

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER of charges of academic dishonesty made on January 7, 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 as amended S.O. 1978, c. 88

B E T W E E N:

UNIVERSITY OF TORONTO (the "University")

- and -

O [REDACTED] S [REDACTED] (the "Student")

Hearing Date: November 30, 2011

Panel Members:

Ms. Roslyn M. Tsao, Barrister and Solicitor, Chair
Professor Graeme Hirst, Department Computer Science, Faculty Panel Member
Ms. Vy Nguyen, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel for the University, Paliare Roland Barristers
Mr. Danny Kastner, Associate, Paliare Roland Barristers
Mr. Edward F. Hung, Law Office of Edward Hung, Counsel for the Student
Ms. Kathrin Herzhoff, Teaching Assistant, PSY240F: Introduction to Abnormal Psychology
Professor Jennifer Tackett, Instructor, PSY240F: Introduction to Abnormal Psychology
Professor John Browne, Dean's Designate, Faculty of Arts and Science
Ms. O [REDACTED] S [REDACTED], the Student

In Attendance:

Dr. Kristi Gourlay, Manager of Office of Academic Integrity, Faculty of Arts and Science
Ms. Amanda Guo, Law Clerk to Mr. Edward F. Hung
Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

Reasons for Decision
Delivered by Ms. Roslyn M. Tsao

1. The Trial division of the Tribunal heard this matter on November 30, 2011. The Student was charged on January 7, 2011 of the following:
 - (a) On or about October 14, 2010, the Student knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated and made use of any such forged, altered or falsified document, namely a scantron answer sheet submitted for re-grading in a mid-term test in PSY240H1F, contrary to section B.I.1(a) of the Code;
 - (b) In the alternative, on or about October 14, 2010, the Student knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind, by submitting an altered mid-term test for regarding in PSY240H1F, contrary to section B.I.3(b) of the Code.

DECISION OF THE TRIBUNAL

2. The University bears the onus of proving the elements of the offence, namely, submission of concocted statements of fact or material, based "on clear and convincing evidence" (Code: s. C.II.(a) 9.).
3. The evidence, in particular, the scantron evidence (both the answer sheet and the re-run scantron results), leads to the conclusion that the answer sheet was altered after its original submission at the mid-term test.
4. The only parties who had the opportunity to alter the scantron after the mid-term test were the Student, the Teaching Assistant, Professor Tackett or the Scantron machine operator. We find that the Student had the opportunity and motive to alter the scantron and that all the evidence when considered as a whole lead to a finding that the Student committed the alteration.

5. Accordingly, the Panel finds the Student guilty of the first charge and we presume the alternative charge to be withdrawn by the University.

SUMMARY OF EVIDENCE AND REASONS FOR DECISION

6. Witnesses were excluded during the hearing. The Teaching Assistant, Kathrin Herzhoff, Professor Tackett and the Dean's Designate involved, Professor Browne testified on behalf of the University. Ms. S█ testified on her own behalf.
7. The Student was, at the material time, a enrolled in PSY240F – Introduction to Abnormal Psychology in the fall of the 2010/2011 academic year.

REVIEW SESSION WITH TEACHING ASSISTANT ("TA")

8. Professor Tackett was the course professor and there were 2 teaching assistants, Kathrin Herzhoff and another. There was a mid-term test on October 4, 2010 which was comprised of 44 multiple choice questions and 3 short answer questions. The answers to the mid-term test were recorded on a scantron form vis-à-vis the multiple choice answers and an **examination booklet** which, in addition to setting out the multiple choice questions, had space for handwritten answers to the short answer questions.
9. Ms. Herzhoff testified that she was one of the TAs for the course's approximately 180 students. Her responsibilities included grading of mid-term tests and papers, holding office hours for review, etc.
10. For the mid-term in question, there were two "Forms" of the test, Form A and Form B to reflect 2 different sets/orders of multiple choice questions to prevent cheating during the test. The Student had Form B of the test.
11. Ms. Herzhoff's review session for the mid-term test was on October 14th. She testified that the review session was held at Sidney Smith building, Room 4004, a small room with one large rectangular table. Ms Herzhoff acknowledged that this was only her 2nd office hours session that she had ever held. Ms. Herzhoff stated that she limited the number of students in the room to 8 at any given time.

