. The grade could only have been changed if the Student had submitted a petition to the Registrar's Office based on medical reasons.
- [25] On April 18, 2008 Professor Gulak prepared a "memo to file", which recounted the events in the case to date as he understood them. The memo records that the Student had attained 16.5 out of a possible 47 marks on the second mid-term test. It further records that the Student wrote on the Post-It note that he had actually earned 37 marks, not 16.5.

Finally, because of the significant discrepancy, Professor Gulak records that he “was suspicious that the test had been tampered with and the Student was committing an academic offence”. For this reason, Professor Gulak passed the matter along to Professor Grant Allen, Dean’s Designate in matters of academic misconduct.

- [26] The panel asked Professor Gulak if the answers written on the exam were, indeed, worth 37 out of 47 marks. Professor Gulak confirmed that, had the teaching assistants found the answers as they now appear before the panel, the Student would have earned 37 marks. Professor Gulak confessed that he could not account for the discrepancy between the answers as currently written and the 16.5 marks recorded on CCNet at the time of marking.
- [27] The panel then inquired into the method of marking. Professor Gulak explained that there were several TAs working on this course. Each TA was assigned one question to mark. This was done to ensure consistency of marking. Once a paper had been graded by all of the TAs, the total score was entered on to CCNet. Professor Gulak testified that scores for individual answers were not entered, only the total score for all answers.
- [28] Professor Grant Allen was also called to testify before the Tribunal. He was the Dean’s Designate in this matter and a Professor in the Chemical Engineering and Applied Chemistry Department and Vice-Dean of Undergraduate Affairs. Professor Allen testified he met with the Student on two separate occasions, specifically February 8 and April 14, 2008. Present at both meetings was Ms. Anna-Lee Potvin, who took notes. Professor Allen confirmed that Ms. Potvin’s notes were substantially in accordance with his independent recollection of those meetings. Mr. Centa sought to allow Professor Allen access to these notes as a means of refreshing his memory. The Chair permitted Professor Allen to access these notes within such limits. The notes were not entered as exhibits.
- [29] Professor Allen testified that ECE302 was the subject of the meeting held on February 8, 2008, while ECE334 was the subject of the second meeting held on April 14, 2008. Professor Allen explained that he began the February 8 meeting with the “Dean’s warning”, that is, he informed the Student of the meeting’s official nature, that he had a right to counsel, that he was not obliged to make an admission statement, but that if he did make any statements they could be used in evidence before the Tribunal. Professor Allen then ascertained that the Student understood these rights.
- [30] Upon being shown the exam booklet from ECE302, the Student disavowed the examination booklet, stating that it was not his booklet. The Student said that the handwriting was not his own. Instead, the Student claimed that the exam booklet was at his home. Professor Allen was asked if the Student ever returned with any other document to substantiate this claim, to which Professor Allen replied that he did not.
- [31] Professor Allen further testified that the Student disavowed an email sent to Professor Liang on January 21, 2008 from a gmail account in the Student’s name, in which the Student requested a mark update on CCNet for ECE302. The Student denied even

having a gmail account. When asked how the email came into existence, the Student claimed that another student created a gmail account using his name and sent the request to Professor Liang without his knowledge. The Student did not provide the name of the individual who he believed had done this.

- [32] At the meeting on April 14, 2008, Professor Allen repeated the "Dean's warning" to the Student, after which he showed the Student mid-term test 2 from ECE334. The Student denied that the document being shown to him was his own. When the Student was asked how the test booklet came to be submitted on his behalf, he explained that he had asked a friend to submit the test, since he had to be out of town. The Student claimed that he also asked his friend to send him an email to confirm that the test had been submitted. When asked if the Student had received the confirmatory email from his friend, he acknowledged that he had. The Student then stated that he emailed Professor Gulak, asking for a mark update.
- [33] Professor Allen was asked if the Student offered an explanation as to why the test that was submitted on his behalf by his friend was not, as the Student alleged, the original. Professor Allen replied that the Student provided a rather confusing account, in which he suggested that he had a friend who was ready to confess and that Professor Allen ought to investigate the Engineering Society. The Student alleged that a member of the Society did not like him and was trying to get him into trouble.
- [34] Professor Allen was asked if the Student identified the name of the friend who was willing to confess, to which he responded that the Student named another engineering student, Mr. A.M. Professor Allen testified that the Student did not return to his office with Mr. A.M. so that Mr. A.M. could confess, nor did the Student ever provide any further evidence to substantiate his explanation.
- [35] In concluding the second meeting, Professor Allen informed the Student that he would be receiving a letter regarding the allegation of misconduct in both ECE302 and ECE334. It was at this juncture that the Student implicated Mr. A.M. in the events associated with ECE302 also. Professor Allen confirmed that the Student never did admit to having committed an academic offence with respect to either course.
- [36] Prior to deliberation, discipline counsel provided the panel with a brief closing statement, in which he highlighted the burden and standard of proof required for the Tribunal to return a finding of guilt. Mr. Centa explained that the panel must be satisfied that the University has proven on a balance of probabilities, that is, that it is more likely than not, that the Student committed academic misconduct in ECE302 and ECE334. It was acknowledged by counsel that it is not possible to give an account of *how* the falsification of documents was accomplished, since it is impossible for the University to photocopy all exams prior to them being returned to Students. However, Mr. Centa argued, it is irrelevant to proving *that* the offence has occurred.

