

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on January 7, 2014,

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:

UNIVERSITY OF TORONTO

- and -

Y ■ W ■

REASONS FOR DECISION

Hearing Date: Friday, December 12, 2014

Members of the Panel:

Mr. Bernard Fishbein, Chair
Professor Michael Saini, Faculty Panel Member
Ms. Susan Mazzatto, Student Panel Member

Appearances:

Ms. Lily Harmer, Discipline Counsel, Paliare Roland Barristers

In Attendance:

Professor Raymond Grinnell, Senior Lecturer, Department of Computer and Mathematical Sciences
Ms. Nikki Alber, Graduate Student, Department of Biological Sciences
Professor Wayne Dowler, Dean's Designate, University of Toronto Scarborough

Not in Attendance:

Ms. Y ■ W ■, the Student
Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

[1] The student, Y ■ W ■ ("the Student") was charged with violations of the University of Toronto ("the University") *Code of Behaviour on Academic Matters, 1995* (the "Code") as follows:

1. On February 27, 2013, you knowingly used or possessed an unauthorized aid in the Midterm Test in MATA33 (the "Course"), contrary to section B.I.1.(b) of the Code.
2. In the alternative, on February 27, 2013, 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 in connection with the Midterm Test in the Course, contrary to section B.I.3.(b) of the Code.

Particulars of the offences charged are as follows:

3. At all material times you were a student at the University of Toronto Scarborough. In Winter 2013, you enrolled in the Course, which was taught by Dr. Raymond Grinnell and Dr. Eric Moore.
4. On February 27, 2013, you wrote the Midterm Test in the Course (the "Test"), which was worth 30% of your final grade in the Course.
5. During the Test, you were permitted to possess and use a standard calculator that did not perform any graphing, matrix operations, numerical/symbolic differentiation or integration functions. You were not permitted to have any other aids.
6. During the Test, you knowingly used and/or possessed a Casio fx-991ES PLUS calculator (the "Calculator").
7. The Calculator was unauthorized because:

- a) the Calculator could perform functions that were unauthorized, including matrix operations; and
 - b) the back of the Calculator and the inside of the Calculator's case contained handwritten notes of formulas. The formulas were relevant to the Course.
8. You knew that:
- a) you were not permitted to use or possess a calculator that could perform any graphing, matrix operations, numerical/symbolic differentiation or integration functions during the Test; and
 - b) the Calculator could perform some or all of these unauthorized functions.
9. You knew that:
- a) you were not permitted to have any notes or formulas during the Test; and
 - b) the back of the Calculator and the inside of the Calculator's case contained handwritten notes of formulas relevant to the Course.
10. You used and/or possessed the Calculator during the Test for the purpose of obtaining academic credit or an academic advantage.

[2] A Notice of Hearing was sent by email and courier to the Student advising of a hearing date of Friday, December 12, 2014 at 9:45 a.m. in the Boardroom (Rm. 209), Simcoe Hall at the University. The Panel of the Tribunal waited for approximately 25 minutes but the Student failed to attend. In fact, the Student did not attend

throughout the course of the hearing and had never responded at all to the University since the incident which led to these Charges.

I Whether the University Could Proceed in the Absence of the Student

[3] The University filed the *Policy on Official Correspondence with Students* (the "Policy") which provides:

"The University and its divisions may use the postal mail system and/or electronic message services (e.g.,, electronic mail and other computer-based on-line correspondence systems) as mechanisms for delivering official correspondence to students.

...

Postal Addresses and Electronic Mail Accounts

Students are responsible for maintaining and advising the University, on the University's student information system (currently ROSI), of a current and valid postal address as well as the address for a University-issued electronic mail account that meets a standard of service set by the Vice-President and Provost.

...

Students' rights and responsibilities regarding retrieval of official correspondence

Students are expected to monitor and retrieve their mail, including electronic messaging account[s] issued to them by the University, on a frequent and consistent basis. Students have the responsibility to recognize that certain communications may be time-critical. Students have the right to forward their University-issued electronic mail account to another electronic mail service provider address but remain responsible for ensuring that all University electronic message communication sent to the official University-issued account is received and read.

...”