12. Ms. Herzhoff and the Student differ in their description of the events during this review session. The Student stated that there were more than 8 people in the room at a time. The Student and Ms. Herzhoff agreed that the Student's test was misfiled because her middle name was used to alphabetize the tests. The Student stated that because of this misfiling mix-up, she later had concerns about whether her test was properly graded.
13. Ms. Herzhoff stated that that she noticed the Student writing (crossing or underlining) during the review session but that she could not do anything about it because the Student was sitting at the furthest point from her at the table. Ms. Herzhoff recalls telling the students that they were not allowed to have any writing utensils while they reviewed their test. However, Ms. Herzhoff acknowledges that she may have permitted students to use pen to calculate their totals since the tests were in pencil. The Student testified that she asked permission to copy the answers to her clipboard from the only 1 or 2 answers keys in the room and that Ms. Herzhoff agreed.
14. The Student testified expressly that she did not make any markings on her **examination booklet** or on the scantron sheet during the review session. This denial is discussed further below in the review of the **examination booklet**.
15. The Panel finds that Ms. Herzhoff's recollection of the review session to have been inconsistent and tentative in parts. For example, Ms. Herzhoff recollects the Student "walking out" with her and another student, P.W., at the end of the session but easily agreed that the Student may have left earlier upon cross-examination.
16. Ms. Herzhoff also acknowledged that other students had identified errors with the posting of the grades to Blackboard (the online student portal for grades) for this mid-term in the first review session. These errors related to the other TA mixing up the results for 3 students who shared the same last name. This mix up was corrected afterwards but caused concern for the Panel that such errors occurred in the first place.
17. Although Ms. Herzhoff's testimony was, in parts, lacking in reliability, we find that in the areas that are most germane to the charge, Ms. Herzhoff's recollections are corroborated by her email of that evening to Professor Tackett (Exhibit 3-3) which is reviewed below.

PROBLEMS WITH STUDENT'S EXPLANATION

Review of Testimonial Evidence

18. For reasons below, the Panel cannot reconcile the Student's version with Ms. Herzhoff's evidence (where we find it to be reliable) and Professor Tackett's evidence. In particular:
- (a) Ms. Herzhoff stated that the Student approached her during the review session on October 14, 2010 to query whether the scantron may have misread the answer to Question 35 because bubble "A" was erased. Ms. Herzhoff is consistent that there was no discussion about an inconsistency between what the Student's Blackboard grade was and a tally of the score at the review session because the Student did not know what her Blackboard score was at the session. Ms. Herzhoff testified that that Student was seeking a regrading of the scantron results.
 - (b) In contrast, the Student insists that she did ask about the scantron having misread the answer to Question 35 because it was clearly "double-darkened"¹ to her and would have been scored as an incorrect answer. The Student testified that she had tallied up her total without Question 35 and counted a score of 56%. The Student testified that, at the time, she believed that her Blackboard score was 54% from her recollection (which she stated was based on her confusion that she got a 54/60 on a test in her sociology course that she wrote the same week²) and, as such, the Student testified that she asked the TA whether the double-darkened answer would have resulted in a **penalty** (ie., reducing her 56% to 54%).
 - (c) Ms. Herzhoff denies that the issue about a double-darkened answer to Question 35 was raised by the Student as the form appeared then as it did at the hearing with an empty bubble "A" (erased) and with bubble "B" filled in.
 - (d) There was no dispute at the hearing that the scantron sheet presented to the Tribunal had an empty though erased bubble "A" and filled in bubble "B".

¹ "double-darkened" in the sense that both bubbles "A" and "B" were filled in a way that would result in a "wrong" answer.

² The Panel notes that no corroborating evidence was adduced by the Student regarding this other 54% test result.

- (e) Ms. Herzhoff's email to Professor Tackett of that evening at 10:02 p.m. (Exhibit 3-3) is, in the Panel's view, reliable evidence of her recollection from the review session and it stated:

Hi Jennifer,

I had my second set of Midterm I office hours today and something came up that [other TA] suggested I talk to you about. A student showed me an answer on her scantron sheet for which one choice was erased and the other bubbled in. She commented that she didn't know whether the scantron machine had read that answer properly. I didn't reply to her comment because she went on to ask me questions about her short answers. At the end, she came back to the scantron issue and I asked her whether she had calculated her score and compared it to the one posted on blackboard. She denied that, so I told her that I would check her scantron after the office hours and get back to her because other students had questions and I didn't have time to check it right away. When I checked it after the office hours, it looked like the scantron machine hadn't correctly counted that answer. I think, however, that this is unlikely to have been the case because the erased bubble is erased very neatly and from what I've been told, a scantron machine would read this correctly. Furthermore, on her actual midterm, she had checked off the supposedly "incorrect" choices, which included the actually correct choice. The correct choice, however, was also circled on her midterm. So, it was checked off together with the other incorrect choice and also circled, whereas the supposedly "correct" choice was left blank. Finally, during the office hours, it appeared to me as if she used a pencil/pen for something; however, I didn't react to it promptly because I was answering another student's questions at the other end of the room and it was generally busy so I didn't end up asking her whether she was taking any notes. How should I proceed with this case?...

