

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of the use or possession of an authorized aid made on November 16, 2011,

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 am.

B E T W E E N:

THE UNIVERSITY OF TORONTO

- and -

C [REDACTED] E [REDACTED]

REASONS FOR DECISION

Hearing Dates: Tuesday, April 9, Monday, May 27 and Wednesday, June 26, 2013

Panel Members:

Mr. Michael Hines, Barrister and Solicitor, Chair
Dr. Joel Kirsh, Faculty of Medicine, Faculty Member
Mr. Peter Qiang, Student Member

Appearances:

Mr. Glenn M. Stuart, Barrister and Solicitor, StuartLaw
Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Barristers
Dr. Justin Bumgardner, Lecturer, University of Toronto Mississauga
Ms. Miriam Avadisian, Student, University of Toronto Mississauga
Cpl. Ivan Ampuero, University of Toronto Mississauga Campus Police
Cpl. Charles Helewa, University of Toronto Mississauga Campus Police
Ms. Catherine Seguin, Lecturer, University of Toronto Mississauga
Ms. Maeve Chandler, Student, University of Toronto Mississauga
Mr. R [REDACTED] E [REDACTED], the student's brother
Ms. J [REDACTED] E [REDACTED], the student's mother

In Attendance:

Mr. C [REDACTED] E [REDACTED], the Student
Ms. Lucy Gaspini, Manager, Academic Integrity and Affairs, University of Toronto Mississauga
Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances, Office of the Governing Counsel

Charges

1. The events leading to this disciplinary hearing are connected to the writing of a final exam in POL310 (a full-year course) on April 20, 2011. The accused C ■■■ E ■■■ was a student in this course. The charges against him read as follows:
 - On or about April 20, 2011, you knowingly used or possessed an unauthorized aid in the final exam ("Exam") in POL310Y5 ("Course"), contrary to section B.I.1(b) of the *Code*.
 - In the alternative, on April 20, 2011, you knowingly engaged in a form of cheating, academic dishonesty or misconduct not otherwise described in the *Code* in order to obtain an academic advantage in the Exam, contrary to section B.I.3(b) of the *Code*.

2. The precise events that occurred in the examination hall that led to these charges can be stated fairly simply, although they are, themselves, not free of controversy. Specifically, there is no doubt that Mr. E ■■■ was in possession of a document in the exam hall in addition to those provided and authorized by the University. The case turns on what that document was – was it a completed Mid-Term Exam Booklet related to POL310 (as the University claims) or was it a completed Mid-Term Exam Booklet from an unrelated course (as Mr. E ■■■ claims)? The answer to this question will determine whether the document in the possession of Mr. E ■■■ was an "aid" or an irrelevancy and hence the guilt or innocence of Mr. E ■■■.

3. To assist in describing the evidence tendered before us, it is helpful to note at this point that in support of his position, Mr. E ■■■ tendered in evidence a completed Mid-Term Exam Booklet that he had used in answering questions in a mid-term exam for POL336, a course taught by a Prof. George Wooten that was acknowledged by the University to be unrelated to POL310. Mr. E ■■■ claimed that this booklet (hereinafter "the 336 Booklet") was the unauthorized document that was in his possession on April 20, 2011. Mr. E ■■■ acknowledged that possession of a completed POL310 Midterm Exam Booklet would constitute possession of an unauthorized aid. For its part, the University did not seriously suggest that mere possession of a completed Midterm Exam Booklet from POL336 would constitute possession of an unauthorized aid.¹

¹ This is not to suggest that possession of such a document in the POL310 exam would be acceptable, given the strict instructions provided to students in terms of ensuring that only expressly authorized materials are taken into an exam hall. The argument here is that, given the difference in the two courses, the 336 Booklet would not have constituted an "aid". In view of our conclusion as to what the document in question actually was, this point need not be definitively determined.

4. The events that preceded and followed the events that occurred in the examination hall are more involved and the conclusions to be drawn from them are far from clear.

