

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on May 3, 2010;

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:

THE UNIVERSITY OF TORONTO

-and-

S K

Date of Hearing: September 24, 2010

Members of the Panel:

- Ms. Bonnie Goldberg, Co-Chair
- Professor Louis Florence, Department of Management, Faculty Panel Member
- Ms. Vy Nguyen, Student Panel Member

Appearances:

- Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Barristers
- Ms. Betty-Ann Campbell, Law Clerk, Paliare Roland Barristers
- Dr. Eleanor Irwin, Dean's Designate, University of Toronto, Scarborough
- Ms. Rita Pearsall, Associate Registrar, University of Toronto, Scarborough
- Mr. Don MacMillan, Former Registrar, University of Toronto, Scarborough
- Ms. Elena Maltseva, Teaching Assistant for POLB92H3: Revolution, Democracy and Authoritarianism in Modern Europe, University of Toronto, Scarborough

In Attendance:

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

Not in Attendance:

- Ms. S K , the Student

REASONS FOR DECISION

1. The Trial Division of the University Tribunal was convened on a peremptory basis on September 24, 2010 to consider charges brought under the *Code of Behaviour of Academic Matters*, 1995 ("Code") and laid against the Student by letter dated May 3, 2010 from the Vice-Provost, Faculty and Academic Life, Professor Edith Hillan.

Preliminary Issue

2. Neither the Student nor a representative for the Student appeared at the hearing. The University proposed to proceed in the Student's absence.
3. The University commenced the hearing by introducing the Notice of Hearing, dated August 26, 2010, outlining the charges against the Student arising out of her alleged behaviour on or about April 14, 2009.
4. The University advised that it had had no contact with the Student since August 6, 2010, and that was only after extensive attempts made to contact the Student by both Discipline Counsel and before that, the Student's Division. The University led evidence in the form of an affidavit from Ms. Betty Ann Campbell, a law clerk at Paliare Roland, the firm that is counsel to the University. Ms. Campbell attended the hearing to testify as to the contents of the affidavit. The affidavit was accompanied by extensive documentation of Ms. Campbell's attempts to locate the Student and the information provided to Ms. Campbell regarding the Division's attempts to do the same.
5. The Panel accepts the following chronology of events. With respect to the Divisional meeting as outlined in the Code, the Dean's Designate, Professor Irwin attempted to schedule a meeting with or to contact the Student on multiple occasions, beginning on or about April 21, 2009 until December 8, 2009. Throughout this period, all communications were directed to the Student via her ROSI residential address, email address and telephone numbers. In January 2010, the Student contacted Professor Irwin's office to arrange a meeting. Professor

Irwin's office made several attempts to arrange a meeting date to accommodate the Student's attendance in Toronto. The Student did not attend the meeting, ultimately scheduled for February 23, 2010. The Student had no further contact with the Division. Thus, the Division referred the matter to the Provost.

6. With respect to the Tribunal hearing, the Panel notes that on May 3, 2010, the Student was charged with academic offences under the Code. From May 21, 2010 to August 5, 2010, Ms. Campbell attempted to contact the Student using the information she had listed on the Student information system ("ROSI"). During this period, the Student was provided with the University's disclosure, canvassed about her availability to attend the hearing, and provided with the Notice of Hearing for the hearing's originally scheduled date (August 18, 2010). Throughout this period, all communications were directed to the Student via her ROSI residential address, email address and telephone numbers. In addition, the University used two personal email addresses that the Student had previously used to communicate with the University. During this period, correspondence sent by courier was returned to the University. As a result, the University resent the information via email to the known email addresses. Further, Ms. Campbell provided information as to her attempts to find another home address for the Student, which involved a motor vehicle search and contact with current residents at a rental unit.

7. On August 6, 2010, Ms. Campbell spoke with the Student about the hearing scheduled for August 18, 2010 when the Student answered a phone call from Ms. Campbell. The Student confirmed the accuracy of the contact information used by the University. When informed by Ms. Campbell of the upcoming August 18, 2010 hearing date, the Student indicated that she would prefer a hearing scheduled for September. She also indicated to Ms. Campbell that she wanted to arrange a meeting with the Dean's Designate. This was the last known verbal communication between the University and the Student. Ms. Campbell followed up with an email confirming the details of the telephone conversation.