[4] The University also filed an affidavit of Janice Patterson, a law clerk in the office of the University Discipline Counsel. It attached the ROSI account of the Student. The ROSI account indicated an address of [REDACTED] (“the ROSI address”) which was effective from 2012-08-13 to 2015-08-31, as well as another address in China. It also indicated a phone number (“the ROSI phone number”) and the University email address for the Student (“the ROSI email”). The ROSI account also indicated that the Student had only successfully completed two half-credits in her three terms at the University and had not been enrolled in the University since the end of the Winter term of 2013.

[5] The Charges had been emailed to the Student’s ROSI email on January 9, 2014 twice (the second time was required because a page had been missing in the first

transmission). A full disclosure package (which also included the Charges and the University's Policy on correspondence) was sent to the Student's ROSI address by courier. It was not returned but the courier records indicated it was accepted by someone named "W[REDACTED]". A disclosure package was also sent by email to the ROSI email. In addition, Ms. Patterson attempted to telephone the ROSI phone number to contact the Student but only reached people that could not speak English. As well, there were various emails to the ROSI email from the Discipline Counsel (who at the time had carriage of this matter) to the Student proposing various dates and asking for hearings and meetings and asking her to respond. She never did.

[6] None of these emails that were sent to the Student's ROSI email ever "bounced back" to the University as undeliverable. This includes, as well, various emails and letters from the University to the Student attempting to arrange various meetings prior to the laying of the Charges as well as the email of January 10, 2014 setting out the Charges and the email of November 6, 2014 setting out the time of the hearing. In addition, those were also sent by courier to the ROSI address and were either left on the porch or in the mailbox and were not returned.

[7] In addition, the University filed further affidavits of unsuccessful attempts to serve the Student with all of the documents at the ROSI address and a further search of the Ministry of Transportation records which indicated that the Student's ROSI address was the same and had not been changed on her driver's license.

(a) The University's Submissions

[8] In all the circumstances, the University submitted that the Student had chosen not to cooperate or respond in any way and the Panel ought to proceed to deal with the Charges in the Student's absence. This was true as far back as the Winter 2013 semester when the Student was still enrolled and when the incidents occurred.

[9] The University pointed out that the Notice of Hearing clearly stated:

"If you do not attend, the hearing may take place without you and you will not be entitled to further notice in the proceeding."

[10] The Tribunal's Rules of Practice and Procedure clearly envisaged:

"9. Charges, notices of hearing, disclosure, material for use on motions, orders, and reasons for decision may be served on a student or sent to a student:

...

(b) by sending a copy of the document by courier to the student's mailing address contained in ROSI, or ... and service shall be effective on the day the document is delivered by the courier;

(c) by e-mailing a copy of the document to the student's e-mail address contained in ROSI, or ... and service shall be effective on the day the document is sent by e-mail;

..."

That was done here. Moreover, section 14 of the Tribunal's Rules required notice of an oral hearing to include:

“(c) a statement that if a person notified does not attend at the hearing, the panel may proceed in the person’s absence and the person will not be entitled to any further notice in the proceeding.

...”

The Notice of Hearing in this case complied with the requirements of Rule 14.

[11] Lastly, Rule 17 clearly provided:

“17. Where notice of an oral hearing, ... has been given to a person in accordance with this rule, and the person does not attend at or does not participate in the hearing, the panel may proceed in the absence of the person or without the person’s participation and the person is not entitled to any further notice in the proceeding.”

(b) Decision

[12] After considering the submissions of the University and the circumstances of this case, the Panel unanimously ruled to proceed in the absence of the Student.

II The Charges Against the Student

[13] The Charges arose out of the Midterm Test in MATA33H3 (Calculus for Management II) (the “Course”) which was administered on February 27, 2013. Throughout the Course and in the specific instructions for the Midterm Test, students were advised that only “standard” calculators were permitted — calculators that could perform graphing, matrix operations, numerical/symbolic differentiation or integration functions were not “legal calculators”. The Student was found not only in possession of

an illegal calculator during the course of the Midterm Test, but upon examination, both the case and back of the calculator had equations and formulas written on them that were relevant to the Course and knowledge of which was being tested on the Midterm Test. The University presented the evidence of two witnesses, Ms. Nikki Alber and Professor Raymond Grinnell, who both gave their testimony after affirming.