The University's Case

5. We will deal first with what occurred in the examination room. The final exam was, according to the Course Outline, to be worth 40% of the final mark. It involved two questions. One of these questions was summative or cumulative, in the sense that it required knowledge of material covered over both terms. Students would have anticipated such a question based upon the description of the exam in the Course Outline. The students who wrote the exam were given the usual warnings prior to the start of the exam prohibiting the possession of unauthorized aids. Invigilators were present, as was Prof. Justin Bumgardner, who had taught the course.
6. As the exam was being written, Prof. Bumgardner's attention was attracted by a student sitting at an exam table next to that occupied by Mr. E [REDACTED]. He approached that student, who indicated by a written note that she suspected that Mr. E [REDACTED] was using an unauthorized aid. Unfortunately, that note was not retained as evidence.
7. At or shortly after that moment, Mr. E [REDACTED] also raised his hand and Prof. Bumgardner approached him. As the two spoke, Prof. Bumgardner noticed something beneath the Final Exam Booklet that Mr. E [REDACTED] was using to record his answers. According to Mr. E [REDACTED], there ensued something of a tussle, with Prof. Bumgardner attempting to see what lay below the Final Exam Book and Mr. E [REDACTED] attempting, by placing his palms on the Final Exam Book, to prevent this.
8. After a few seconds of this, Prof. Bumgardner succeeded in seeing what was being concealed. He testified that the document in question was a Mid-Term Exam Booklet.² He testified further that he could see that the front cover had been filled in by handwriting identifying the course as POL310, the Instructor as himself and the Student as Mr. E [REDACTED].
9. Prof. Bumgardner seized both Exam Booklets and instructed Mr. E [REDACTED] to follow him to the invigilator's table at the front of the exam hall. He handed the materials to the Chief Presiding Officer ("CPO") and explained what had happened. He left the matter between Mr. E [REDACTED] and the CPO, observing that Mr. E [REDACTED] assumed a vacant exam table immediately in front of the invigilator's table, evidently to continue writing the exam (as would have been Mr. E [REDACTED]'s right).

² Although the Mid-Term and Final Exam Booklets are similar, the printed material on the cover of the former is in bright blue ink while the printed material on the cover of the latter is in black ink. The two kinds of booklets would, we believe, be readily distinguishable to those familiar with the differences.

10. Prof. Bumgardner's attention was next drawn to Mr. E [REDACTED] when, shortly before the end of the exam, he observed Mr. E [REDACTED] leave his seat, go to the invigilator's table, seize the two exam booklets and, over the protestations of the CPO and following a brief physical struggle, run out of the exam hall and down the hallway. By the time Prof. Bumgardner managed to get to the doorway of the exam hall, Mr. E [REDACTED] had vanished.
11. The foregoing, including Mr. E [REDACTED]'s name, was reported to Campus Police.
12. Prof. Bumgardner was shown the 336 Booklet in his examination-in-chief and denied that it was the document that he had confiscated on the day in question. In cross-examination, Prof. Bumgardner was also shown a document later identified by Mr. E [REDACTED] as the POL310 Midterm Booklet Mr. E [REDACTED] had used in January, 2011 when writing a make-up of that exam. Prof. Bumgardner testified that this document was, in fact, the document he had confiscated on April 20, 2011, basing this on the fact that both the document shown to him and the document he had seized had reflected that the course in question was POL310.
13. Although the further cross-examination of Prof. Bumgardner revealed some minor anomalies, the substance of his account was not undermined in any material way.
14. The CPO was called as a corroborative witness by the University. Although this witness confirmed that Prof. Bumgardner had handed her both a Final Exam Booklet and a Mid-Term Exam Booklet, she was unable to shed any light on the precise details of the information on the cover of the Mid-Term Exam Booklet that was given to her by Prof. Bumgardner. However, when shown the 336 Booklet, she denied that it was the Mid-Term Exam Booklet that had been handed to her, testifying that the information on its cover regarding the course and instructor was different from the information on the cover of the Mid-Term Exam Booklet handed to her. She observed specifically that she would have noted that a reference to an Instructor other than Prof. Bumgardner would have "struck [her] as odd".
15. The CPO also testified that Mr. E [REDACTED] was extremely agitated and nervous after Prof. Bumgardner's intervention. Although Mr. E [REDACTED] attempted to continue writing the exam, he asked to take several breaks to get a drink and to go to the washroom. The CPO confirmed Prof. Bumgardner's description of Mr. E [REDACTED]'s seizure of the booklets and exit from the exam hall. She advised that in addition to the two booklets, Mr. E [REDACTED] had also made off with the reports concerning the incident that were in the course of being prepared.