8. On or about August 12, 2010, the University began receiving “bounce backs” of emails sent to the Student at her official email address. Emails sent to the Student’s two other email accounts did not bounce back.
9. As requested by the Student, the August 18, 2010 hearing was adjourned. The Co-Chair signed an order making the September 24, 2010 hearing peremptory. On August 26, 2010, the Notice of Hearing was sent to the Student.
10. Counsel for the University submitted that the notice given to the Student was reasonable, and in accordance with the requirements of the *Statutory Powers Procedure Act*. Counsel submitted that the evidence shows that that the Student had no interest in taking part in the proceedings, and had made a conscious choice not to participate. Counsel relied on a University policy, which became effective September 1, 2006, indicating that students are responsible for maintaining and advising the University on ROSI of a current and valid mailing address, as well as for the use of the University issued email address.
11. Based on the information before us, the Panel concluded that the University had provided reasonable notice to the Student. The Panel concluded that other than one contact in January 2010 with the Division, and then Ms. Campbell’s phone call to the Student on August 6, 2010, the Student has not responded to any communications from the University. Further, it is apparent from the information before us that the Student, when contacted briefly on August 6, 2010, used that conversation to adjourn the scheduled hearing on the August 18, 2010 yet made no sincere attempt to participate again in the process. This was similar to her behaviour when the Division arranged a February 23, 2010 meeting, at which the Student did not attend.
12. The Panel was satisfied that the University had taken many steps to try to contact the Student, and that the Student had failed to make herself available to the University or to acknowledge communications from the University repeatedly. The information before us persuades us that the Student received the information sent by the University. The evidence is clear that by August 6, 2010, the Student was aware that she was facing academic

discipline charges, that a hearing was scheduled, and that the University was prepared to adjourn the hearing to accommodate the Student. However, the Student never communicated again with the University. Further, the evidence demonstrated the Student's unwillingness to attend the Dean's meeting, also scheduled to accommodate the Student.

13. Accordingly, the Panel concluded that reasonable notice had been provided, and that it would be improper to permit a Student to avoid facing charges by a complete failure to respond to the University's many attempts to reach her and to accommodate her. Similarly, the Panel concluded that any further adjournments would not be reasonable, given that the Student has demonstrated a pattern of behaviour consistent with someone who appeared unwilling to participate in any part of the process.

14. Therefore, the Panel concluded that reasonable notice had been provided and was prepared to proceed in the Student's absence, in accordance with the provisions of the *Statutory Powers Procedure Act*.

Hearing on the Facts

15. The charges are as follows:

- i. On or about April 14, 2009, you knowingly used or possessed an unauthorized aid during and in connection with the final examination in POLB92H3 ("Course"), contrary to section B.I.1(b) of the *Code*.
- ii. In the alternative to charge #1, on or about April 14, 2009, 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, with respect to the final examination in the Course, contrary to section B.I.3(b) of the *Code*.

16. The Particulars of the charges are as follows:

- i. At all material times, you were registered as a Student at the University of Toronto.

- ii. In the Fall term of 2008, you enrolled in the Course, Revolution, Democracy and Authoritarianism in Modern Europe, which was taught by Lucan Way at University of Toronto Scarborough.
- iii. You wrote a deferred final examination in the Course which was held on April 14, 2009 (the "Examination"). The Examination was worth 45% of the final grade in the Course.
- iv. You were not permitted to bring any aids into the Examination.
- v. You brought an exam answer booklet marked "TERM" into the Examination which contained 11 pages of notes relevant to the Course ("Course Notes"). You were not permitted to possess or use those Course Notes during the Examination.
- vi. You brought the Course Notes into the Examination in order to obtain an academic advantage.

Evidence

17. In support of the charges, the University called three witnesses and provided a Book of Documents.

18. The first witness was Ms. Rita Pearsall, the Associate Registrar of the University of Toronto at Scarborough ("UTSC"). She testified that following the creation of a new deferred examination policy, UTSC was inundated with requests for deferred examinations. Accordingly, the UTSC created a deferred examination sitting date to accommodate all the Students sitting deferred examinations from the fall 2008 session. This sitting was set for April 14, 2009. Ms. Pearsall was responsible for implementing a system to administer the deferred examination sitting. Specifically, she created a process whereby every student sitting for an examination was provided with a specially marked envelope, whose cover page set out the details of the examination including the length, the number of booklets provided, and whether aids were provided. The envelope contained each student's specific examination questions and the appropriate number of booklets. She explained that when students entered the room, their ID was checked, and they were provided with their specific envelope. They were asked to leave their bags and coats at the front of the room, and sat in an assigned area.

At the conclusion of the examination, students were required to place all their material back into the envelope.