- (f) On the instructions of Professor Tackett, Ms. Herzhoff emailed the Student the next morning at 10:28 a.m. advising the Student that she would have to follow-up with Professor Tackett during her office hours.
- (g) The Student testified that she checked her Blackboard score after her statistics class which was right after the review session and confirmed that Blackboard did reflect the "correct" 56% score. However, she did not email the TA that evening

because she was busy with a statistics assignment and instead replied to Ms. Herzhoff's email of October 15th at 12:21 p.m as follows:

Hi Kat,

*After talking to you yesterday, I have double checked with my grades on blackboard, and I think my problem is solved now. I think I have made a **wrong calculation** yesterday. Sorry for the inconvenience caused.*

Thank you! (emphasis added)

- (h) Professor Tackett contacted the Student by email to request a meeting. The Student's emails with Professor Tackett between October 18 and 20 (Exhibit 3-5) included the following:

[October 18]

*...Sorry that i have **miscalculated the mark** that day when I met Kathrin at SS 4004, I thought I would be having a higher mark than it is I stated on ROSI, but when I double checked with the mark on ROSI after meeting Kathrin, I realised the calculation is correct...*(emphasis added)

[October 20]

*... I know **my miscalculation** for the test has been causing you and the TAs a lot of trouble...* (emphasis added)

- (i) Professor Tackett met with the Student on October 27th (Professor Tackett initially believed the date to be October 20th until other evidence was put to her) and testified that she admittedly wanted to give the Student the chance to admit the academic offence. During the meeting, Professor Tackett testified that the Student never raised the "double-darkened" issue and that she only learned of this issue after her involvement in the matter ended. The Student maintained that she did not do anything.
- (j) The Panel notes that, although Professor Tackett claimed that she had not pre-judged the circumstances and, therefore did not wish to run the re-scan of the scantron answer sheet before she interviewed the Student, she had likely already

concluded that the Student had made an alteration before the meeting and was hoping that the Student would acknowledge having done so.

- (k) After the meeting, Professor Tackett did, in fact, re-run the scantron and the only change from the Student's original results was that the answer to Question 35 went from a "wrong" answer to a "correct" one.
- (l) Because the Student did not admit that she had altered the Question 35 answer, Professor Tackett had no choice but to forward the documentation to a centralized committee at the university since she suspected that an academic offence had been committed.
- (m) Professor John Browne was the Dean's Designate for the meetings held with the Student pursuant to the Code when there is an investigation into academic misconduct. Professor Browne met with the Student on 3 occasions, November 17, 2010, November 22, 2010 and again on June 24, 2011.
- (n) Professor Browne confirmed that the Student attended at the November 17, 2010 meeting with a friend and met with him and Dr. Gourlay. The Student was cautioned about her rights in the normal course. The Student denied that she had committed any academic misconduct. Professor Browne recalls being puzzled about how, at the time of writing the test and at the review session, the bubble had been double darkened. The Student said that she had filled in both bubbles A and B for Question 35 and that bubble A was much darker when she submitted her scantron for the test.
- (o) Professor Browne asked the Student "who" would have changed the scantron after the TA session from having a double-darkened answer to Question 35 to having a clear bubble B answer. The Student's only answer, consistent with her answer at this hearing, was that she did not know but that it was not her. The Student, at no time, accused Ms. Herzhoff or Professor Tackett.
- (p) Professor Browne adjourned the meeting to November 22nd as he wanted to clarify some information from the faculty. Both Ms. Herzhoff and Professor

Tackett were asked whether they recalled any discussion with the Student about the double-darkened bubbles. By emails (Exhibits 3-12 and 3-13) of November 18, 2010 (again, relatively contemporaneous to the meetings in October 14 and 27, respectively), each confirmed that the double-darkened issue had not been raised by the Student to either of them.

- (q) The further meetings between the Dean's Designate and the Student of November 22, 2010 and June 24, 2011 (with new counsel) resulted in the same exchanges. The Student did provide a written statement to the Dean's Designate (Exhibit 3-8) shortly before this June 24th meeting which was consistent with her testimony at this hearing.
- (r) The matter was referred to the next level by the Dean's Designate since no resolution was possible.