16. As stated above, Campus Police were called immediately after the incident. The name of the student was, of course, known, and efforts were made to get in touch with Mr. E [REDACTED] in order to ask questions of him and, hopefully, recover the two exam booklets he had taken. A message was left that evening at the telephone number on record by Campus Police Corporal Ivan Ampuero, asking Mr. E [REDACTED] to contact Campus Police. At approximately 7:20 p.m., Mr. E [REDACTED] returned the call. He was asked to attend for an interview in respect of a report of an academic infraction committed by him that afternoon in connection with the POL310 Final Exam. Mr. E [REDACTED] advised Corp. Ampuero that he had not written the exam that day, having "opted out" due to a medical condition. Despite this, Corp. Ampuero insisted on a meeting on campus, and one was arranged for the following day.
17. In fact, Mr. E [REDACTED] called Corp. Ampuero the following day to cancel the meeting and re-schedule it for April 22. Mr. E [REDACTED] maintained that he could not attend the planned meeting because he could not secure the use of a car. While perhaps time-consuming to do so, it is possible to get from Mr. E [REDACTED]'s family residence to the Mississauga Campus by public transit.
18. Mr. E [REDACTED] attended the following day and was interviewed by Campus Police Corporal Charles Helewa. Mr. E [REDACTED] admitted having taken the booklets and having run from the exam hall. He told Helewa that he had "stashed" the papers at the bottom of a little-used staircase in the same building in which the exam had been written. Helewa interrupted the interview in order that Mr. E [REDACTED] might show him where the papers were.
19. The two attended the location described by Mr. E [REDACTED] and retrieved the incident reports and two exam booklets. One booklet was Mr. E [REDACTED]'s Final Exam Booklet for POL310 that had been seized by Prof. Bumgardner. The other was the 336 Booklet. Mr. E [REDACTED] told Helewa that the 336 Booklet was the second booklet that Prof. Bumgardner had confiscated.
20. Mr. E [REDACTED] then told Helewa that when he had entered the exam hall on April 20, he did so with the 336 Booklet (which was not relevant to the POL310 exam) in the pocket of his sweatpants. As the exam progressed, he removed the 336 Booklet from his pocket because it was making noise every time he wrote something. This was evidently observed by the student at the desk next to his, who then alerted Prof. Bumgardner. Mr. E [REDACTED] described the confiscation of the papers and his efforts to resume writing the exam. He panicked, rushed the invigilator's table, seized the materials and fled, ultimately deciding to leave the materials at the base of the staircase where they had just been. Helewa described Mr. E [REDACTED] as teary-eyed and nervous during this interview, "weighing his words carefully".

Mr. E [REDACTED]'s Case

21. The account Mr. E [REDACTED] gave to Corp. Helewa on April 22 was, in its essential points, the same account that Mr. E [REDACTED] gave to the Dean's Designate during the investigation of the matter and to the Panel at our hearing. This account of the events of April 20, 2011 was supplemented by some additional information that shall now be addressed.
22. Mr. E [REDACTED] called as a witness a fellow student, Maeve Chandler. Mr. E [REDACTED] and Ms. Chandler had taken Prof. Wooten's course in POL336 at the same time that year. She recalled having a meeting that involved Prof. Wooten, Mr. E [REDACTED] and three other students to discuss a group essay that the students had written. Mr. E [REDACTED] had taken notes of this meeting "on the back of an old paper or test". Ms. Chandler was unsure what course this "old paper or test related to", but when shown the 336 Booklet, identified it as the document in question.
23. After this meeting, the notes had ended up in Ms. Chandler's possession. She testified that she later returned the notes to Mr. E [REDACTED] at the end of the 2010-11 academic year. This occurred at a chance encounter at the library – the two had not planned to meet, but Ms. Chandler knew that Mr. E [REDACTED] was often there studying. At first, Ms. Chandler testified that this occurred on April 20, 2011, but it became clear in cross-examination a) that she did not have a reliable independent recollection of the precise date of this event and b) that the date of April 20 had been suggested to her by Mr. E [REDACTED].
24. Mr. E [REDACTED]'s brother then testified, presumably to explain that he was busy on April 21, 2011 with one of the two family cars. However, Mr. E [REDACTED]'s brother did not indicate that it would not have been possible for him to drop Mr. E [REDACTED] off at the University. Indeed, his evidence was to the contrary.
25. Mr. E [REDACTED]'s mother also testified. She related that their family had experienced a number of tragic events in the months preceding April 20, 2011. In particular, Mr. E [REDACTED] had suffered an accident in January, 2010, having been hit by a bus. This led to months of painful rehabilitation. As a part of this, Mr. E [REDACTED] had been prescribed Percocet, to be used on an as needed basis. She testified that he reacted very poorly to this medication, becoming very emotional and anxious, crying and wringing his hands.
26. As well, her father (Mr. E [REDACTED]'s grandfather) had contracted cancer around the same time, ultimately passing away on May 6, 2010. Mr. E [REDACTED] was extremely close to his grandfather, and his death was a great blow to the family.
27. The events of April 20, 2011 immediately preceded the Easter Weekend, the first since the death of Mr. E [REDACTED]'s grandfather. It was apparent from the evidence that Mr. E [REDACTED]'s family was spiritually observant, and this was to

