THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on July 19, 2012;

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 -

C[redacted] A[redacted] M[redacted]

Date of Sanction Hearing: May 2, 2013

Members of the Panel:
Ms Lisa Brownstone, Barrister and Solicitor, Chair
Professor Pascal van Lieshout, Faculty Panel Member
Mr. Yingxiang Li, Student Panel Member

Appearances:
Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Barristers
Ms. Tina Lee, Assistant Discipline Counsel, Paliare Roland Barristers

In Attendance:
Mr. C[redacted] A[redacted] M[redacted], the Student
Professor John Carter, Dean's Designate, Department of Electrical and Computer Engineering

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

[1] On May 2, 2013 the Panel reconvened to consider the appropriate sanction for Mr. M[redacted] given its finding dated March 18, 2013.

[2] In the evidence phase of the sanction hearing, the Provost called Professor Carter, and filed a letter dated January 30, 2008 from Professor Susan McCahan to Mr. M[redacted]. The letter referred to a violation of the Code of Behaviour on Academic Matters in respect of plagiarism and collaboration on two laboratory reports and a quiz in a first year course. It indicated that this was a first offence and that Mr. M[redacted] had assured the University that a violation of the Code of Behaviour and Academic Matters would never be repeated. The penalty given was an assignment of a mark of zero for each laboratory report in question, a reduction of marks equal to a double zero for the quiz in question, and a letter documenting the incident placed in Mr. M[redacted]'s student file, but no official recording of the decision on his academic record was to be made. The letter closed by indicating that academic offences are extremely serious and constitute unacceptable behaviour, and stated that "I want you to clearly understand that a second offence will result in more severe sanctions....I urge you to let this letter serve as a strong warning to you that any future academic work must be conducted in a **full** accordance with the rules and regulations of the University."

[3] In cross-examination by Mr. M[redacted], Professor Carter explained that because all three offences occurred within a short time, they were in essence treated as a simultaneous first offence. It was clear that Mr. M[redacted] was not told of any of the infractions before committing the next one, given the short time frame in which the infractions occurred. Professor Carter acknowledged that the offences occurred in the first term and the interview with Mr. M[redacted] to discuss the offences occurred in the second term. Mr. M[redacted] asked Professor Carter whether it was the regular procedure to wait until there

were three offences. Professor Carter replied that the University tries to process these matters quickly but if they cannot get to one before the next one occurs, this is obviously not possible.

[4] That was the totality of the evidence for the University at the sanction phase. Mr. M[redacted] was asked whether he wished to submit evidence at the sanction phase.

[5] It should be noted that Mr. M[redacted] had provided to the Provost's counsel and to the Panel various documents and e-mails in advance of the sanction hearing. However, while the University's counsel did not object to the Panel seeing the materials, it did indicate that it would have comments on admissibility should Mr. M[redacted] seek to introduce those materials at the hearing. Mr. M[redacted] was asked whether it was his view that any of the materials sent were relevant to sanction, or whether all were relevant to the issue of liability. He indicated they were relevant only to liability and not to sanction. The Panel asked University counsel for submissions on whether the Panel had the authority to consider further evidence on liability at this stage of the proceedings. University counsel submitted that under the Code and the Rules there is no express support for re-opening a case but neither is there any express prohibition on doing so. University counsel pointed to s. B8 of the Code of Behaviour on Academic Matters in respect of an appeal. In counsel's submissions, that provision is some evidence that a tribunal panel ought not to re-open a case and pointed out that very often there is no time between the liability phase and the sanction phase. The language of the appeal procedure seems to indicate that it was not intended that there would be reconsideration, but the right of reconsideration is

never explicitly addressed. University counsel advised that there is a full right of appeal which is very broad, and that fresh evidence can sometimes be admitted at that stage. Mr. M[redacted]'s view was that there had to be a right of reconsideration, there was no reason the Panel could not do so, and that the Panel had to make sure it was seeing both sides and had to correct its previous mistake.

[6] The Panel's view was that based on s. 21.2 of the *Statutory Powers Procedure Act* and the Rules, it was unclear whether it had jurisdiction to reconsider the liability portion of the hearing at its stage. Mr. M[redacted] did confirm that all of the materials he wished to introduce at this stage were in existence and available to him prior to the liability portion of the proceeding. The Panel concluded that, even if it has the authority to re-open the case, it would not exercise its discretion to admit new materials at this stage, given the full hearing that had already occurred, the fact that Mr. M[redacted] had access to counsel at that hearing although he was not represented by counsel, and that all of the information he wished the Panel to have was in existence and available to him at the time of the initial hearing.

[7] Given these factors, as well as the right of appeal and the nature of the information sought to be introduced, the Panel decided against re-opening the liability phase of the proceedings.

[8] Mr. M[redacted] then said he had no evidence about sanction and was not going to talk about sanction, given that he disagreed so strongly with the decision of the Panel.