Observations About The Scantron Sheet And Examination Booklet

- 19. The scantron answer at issue was Question 35. From the original scantron form provided to the Panel (Exhibit 4), bubble "A" of this question was filled in at some point and then erased cleanly and bubble "B" is filled in. In a like manner, the original scantron form also showed an erasure of bubble "B" for Question 43 with its bubble "C" filled in. The Panel notes that there are no other erasures apparent on the form and that each filled in bubble is very neat and complete except for Question 35, bubble "B" which is different than the others in its completeness and that it goes outside of the bubble. This difference is not a definitive observation leading to a finding of guilt but is one fact to consider. In short, from the scantron sheet presented to the Panel, there is no doubt that bubble "B" to Question 35 is clearly the selected answer and that bubble "A" has been erased as confirmed from the re-run results.
- 20. It is a review of the **examination booklet** coupled with the Student's denial of altering the examination booklet during the review session that causes the Panel to most seriously doubt the Student's explanation:

- (a) Upon close examination of the examination booklet, it is noted that there are a number of notations (in pencil) throughout the multiple choice questions. These notations include:
- (i) circles around the question number;
 - (ii) circles around some of the letters of the choices;
 - (iii) underlining of parts of the question or parts of the multiple choice answers;
 - (iv) checkmarks beside some of the multiple choice answers – sometimes to the left of the answer, sometimes to the right;
 - (v) "x" marks -- sometimes beside multiple choice answers, directly on the text of an answer or directly on the letters of the choices;
 - (vi) arrows (" \leftarrow ") or line ("---") to some of the multiple choice answers;
 - (vii) scribbles beside an answer; and
 - (viii) sometimes, combinations of some of the above.
- (b) Counsel for the Student provided a summary chart of the notations as Exhibit "5". The Panel also closely examined the examination booklet to review notations.
- (c) The Student testified that, during the test, she would have circled the question numbers of those questions that she was not sure about. Checkmarks beside answers and "x"s beside answers did not necessarily mean she was excluding or including them as possible correct answers. In short, the Student would not or could provide a coherent explanation for her notations on the examination sheet.
- (d) The student had 25 correct multiple choice answers in her original scantron score and, therefore, 19 wrong answers.

- (e) Out of the 19 questions which were wrongly answered, 13 of them improbably have only one answer circled in the examination booklet which circled answer corresponds to the correct answer³.
- (f) Out of the remaining 6 questions which were wrongly answered, 4 of them had the correct answer marked (Q. 14: correct a. was circled and incorrect b. was circled but also crossed out over circle; Q. 15: only mark was an "x" beside the correct answer; Q. 40: arrow pointing to correct answer; Q. 43: arrow pointing to correct answer).
- (g) The remaining 2 questions which were wrongly answered (Q. 11 and Q. 13) do not have a definitive mark for the correct answer.
- (h) After considering (e), (f) and (g) above, it is the conclusion of the Panel that the Student circled the correct answers on the examination booklet at the review session for, at least, the questions noted in (e) above. The only other explanation would be that the Student, during the test, managed to circle 13 correct answers but ultimately answered them all incorrectly on the scantron. In particular, in Q. 16, the only notation in the choices is a circle around the correct answer – regardless, the student filled in an incorrect answer on her scantron sheet.

CONCLUSION

21. The explanation offered by the Student is suspect and cannot be accepted as we believe and accept the following:
- (a) that Ms. Herzhoff's and Professor Tackett were not alerted to any double-darkened issue by the Student in their discussions/meetings with the Student;
 - (b) that the scantron sheet submitted at the test and the scantron sheet which was evidence at the hearing had been altered after the test vis-à-vis Question 35;

³ Questions 5, 6, 16, 20, 23, 25, 30, 31, 32, 35, 37, 41 and 42.

- (c) that the Student had the only motive to change the scantron sheet after it was returned during the review session and that she had the opportunity;
- (d) it is highly unlikely and improbable that either the TA or Professor would have changed the scantron sheet which the Student adamantly maintains was changed after the review session;
- (e) some of the Panel doubted whether a second year Student would question whether a double-darkened bubble answer attracted a deduction when a "wrong" answer did not (however, the Panel can acknowledge that in a moment of panic, a Student could have such a question); and
- (f) that a review of the Student's examination booklet leads to the clear and compelling conclusion that the Student marked the correct answers in the examination booklet during the review session from the answer key **contrary to her sworn testimony that she did not**. This puts into doubt the Student's evidence on all other relevant matters.

22. The Panel finds the Student guilty of altering the scantron sheet, in particular Question 35.

Penalty

23. A hearing date is to be scheduled for penalty submissions unless both parties agree to proceeding by way of written submissions only.

24. We thank both counsel for their assistance in this case.

Dated at Toronto, this 7th day of February, 2012.



ROSLYN M. TSAO
Co-Chair