be a significant weekend. Tragically, on that same weekend (although evidently after April 20), one of Mr. E [REDACTED]'s aunts died.

28. Mr. E [REDACTED]'s mother attempted to explain that the thought of Mr. E [REDACTED] travelling to the Campus by bus was unrealistic since he was "on crutches, hobbling around". In cross-examination, it was confirmed that by April, 2011 (fifteen months after being hit by the bus), Mr. E [REDACTED] was no longer on crutches and, in fact, had attempted to return to competitive running the previous summer.
29. Mr. E [REDACTED]'s mother also testified that on the morning of April 20, 2011, she had driven him to the Campus for his exam (which was not to begin until 4:00 p.m.). She testified that Mr. E [REDACTED] had taken "a pill". In cross-examination, she clarified that she had kept possession of the Percocet, and that Mr. E [REDACTED] had to obtain her permission before taking one, hence her knowledge of the consumption of the pill on the morning in question.
30. Mr. E [REDACTED]'s mother testified that on the night that the Campus Police first called to speak to Mr. E [REDACTED], when she gave the telephone to him, he left the room to speak in private.
31. Mr. E [REDACTED] then testified. He recounted the impact on him of his grandfather's death and the effect that Percocets had on him – they made him feel "spaced out" and made it harder for him to focus on tasks. He stated that he was in pain in April 2011 and remained in pain to the present time due to the accident with the bus.
32. On the day of the exam, Mr. E [REDACTED] stated that his pain was particularly bad, leading him to obtain a Percocet from his mother that morning and take it. He told us that the effects of a pill would last for approximately 8 hours. Mr. E [REDACTED] then was driven to the Mississauga Campus by his mother, arriving at approximately 8 a.m..
33. Mr. E [REDACTED] stated that he spent the day in the library studying. He testified that on that morning he encountered Ms. Chandler, who returned to him the 336 Booklet, which he folded up and placed in the pocket of his sweatpants. He said that he did not place the 336 Booklet in his knapsack since he was just going for a walk.
34. Mr. E [REDACTED] studied until approximately 3:45 p.m. As stated above, the exam began at 4 p.m. Being uncomfortable due to pain, Mr. E [REDACTED] claimed that he became fidgety, which in turn caused the 336 Booklet in the pocket of his sweatpants to rustle. He noticed the girl beside him raise her hand, in his understanding to complain about the noise the 336 Booklet was making. Mr. E [REDACTED] then also raised his hand in order to get guidance as to what he ought to do with the paper. Prof. Bumgardner approached the girl first and

then, giving Mr. E [REDACTED] no opportunity to explain, grabbed the 336 Booklet from him. Evidently by this point Mr. E [REDACTED] had removed the 336 Booklet from his pocket and placed it somewhere on his desk.