(a) Ms. Alber

[14] Nikki Alber was a PhD student in Biology and also served as an invigilator at the University for exams and tests. She was also a member of the Exam Support Team at the University's Scarborough Campus. At the time of the incidents leading to the Charges, Ms. Alber had invigilated at least 50 different exams and midterm tests.

[15] Ms. Alber was one of the invigilators in one of the rooms for the Midterm Test in the Course on February 27, 2013. In the room that she was invigilating with Professor Eric Moore, there were approximately 80 students. Professor Moore was one of the teachers of the Course. The exam was being conducted in at least one (if not two) other room where the professor in charge of the Course, Professor Grinnell, was invigilating.

[16] At the commencement of the Midterm Test, written instructions were handed out. Those instructions provided, *inter alia*:

3. You may use at most one hand-held calculator during the test. However, your calculator cannot perform any of: graphing, matrix operations, numerical/symbolic differentiation or integration. Calculators will be checked during the writing of the test. If you are found to have a

calculator that performs any of the operations above (whether you know how to use them or not), you will be asked to turn it off and put it beneath your seat for the rest of the test. Calculator borrowing or sharing is not allowed.

4. The following are forbidden at your test writing space either by intent or by accident: cell-phones, smart phones, laptops, I-pods, MP-3s, Blackberrys, or other electronic devices that are not a standard hand-held calculator, scrap paper, notes, and textbooks.

[17] In addition, Ms. Alber announced out loud prior to the commencement of the Midterm Test that students were prohibited from having both illegal calculators and notes. After the test had begun and taking a head count and a quick walk-through, Ms. Alber began a person-to-person check of each student at each desk. She checked their ID and their student card and their calculators. For each calculator, she would check to see whether it was illegal (by checking to see if it had buttons to perform the illegal operations) as well as looking on the back of the calculator and its case to make sure that it had no improper notes. She did this for the Student and discovered not only an illegal calculator, but extensive notes and formulas both on the back of the calculator and on the case. Ms. Alber explained that the calculator was "illegal" because it automatically performed the functions, which the students were being tested upon in the Midterm Test.

[18] Ms. Alber then questioned the Student about the notes. The Student said the notes were not for this Course. The calculator was turned on. Ms. Alber confiscated the calculator. Ms. Alber then immediately advised Professor Moore of what had transpired and then found Professor Grinnell in the other room where he was invigilating

and advised him of what had transpired. The Student was allowed to complete the balance of the exam.

(b) Professor Grinnell

[19] Professor Grinnell also gave testimony. He has been teaching at the University for eleven and a half years in the Department of Computer & Mathematical Sciences at the University's Scarborough Campus. He was the senior instructor for the Course. He had taught the Course perhaps ten times before over the previous seven years.

[20] Professor Grinnell identified the Course Information Policies ("CIP") for the Course, which indicated the method of evaluation of the Course (including the Midterm Test worth 30% of the Course mark) and the rules and policies of the Course including the policy with respect to illegal calculators. The CIP was posted on the Course's homepage. In addition to the CIP, the homepage had the Course syllabus (the academic content of a course), weekly assignments, the answer sheets, past exams, midterms and Notices of other information that might arise during the Course. Accordingly, it would be expected that students in the Course would regularly visit the homepage.

[21] There were approximately 550 students in the Course. The Midterm Test was written in February 2013 in two or three different exam rooms. All students wrote the same Midterm Test.

[22] Professor Grinnell pointed to the CIP, which clearly explained the types of illegal functions not allowed on calculators to be used for the Midterm Test. Professor Grinnell

explained that the reason for this was so that calculators would not be used to perform what the students were being taught and being evaluated on, thereby defeating the purpose of the Midterm Test. In addition to the CIP, Professor Grinnell said students would be informed of this repeatedly in lectures. Professor Grinnell also pointed out that the same rules would apply in Calculus for Management I (MATA32), which was a prerequisite to the Course.

[23] Professor Grinnell also pointed out that the Information Sheet was not only distributed at the outset of the Midterm Test but was also posted on the homepage and also specifically addressed the question of illegal calculators.