19. Ms. Pearsall explained that the examination booklets used for April 14, 2009 were from the "J" series, but she acknowledged that one of the Student's three booklets was from the "K" series. They were not using the "Term" series booklets, as these were the booklets used by Divisions when the students wrote term tests. These booklets were not in use for final examinations.

20. Ms. Pearsall testified that she witnessed the Student "flustered" and unwilling to place everything back into the envelope. Ms. Pearsall observed the Student "delaying" the return of the materials into the envelope. However, the Student (at Ms. Pearsall's request) finally put all the material into the envelope. Ms. Pearsall collected the Student's envelope but she testified that the Student then returned and asked for the envelope. Ms. Pearsall did not give her the envelope. Ms. Pearsall then observed the Student leave the examination room and return again. She identified the Student to the Registrar, Don MacMillan, and indicated that there might be a problem with the Student's examination. Ms. Pearsall recalled noticing that something was not right with the Student's materials because she thought she observed a booklet marked "Term" as these were not in use during that examination period. She did not know the Student prior to the events of April 14, 2009.

21. The University then called the Registrar, Don MacMillan. He reviewed for the Panel the careful process created by the University to oversee the integrity of this deferred examination sitting date. He explained that Ms. Pearsall was responsible for creating a process that ensured that each Student was provided with a specially designated envelope containing the Student's examination and the appropriate examination booklets. Further, the envelopes contained specific information for each course about whether aids were allowed. He described for the Panel that on the date in question, Students entered the room, were given the appropriate envelope by invigilation staff and were seated at specially marked tables.

22. Mr. MacMillan testified that he left the examination after it started but returned for the collection of the "two hour" examinations. He recalled that Ms. Pearsall identified the Student to him, and indicated that she was reluctant to return all her materials in the envelope. Mr. MacMillan opened the envelope and saw that there were four booklets inside, including one marked "Term." He reviewed its contents and believed it to be "crib notes." Mr. MacMillan recalled that the Student returned to the examination and indicated that she wanted the envelope back because she had forgotten something. Mr. MacMillan testified that at that point he stated that he believed that an attempt had been made to cheat and indicated that the Student could not have the envelope and he would be reporting the matter.
23. Mr. MacMillan explained to the Panel that the "Term" booklets were only used for term tests and not final examinations. This examination sitting used the "J" series, but if they had run out while packing envelopes, they would have used the next alphanumeric in the series, hence the Student having a "K" booklet in her envelope. Students who required additional booklets during the examination would have been given booklets from the same series. In his opinion, it was unlikely that they would be given a "Term" booklet. The examination booklets came out of boxes stored in a secure location under the control of the Registrar's Office, and were labeled sequentially. The boxes brought to the examination room as "extras" would have been sequentially labeled and part of the same series.
24. Then the Panel heard from Ms. Elcna Maltseva. Ms. Maltseva has been the tutorial assistant in the Course for the past five years, and has always been responsible for marking the final examination. She explained that she knew the Student very well, as she often participated in the Course. She explained that no aids were ever allowed for this Course's final examination. Ms. Maltseva reviewed the Course syllabus and the contents of the final examination. She reviewed the contents of the "Term" booklet in some detail for the Panel, and compared the contents of the booklets labeled "J" and "K," which contained the Student's answers to the examination questions. Ms. Maltseva's review of the material led her to several conclusions. First, she noted that some of the material in the "Term" booklet was not covered by any question on the examination; accordingly it would have been extremely unlikely that a student making "rough notes" would have spent time preparing answers to questions that

were not asked. Similarly, some of the contents of the "Term" booklet contained extensive, detailed answers to questions that required only a "short" answer. Further, many of the questions would not have required the Student quote the statistical and chronological detail included in the "Term" booklet. As well, the "Term" booklet contained a list of Course readings, with relevant page numbers. Further, the contents of the "Term" booklet were repeated nearly verbatim in support of some of the Student's answers in the examination booklets.

25. The Panel reviewed the documentary evidence provided by the University. The Panel reviewed the actual envelope provided for the Student's deferred examination in the Course, noting that the examination was listed as two hours in length, three booklets were provided, and no aids were allowed. The Student's work included writing in 2 "J" series booklets, and 1 "K" series booklet. These three booklets were labeled as part of the Student's examination materials (i.e. 1/3, 2/3 etc. with the Student's student number and name). The Student also returned a fourth booklet marked "Term". The cover of this booklet was blank. The Panel reviewed the contents of all four booklets.