Decision of the Tribunal

- [37] The panel, after considering the evidence and submissions of discipline counsel, found the evidence to be overwhelming and, therefore, returned a finding of guilt on charges #1 and #3. As a result, discipline counsel withdrew the alternative charges #2 and #4.

Penalty Phase

- [38] The University submitted that the appropriate penalty in the circumstance was:
- i. A grade of zero in ECE302 and ECE334
 - ii. A four-year suspension from the University to commence from the date of the hearing
 - iii. A six-year notation on the Student's transcript to commence from the date of the hearing
 - iv. A report of the decision to the Provost for publication in the University's newspaper with the name of the Student withheld.
- [39] The University placed a Book of Authorities before the panel so that it might have an opportunity to review several decisions of other panels of the University Tribunal in similar cases. In particular, the panel reviewed the criteria for sanction first proposed by the late and former Mr. Justice Sopinka in the matter of the appeal of Mr. C. (November 5, 1976). According to these guidelines, the Tribunal should consider the following six criteria when deciding on an appropriate sanction:
- 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 the 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.
- [40] Mr. Centa acknowledged that the challenge for the panel is to consider sanction in the absence of submissions from the Student. The panel could glean nothing regarding the Student's character, except for the evidence presented against him. Moreover, there was no explanation of mitigating factors that might help the panel to understand the Student's behaviour. The latter is especially troubling in light of the academic promise shown by the Student in his first year of study.
- [41] Mr. Centa argued that what can be gleaned from the Student's non participation is his lack of insight and remorse. It is a failure to own up to one's responsibilities. This is in stark contrast to many other cases that come before the Tribunal in which the accused

pleads guilty and enters into an *Agreed Statement of Fact* and a *Joint Submission on Penalty*. In the absence of evidence of insight, the University seeks a significant suspension, in order to give the Student an opportunity to reflect on his behaviour and, hopefully, to rehabilitate the academic relationship that has been compromised.

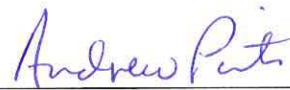
- [42] Mr. Centa further argued that the detriment to the University, had the Student succeeded, cannot be overstated. In a competitive program the undermining of the University's evaluation system is extremely problematic. Furthermore, it is difficult to protect against such subversive behaviour. Tests are returned to students for good pedagogical reasons, so that they can learn from their mistakes. To abuse this pedagogical opportunity for one's own academic advantage threatens to undermine the University's mission.
- [43] The panel's attention was drawn to the case of Mr. S.B. (Nov. 14, 2007). In paragraphs 33-34 of that decision, the Tribunal provided an overview of its own case law and concluded that the norm for a serious breach of trust results in at least a two-year suspension. Mr. Centa argued that the misconduct in this case, which clearly required a great deal of premeditation and effort to execute, constitutes a serious breach of trust, not once but twice and, therefore, warrants a significant suspension. In effect, discipline counsel recommended to the panel that a two-year suspension be imposed for each infraction for a four-year suspension in total.
- [44] Discipline counsel concluded that the proposed sanction strikes the right balance: it provides the Student with the opportunity to return to the University; yet it also strongly denounces this type of behaviour, and sends the message to the Student as well as the community at large that such misconduct cannot and will not be tolerated by this University.

Sanction and Reasons

- [45] Following submissions about penalty, including the review of previous Tribunal sanctions, the panel deliberated. The panel concluded that the penalty requested by the University should be imposed, specifically:
 - i. A grade of zero in ECE302 and ECE334
 - ii. A four-year suspension from the University to commence from the date of the hearing
 - iii. A six-year notation on the Student's transcript to commence from the date of the hearing
 - iv. A report of the decision to the Provost for publication in the University's newspaper with the name of the Student withheld.
- [46] The panel commented that it was disappointed that the Student had chosen not to participate in the discipline process. It noted that the Student had engaged in an on-going campaign of deception beyond just the original misdeed of falsifying documents. He disavowed submitting an examination booklet and a mid-term test that, on a balance of probabilities, the Tribunal found to be the Student's. He denied sending e-mail from his

own gmail account. He initially referred to his own kidney operation as a reason for a late regrade request, but later suggested that it was his mother's kidney operation. Worse, when confronted with the allegation of academic misconduct, he implicated and named a third party who was purportedly involved in the deception. This, in the panel's estimation, was a significant aggravating factor. While the Student was not being expelled from the University, his misconduct warranted the serious sanction requested by the University in the circumstances.

Dated this 5th day of May, 2009



Andrew Pinto, Co-Chair