[9] By way of sanction, the University advised that it was seeking a zero in Course ECE 318, a recommendation to the President that he recommend to Governing Council that Mr. M[redacted] be expelled, an order that Mr. M[redacted] be suspended for five (5) years or until the expulsion was decided upon, whichever came first, and an order that the decision be published without the student's name.

[10] The University took the Panel through several cases, and discussed the well-known factors in considering sentence. In her submission, the only thing we know about Mr. M[redacted]'s character was what we learned at the February hearing and today, that he was dishonest and would be dishonest to obtain an advantage for himself, that he was not afraid to point fingers and implicate others, and that he made serious, unfounded allegations against the University in closing submissions. Further, he had accused Professor Aitchison of fabricating an e-mail, suggested Mr. Wong fabricated an e-mail, and blamed the "system" in his closing argument, showing a readiness to call the integrity of others into question.

[11] University counsel based part of her submissions on the documents that were sent to the Panel but not admitted by it, in between the liability phase and the sanction phase. The Panel placed no reliance upon these documents for any purpose, concluding that it would be unfair to rely on them for the purpose of showing Mr. M[redacted]'s character, while not allowing Mr. M[redacted] to re-open the hearing to introduce those documents.

[12] The University submitted that repetition of the offence was likely, given that there had already been a first offence, or three concurrent first occurrences, and that Mr. M[redacted]

was seriously warned that further offences would be treated more severely. There was nothing to suggest any remorse. Further, the nature of the offence was very serious, considering that there needed to be a deliberate intention to commit the offence, as opposed to a carelessness that might exist in some plagiarism cases. In this case, it was planned and deliberate and not something that occurred spontaneously in a moment of panic. Further, he could have reconsidered his plan in between the time he wrote to Mr. Wong and the time he went to see Professor Aitchison, but did not. There were no extenuating or mitigating circumstances put before the Committee, and in the University's submission, the detriment to the University, its students and its faculty, was significant.

[13] In particular, counsel noted that tests are returned to students in order to facilitate their learning, and if tests are to be misused in this way, it is a direct attack on academic integrity and on those students who wish to learn. Finally, there is a detriment to the University, in counsel's submission, to have allegations made against the University, its students, its TAs and the "system". Finally, University counsel submitted that general deterrence was an important consideration and the message needed to be sent that this kind of behaviour would be dealt with strongly. The University relied on several authorities in support of its submissions.

[14] The student, on the other hand, said that given that this was a second and not third offence, there should be no expulsion. He denied that he accused Professor Aitchison or the system of anything, and indicated that he was not blaming or accusing anyone.

Although he has completed his requirements and indicated that he does not need the credit in the course, he did acknowledge that if he were expelled, he would not receive his degree. He objected to University counsel "testifying" about his character, denied that he had changed statements and indicated that he had been consistent throughout. He closed by indicating he was not prepared to talk about sanction.

[15] The Panel concluded that the University's request in terms of sanctions was reasonable and appropriate. The Panel found the case of *The University of Toronto and Ms. M[redacted] B[redacted]* (Case #538; August 14, 2009) to be most compelling, and wishes to underscore the seriousness of the offence.

[16] The Panel does not share the University's view that it is aggravating for Mr. M[redacted] to suggest in his defence that there is a "systems error". This suggestion in and of itself is not sufficient to call into question the University's integrity. Students must be able to bring forward questions about the systems in place without fear of these questions being cast as aggravating factors. However, the Panel was concerned that Mr. M[redacted] did implicate both Mr. Wong, the teaching assistant, and Professor Aitchison, to a degree, by suggesting that they had made up or possessed "bogus" e-mails. In addition, Mr. M[redacted]'s offence was extremely serious and, in the words of *B[redacted]*, calculated; no mitigating factors were presented to the Panel; the act was intentional as contrasted to some of the plagiarism cases brought before this Tribunal; and the degree of planning and deliberation was high. Given these factors and Mr. M[redacted]'s history, the Panel was of

the view that the order requested was necessary and appropriate, and made that order on May 2, 2013.

[17] During the time that the Panel was deliberating about penalty, Mr. M[redacted] entered the room and provided the Panel with a document that purported to be an e-mail exchange between him and Mr. Wong. The Panel had no regard to those documents in reaching its decision.

Sanction

[18] Therefore, the Panel ordered that the following sanctions shall be imposed on Mr. M[redacted]:

(a) a final grade of zero in the course ECE318;

(b) a suspension from the University for a period not to exceed 5 years from the date of this order or until Governing Council makes its decision on expulsion, whichever comes first;

(c) that the Tribunal recommends to the President of the University that he recommend to the Governing Council that Mr. M[redacted] be expelled from the University; and

(d) that this case be reported to the Provost, with Mr. M[redacted]'s name withheld, for publication of a notice of the decision of the Tribunal and the sanction imposed.

Dated this 11th day of June, 2013

Lisa Brownstone, Co-Chair