35. Mr. E [REDACTED] described being taken to the front of the exam hall and being instructed by the CPO that he should begin writing the exam again from the beginning. This caused him even greater anxiety since the exam was more than half over. He claimed that he had attempted to explain the situation to the CPO, again to no avail. His situation and his inability to make his explanation known coupled (according to his testimony) with the influence of his medication caused him to panic, which in turn led him to grab the papers from the invigilator's table and make off with them. Mr. E [REDACTED] stated that as he was making his way through the halls, he was asking himself "What are you doing?". He described placing the documents at the foot of the staircase and leaving the building.
36. Mr. E [REDACTED] acknowledged that he had "not been 100% forthcoming" when he was first contacted over the telephone that evening by Campus Police, attributing this to the stress his family was undergoing due to the emotional circumstances. He admitted that he had agreed to come in the following day, but decided not to when he could not get a ride. On the following day, he had reached the conclusion that he had nothing to hide and, as described by Corp. Helewa, gave his account to Campus Police and showed them where the documents were.
37. In cross-examination, Mr. E [REDACTED] agreed he knew the rules prohibiting possession of unauthorized aids. He appeared to rely on the medication (which he stated he had taken before 7:30 a.m.) and his resulting "frame of mind" to explain why he may have failed to have removed the 336 Booklet from the pocket of his sweatpants, stating that it was "difficult to discern" whether he had anything improper in his possession. It was only at a point in the exam when he started jiggling his leg that he realized that he had the 336 Booklet in his pocket. This realization made him nervous, leading him to seek Prof. Bumgardner's guidance. When asked why he did not wait to clarify everything at the end of the exam, Mr. E [REDACTED] replied "No one wanted to hear what I had to say".
38. Mr. E [REDACTED] stated in cross-examination that he, rather than the girl beside him, had been the first to seek an invigilator's attention. Mr. E [REDACTED] stated that he was only being honest "and that led to my downfall", that the confusion could have been avoided had Prof. Bumgardner only approached him first – "I was owed that and was never given the opportunity". However, Mr. E [REDACTED] agreed that when Prof. Bumgardner approached him, the proper POL310 Exam Booklet was on top of the Midterm Exam Booklet he had removed from his pocket. He agreed that he had resisted Prof. Bumgardner's seizure of the materials on his desk "because he tried to grab everything".

39. In terms of the meeting he initially agreed to attend on April 21, Mr. E [REDACTED] stated that he could not secure a ride from either his mother or his brother. He asserted that, given the fact that he had been injured by being hit by a bus, it was unreasonable to expect him to travel to the Campus by public transit.
40. Mr. E [REDACTED]'s account of his meeting with Corp. Helewa was not materially different from that provided by Corp. Helewa described above.

Findings of Fact

41. There is only one material factual finding to be made – was the document seized by Prof. Bumgardner the 336 Booklet or the POL310 Midterm Exam Booklet? For the reasons set out below, we conclude that it was the latter.
42. To begin with, it should not be overlooked that the inability to answer this critical question with certainty is entirely attributable to the actions of Mr. E [REDACTED] in seizing and making off with the document confiscated by Prof. Bumgardner. While this fact does not relieve the University of its ultimate burden of proof, it obliges Mr. E [REDACTED] to provide a credible, cogent account that explains satisfactorily how the facts are best explained by acceptance of his contention that the confiscated document was the 336 Booklet. In the Panel's opinion, he has not met this challenge.
43. We begin with the evidence of Prof. Bumgardner. He testified both in chief and in cross-examination that his opportunity to observe the confiscated document was sufficient to allow him to read sections on the front cover that Mr. E [REDACTED] had filled in. He was unequivocal in his testimony that the cover identified the booklet as being associated with the POL310 midterm. He was shown the 336 Booklet and denied that it was the document he had confiscated. He was later shown the POL310 Midterm Booklet and he identified it as the document he had confiscated.
44. The Panel sees no reason to disbelieve this testimony. We believe that faculty members such as Prof. Bumgardner are sensitive to the calamitous consequences that may befall students convicted of serious academic misconduct. We doubt that Prof. Bumgardner would raise and maintain these concerns lightly.
45. The testimony of Prof. Bumgardner was corroborated by that of the CPO, who also had a brief opportunity to see the cover of the confiscated booklet. She denied that the booklet he had handed to her was the 336 Booklet, rejecting the suggestion that the confiscated document had Prof. Wooten's name written on it. While this testimony standing alone might not have persuaded us, it is consistent with and supportive of the University's key eyewitness testimony.