The University's Submissions

26. The University, in its closing submission, argued that there was more than enough information evidence before us to conclude that the Student more than likely brought the "Term" booklet into the examination with her, that this booklet contained notes, and that the Student used these notes to answer the examination questions. There was no reasonable explanation for the contents of the notes, given that it was a two-hour examination and the booklet contained nearly 11 pages of densely written notes. Further, some of these notes bore a high degree of similarity to the Student's answers; other information was not relevant at all to the questions on the examination. Further, the evidence indicated that the Student appeared reluctant to return all her materials to the invigilators and made a number of attempts to retrieve something before finally exiting the examination room. In the absence of an explanation from the Student as to her actions that day, or with respect to the contents of the "Term" booklet, a reasonable inference was that the Student brought an unauthorized aid into

the examination room with her to gain an advantage. While there was no specific information before the Panel as to how the Student brought the "Term" booklet into the room, the Panel need not determine exactly how this occurred. Rather, the Panel had to be satisfied that the Student, on a balance of probabilities, possessed and used an unauthorized aid in the examination on April 14, 2009 in the Course.

Decision of the Tribunal

27. The Panel, having reviewed and considered the oral and documentary evidence finds the following.

28. It is apparent to the Panel that the University went to great lengths to organize and implement a new deferred examination process to accommodate the large number of students sitting deferred examinations in April 2009. It is apparent that the University instituted a careful and deliberate process to ensure that students were provided with the correct envelope, and that the contents of the envelope contained only the information required to write that student's particular examination.

29. It is apparent to the Panel that the Student was provided with an envelope that contained three examination booklets in the appropriate alphanumeric series for a two-hour examination in the Course on April 14, 2009. However, the evidence before us indicates that when the Student was asked to put all her material into the envelope at the end of the examination, the Student was reluctant to do so, and in fact, inquired about and returned to the invigilation staff, in an effort to retrieve a document from the envelope. It is apparent to the Panel that the Student's envelope included a fourth booklet which was not provided to the Student at the start of the examination and which appeared to be some sort of unauthorized aid.

30. Further, the Panel has concluded that this fourth booklet had the appearance of a "cheat sheet." The booklet contained eleven pages of densely written notes. These notes were written within an examination booklet that was labeled "Term" which was out of sequence

with that day's exam booklets' series and not labeled as an examination answer booklet. In some respects, the information contained in the booklet bore a high degree of relevance to the final examination. In other respects, the notes bore no relation to the questions on the examination. Further, some of the information was repeated directly in the Student's exam answer booklets, while other information was either elaborated upon or condensed, depending on the nature of the question.

31. In our view, the University has proven on balance of probabilities that the Student both possessed and used the unauthorized aid in the examination.

32. As stated, the evidence before us demonstrated that it was more likely than not that the Student brought the "Term" booklet into the examination with her to use as an unauthorized aid during the examination. We note that there was no information before us to answer the question of "how" the Student brought the unauthorized aid into the examination. However, the Panel considered the reasoning in the matter of Tribunal Decision "Ms. B.," in which the Panel concluded that it was not necessary to determine how the cheating occurred. Rather, the test is whether the University has provided clear and convincing evidence that the student violated the Code in the manner described. In this case, the University has satisfied that test. In our opinion, there was no other reasonable explanation to explain the information before us, other than that the Student brought an unauthorized aid into the examination with her and used it to gain an academic advantage.

33. Accordingly, the Panel concluded that the University had discharged its onus and proven the offence on the balance of probabilities. Thus, the Panel found that the Student is guilty of one (1) count of use or possession of an unauthorized aid during and in connection with the final examination in POLB92H3, contrary to section B.I.1(b) of the *Code of Behaviour on Academic Matters* ("Code"). The University withdrew the alternate charge, given our finding of guilt on this charge.

Penalty Phase of the Hearing

Evidence

34. The University did not tender any evidence at the penalty phase of the hearing.

The University's Submissions

35. The University advised that it was seeking the following sanction to be imposed by the Panel:

- a) Final grade of zero in POLB92H3;
- b) That the Panel suspend the Student for a period of not less than two years;
- c) That the Panel impose a notation on the Student's transcript for a period of not less than three years; and
- d) That the Panel recommends that the Provost report the matter with the Student's name withheld.