[24] Professor Grinnell did not know the Student before the Midterm Test. However, her use of the illegal calculator was brought to his attention by the invigilator during the Midterm Test, Nikki Alber, who showed him the calculator. It was clear from the buttons alone that it was an illegal calculator because those buttons performed all of the prohibited functions. In addition, Professor Grinnell identified a page on the internet from Casio, the manufacturer of the particular calculator, which lists all of the illegal functions that the calculator performs. Professor Grinnell also identified the user guide for the calculator, which also gave lengthy and explicit instructions on how to perform all of the prohibited functions.

[25] Professor Grinnell also reviewed the notes and formulas that were on the back of the calculator and on the calculator case. He indicated that when first presented with it, he had to reflect for a moment because he had never previously encountered such a blatant example of illegal aids or "cheat sheets". Ms. Alber then directed Professor

Grinnell to where the student was sitting during the Midterm Test. Professor Grinnell went over and wrote down the Student's name from either her student identification card, which was on her desk or from the exam paper. He then advised the Student that she was using a forbidden calculator and that it would be confiscated. He advised her that she should complete the exam.

[26] Professor Grinnell had no further contact with the Student and then reported the incident to the appropriate channels which ultimately led to the initiation of the Charges against the Student under the Code. When asked why the illegal calculator was confiscated and not merely turned off and placed under the Student's desk as was indicated in the instructions to the Midterm Test, Professor Grinnell said it was simply a case of the severity of the infraction. Not only was the calculator illegal, but he had never seen an example of such blatant and copious improper notes or cheat sheets written onto a calculator or a calculator case.

(c) Submissions of the University

[27] The University submitted that all of the elements of a violation of section B.I.1.(b) of the Code had been made out — that the Student had knowingly used or possessed an unauthorized aid in the Course. Not only was the Student in possession of an illegal calculator but also a “jawdropping” amount of improper notes during the course of the Midterm Test. In the circumstances, the Student not only had to know that the calculator was illegal, but that this was clearly so. In any event, there could be no possible explanation for the use of the improper notes present on the back and on the case of the calculator. The Student had seen fit not to participate in any way in these

hearings and other than her remark to Ms. Alber that the notes were for another course (which in any event would not have in any way made them proper), there was no possible explanation or justification for their presence during the Midterm Test, in blatant violation of the clearly-understood instructions for the Midterm exam.

(d) Decision

[28] After considering the evidence and submissions of the University ballot, the Panel ruled unanimously that the University had established a violation of section B.I.1.(b) of the Code in that the Student had knowingly used or possessed an unauthorized aid in the Course. In light of this ruling, the University withdrew its allegation made in the alternative that the Student violated section B.I.3.(b) of the Code in that she 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 in connection with the Course.

III Penalty

(a) University's Submissions

[29] In the circumstances, the University sought a penalty of:

- a) a grade of 0 in the Course for the Student;
- b) a suspension of the Student from the University for two years from the date of the hearing;

- c) a notation on the Student's transcript for three years from the date of this hearing; and
- d) a publication of the outcome of this case with the name of the Student withheld.

[30] Although a first offence by the Student, the University asserted that there were no particular mitigating circumstances here. The Student had failed to cooperate or engage with the process at all, making the process all the more difficult for the University. There was nothing salient or relevant offered by the Student at any point in time to mitigate or explain her conduct.

[31] In the University's view, a two-year suspension was what had evolved in the Tribunal's jurisprudence as the standard or ordinary suspension in similar circumstances and, although conceding that sanction was in the discretion of this Panel pursuant to section C.ii.(b) of the Code, this was still the most appropriate sanction in these circumstances. Conduct of this sort was serious, a significant threat to the integrity of the evaluation processes of the University and warranted a message of general deterrence to the University community at large. The University referred us to several other Tribunal cases in similar, if not identical, circumstances where such (or greater) sanctions had been imposed.

(b) Decision

[32] It was the unanimous ruling of this Panel to impose the sanctions sought by the University. However, the Panel wished to observe that in view of the instructions on the Midterm Test (that the use of illegal calculators would result only in the Student being

asked to turn it off and put it beneath the seat for the rest of the Midterm Test), but for the additional and completely unjustified use of the extensive notes and formulas written and apparently sought to be hidden on the back of the calculator and the calculator case, a lesser sanction might likely have been imposed.

Dated at Toronto, this 14th day of January, 2015



Mr. Bernard Fishbein, Chair