46. Then there are circumstances surrounding the confiscation. In particular, Mr. E [REDACTED] did not deny that he and Prof. Bumgardner had tussled over the document he had carried into the exam hall in the pocket of his sweatpants. In fact, he confirmed that this document was, at the moment Prof. Bumgardner approached his desk, beneath the POL310 Exam Booklet he was writing in. This is inconsistent with his story that he had, just seconds previously, removed the document from his pocket in order to obtain guidance from Prof. Bumgardner as to what he ought to do with it.
47. Then we must assess Mr. E [REDACTED]'s behaviour in seizing the materials from the invigilator's desk and making off with them. This was certainly behaviour consistent with panic – Mr. E [REDACTED] acknowledged this. The Panel finds it impossible to accept that Mr. E [REDACTED] had attempted to explain to both Prof. Bumgardner and the CPO what he says happened, that both Prof. Bumgardner and the CPO refused to take the elementary step of simply looking at the name of the course written on the cover of the confiscated document.
48. Had Mr. E [REDACTED]'s story been true, one would have expected him to remain until the end of the exam in order to demonstrate beyond doubt that the confiscated document was the 336 Booklet. Even allowing for an understandable level of anxiety resulting from the initial confrontation with Prof. Bumgardner, we do not accept that Mr. E [REDACTED] (had his story been factually accurate) would have behaved in the manner that he did, a manner that could not help but give rise to profound suspicion. His behaviour is far more consistent with a guilty mind than with an honest student whose panic was nevertheless so extreme as to rob him of any vestige of rationality.
49. Mr. E [REDACTED] attempted to buttress his claim of honest yet irrational panic by reference to the fact that, as his mother confirmed, he had taken a Percocet that morning. Treating that evidence most generously, we observe that by the time of the confrontation with Prof. Bumgardner, the Percocet (taken at 7:30 a.m.) had been in Mr. E [REDACTED]'s system for over nine hours. Mr. E [REDACTED] advised us that the effects of these pills typically dissipated after eight hours. The cognitive impact of the pills was simply to make Mr. E [REDACTED] feel a little spaced out and to lessen his ability to focus on tasks. It was not suggested that a Percocet tablet would rob Mr. E [REDACTED] of the ability to act rationally. It is to be noted in this regard that Mr. E [REDACTED] was in the process of writing a final exam despite having taken the Percocet tablet earlier that day. The panel does not accept that Mr. E [REDACTED]'s behaviour after the booklet was confiscated was attributable to his medication.
50. Then there is the matter of Mr. E [REDACTED]'s behaviour after he fled the exam hall. He asks us to believe that he wandered through the building for a period of time and then decided to place the materials he had seized from the invigilator's table at the bottom of a little-used stairwell. No explanation was

given for this ostensibly inexplicable act. One would have thought that Mr. E█████ would have either taken the materials home, thrown them out or, if he had by that point determined to attempt to exonerate himself, return them immediately to Prof. Bumgardner, the CPO or someone in a position of authority. It is difficult to understand why he would simply place them at the bottom of a little-used stairwell and walk away.

51. Mr. E█████'s account allows him the following luxury – it provides him with two days during which, by his story, the evidence remains accounted for and at the same time untainted. He can claim that when he led Corp. Helewa to the site, the documents were just as he left them. He can claim that the document that Prof. Bumgardner confiscated from him never left the building.
52. This would be important if, as the University maintains, Mr. E█████ actually retrieved the 336 Booklet and, at some point prior to his Friday meeting with Helewa, used it to replace the POL310 MidtermExam Booklet among the materials he had seized from the invigilator's desk, placing the entire bundle at the bottom of the staircase. Mr. E█████'s account as to how, when and why the documents ended up where they were makes little sense, assuming he was innocent. By contrast, the University's theory as to how, when and why the documents got to the bottom of the staircase makes perfect sense if Mr. E█████ was not innocent.
53. Finally, it does not assist Mr. E█████ that he lied to Corp. Ampuero when he was first contacted on the evening of April 20, denying that he had even written the exam. Nor does it assist him that he took two days to re-attend the Campus to meet with Corp. Helewa without any credible explanation for the delay. This delay conveniently (according to the University's theory) extended the window of opportunity available to him to locate the 336 Booklet and place it (along with the other materials) at the bottom of the staircase. As with the corroborative evidence of the CPO, this evidence standing alone would not have satisfied the University's ultimate onus of proof. However, it is more explicable under the University's theory of the case than Mr. E█████'s theory of the case, and so adds weight to the other, more material direct and circumstantial evidence relied upon by the University.
54. We have not overlooked the evidence of Ms. Chandler that she gave Mr. E█████ the 336 Booklet in and around the time in question. Indeed, she may well have given the 336 Booklet to Mr. E█████ on the morning of the exam. That does not establish that he carried the document into the exam hall. We have only his word for that. For the reasons set out above, we do not accept his account of these events.
55. For all of the foregoing reasons, we conclude that Mr. E█████ was in possession of an unauthorized aid during the POL310 exam on April 20, 2011.