36. The University took the Panel through the case of "Mr. C." in which the University Tribunal provided an outline of the principles to be followed in dealing with the penalty phase of an academic discipline matter. In that case, the Tribunal noted that punishment is not intended to be retribution to get even with the student, but rather must serve a useful function. The classical components of punishment are reformation, deterrence, and protection of the public. In applying these criteria, a tribunal should consider all of the following:

- i. The character of the person charged;
- ii. The likelihood of a repetition of the offence;
- iii. The nature of the offence committed;
- iv. Any extenuating circumstances surrounding the commission of the offence;
- v. The detriment to the university occasioned by the offence; and
- vi. The need to deter others from committing a similar offence.

37. University counsel took the Panel through a number of relevant Tribunal decisions. She observed that no two cases were alike, and that the Panel was not bound by these decisions but that consistency was an important principle in sentencing. She highlighted for the Panel that the Tribunal typically dealt with students who were convicted of a first offence by imposing a suspension of no less than two years. She further submitted that the Tribunal must

consider the relevant aggravating and mitigating factors of each case before assigning a penalty.

38. Counsel acknowledged that there was no information before us to indicate that the Student had committed other academic offences. She submitted that the evidence demonstrated a deliberate and carefully planned attempt to gain an academic advantage. In the University's submission, the onus was on the Student to show evidence supporting a reduced penalty or mitigating factors. The Student did not plead guilty, which would be the best evidence or insight of remorse, and indeed, by her failure to attend, presented no evidence of any other mitigating factors. The likelihood of repetition was not clear given the lack of information before us. The only character evidence before the Panel was that of the information related to the offences.

Decision on Penalty

39. The Panel considered the University's submission and the information presented to the Panel by the University. The Panel also considered the cases presented by the University in support of its submissions on penalty. As submitted by the University, the Panel is not bound by these cases, but these cases offered the Panel an instructive overview as to how previous panels of the Tribunal dealt with similar offences.

40. The Panel recognized that the University sought what it referred to as "threshold" penalty for a first offence, and for a case such as this. However, the Panel chose to impose a longer suspension and notation period than that requested by the University for the reasons that follow.

41. First, the information before us led the Panel to conclude that the Student both possessed *and* used the unauthorized aid. The Student's actions were, in the Panel's view, characterized by deceit and pre-meditation, in an effort to gain an unfair academic advantage.

42. Second, while the information indicated that this was the Student's first offence, the Panel observed that the offence was committed after the Student had been enrolled at the University for several semesters already. At that time in her University career, the Student would have been expected to clearly know and understand the expectations of the University with respect to academic integrity.

43. Third, given the Student's failure to participate in any stage of the process, the Panel had no evidence of any mitigating factors. There was no acknowledgement, no explanation, no remorse, no extenuating circumstances, and no evidence of any prospect of rehabilitation brought to the Panel's attention. The Panel was concerned about what appeared to be several attempts to mislead the University as to her willingness to participate at different stages of the process. The Panel was also concerned at the lengths to which the University had to go to ensure that the Student was notified of the hearing, despite her unwillingness to engage, and the resources involved in such an undertaking.

44. Finally, the Panel was concerned about the nature of the offence and the importance of deterrence. The Panel notes that the first paragraph of the Code states the following:

The concern of the *Code of Behaviour on Academic Matters* is with the responsibilities of all parties to the integrity of the teaching and learning relationship. Honesty and fairness must inform this relationship, whose basis remains one of mutual respect for the aims of education and for those ethical principles which must characterize the pursuit and transmission of knowledge in the University.

45. Further, the Code states as follows with respect to "Offences":

The University and its members have a responsibility to ensure that a climate which might encourage, or conditions which might enable, cheating, misrepresentation or unfairness not be tolerated. To this end, all must acknowledge that seeking credit or other advantages by fraud or misrepresentation, or seeking to disadvantage others by disruptive behaviour is unacceptable, as is any dishonesty or unfairness in dealing with the work or record of a student.

46. The Panel observed that students who do not act with honesty undermine the reputation of the University and the hard work of other students who do act with honesty in their studies. The Student's actions in this case strike at the heart of academic integrity and make light of the attempts by other students to approach their studies with integrity and honesty.

47. Therefore, in consideration of the sentencing principles outlined above, the evidence before us, and past Tribunal decisions, the Panel imposed the following sanctions:

1. The Student receive a final grade of zero in the Course POLB92H3;
2. The Student be suspended from the University for a period of three years, commencing September 24, 2010, to September 23, 2013;
3. That the Student's academic record and transcript be annotated to reflect that she has been found to have committed academic misconduct for a period of four years, commencing September 24, 2010, to September 23, 2014;
4. 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 this 12th day of October 2010



B. Goldberg, Co-Chair, for the Panel