Sanction

56. Mr. E [REDACTED] has no prior disciplinary record. He submitted two letters of reference which spoke very highly of him. It appears that the authors of these letters were unaware of the conduct that brought Mr. E [REDACTED] before us, and consequently we attribute little, if any, weight to them in our determination.
57. Discipline Counsel proposed the following sanction:
- (a) A final grade of zero in POL310
 - (b) A three year suspension
 - (c) A notation on the Student's transcript for a period of four years
 - (d) A report to the Provost for publication of a notice of our decision including sanctions, with the name of the student withheld.

Discipline Counsel observed that the normative penalty for a first offence involving a case of serious academic misconduct is a two year suspension. However, in this case, there were exacerbating factors, specifically the extraordinary conduct of Mr. E [REDACTED] in the minutes, hours and days following the seizure of the document by Prof. Bumgardner, coupled with his steadfast denial of his guilt in these proceedings.

Reference was made, among others, to the case of K [REDACTED] which involved a first offence remarkably similar to that proven before us in this case. The only material difference in the cases was that the student in K [REDACTED] chose not to appear, leaving the Panel to wonder as to the impact that the disciplinary process had had on her. Given the absence of any evidence of remorse or other mitigating factors, the Panel elected not to accept Discipline Counsel's request for a two year suspension, imposing instead a three year suspension.

In our case, of course, Mr. E [REDACTED] did testify. We have rejected his account, concluding that he has engaged not only in the particular offence with which he was charged (i.e., possession of an unauthorized aid) but also in a protracted and deliberate course of deception. We sympathize with the series of personal tragedies experienced by Mr. E [REDACTED] in the fifteen months preceding the incident in question. However, Mr. E [REDACTED] did not initially rely upon these events before us to explain why he cheated on an exam, and then seek mitigation of his penalty. He relied on them to try to explain why he, an honest student, panicked in the fashion that he did. We have rejected this account. The tragedies experienced by Mr. E [REDACTED] in 2010 and 2011 do not explain or mitigate the fact (as we have found) that he attempted to mislead the Tribunal in 2013.

While previous cases are to provide guidance only, we are persuaded that Mr. E [REDACTED] should be treated no more leniently than was Ms. K [REDACTED]. We observe that a three year suspension is also consistent with the other case law that was put before us. This is a serious offence, one that cuts at the heart of academic integrity. Although Mr.

E [REDACTED] clearly has many fine qualities, the ones most directly at issue in this proceeding are not flattering. There is a continuing need to deter this type of behaviour. He is unlikely to repeat this type of offence, and consequently it is not necessary to prevent his return to the University altogether. However, his failure to acknowledge his wrongdoing is clearly an exacerbating factor.

Under all the circumstances, we accept the proposal of Discipline Counsel regarding penalty. We observe that, due to factors beyond Mr. E [REDACTED]'s control, it has taken more than four months for this Decision to be issued. Because our last day of hearing was June 26, 2013, the timing of the commencement of his suspension is significant. Therefore, we will direct that the suspension requested by Discipline Counsel shall commence on the last day of hearing in this matter rather than the date of the issuance of this Decision.

The Panel therefore imposes the following sanctions:

- (1) The Student shall receive a final grade of zero in POL310;
- (2) The Student shall be suspended from the University for a period of three years, commencing June 26, 2013;
- (3) The Student's academic record and transcript be annotated for a period of four years, commencing June 26, 2013, to reflect that he has been found guilty of academic misconduct;
- (4) That this case shall be reported to the Provost for publication of a notice of the Decision of the Tribunal and the sanctions imposed, with the name of the student withheld.

Dated at Toronto, this 12th day of November, 2013.



Michael A. Hines, Co-Chair