

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL
TRIAL DIVISION**

IN THE MATTER OF charges of academic misconduct made on September 11, 2011 and December 1, 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.

BETWEEN:

THE UNIVERSITY OF TORONTO

- AND -

M [REDACTED] ([REDACTED] F [REDACTED]

REASONS FOR DECISION

Hearing Date: March 28, 2013, May 6, 2013, May 22, 2013 and, June 12, 2013

Members of the Panel:

Mr. Michael Hines, Barrister and Solicitor, Chair

Professor Richard B. Day, University of Toronto Mississauga, Department of Political Science, Faculty Panel Member

Ms. Eleni Patsakos, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Barristers

Mr. Adam Goodman, Barrister and Solicitor, for the Student

Mr. Olivier Sorin, Invigilator

Ms. Tamara Powell, Invigilator

Professor Christopher Yip, Course Instructor: CHE353F: Engineering Biology

Professor Jason Grenier, Course Instructor: APS112T: Introduction to Engineering Strategies and Practice

Dr. Mostafa Showraki, Psychiatrist, Cognitive-Behaviour Therapy Centre

Ms. M [REDACTED] F [REDACTED], the Student

In Attendance:

Professor John Carter, Dean's Designate, Faculty of Applied Science and Engineering

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

Overview

1. The events at issue in this hearing took place in 2011. The student, Ms. M [REDACTED] F [REDACTED], was at that time an undergraduate student in the Department of Mechanical and Industrial Engineering in the Faculty of Applied Science and Engineering.
2. By letter dated September 1, 2011, Ms. F [REDACTED] was advised that she had been charged with a variety of offences arising out of two distinct factual scenarios in connection with work that was to have been done in Course APS112T – Introduction to Engineering Strategies and Practice. The first listed offence concerned the submission of academic work (specifically, portions of a group project) that she had previously submitted for credit. The second offence alleged that Ms. F [REDACTED] had obtained unauthorized assistance in connection with an individual portfolio she had submitted or, alternatively, had represented the work of another (i.e., the portfolio) as her own.
3. Both of these alleged offences were described in the alternative as forms of “cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described” that had been engaged in for academic advantage. The precise charges are appended to this Decision as Appendix “A”.
4. By letter dated December 1, 2011, a further allegation was raised, this time in connection with a term test written on October 25, 2011 in CHE353F – Engineering Biology. It was alleged that Ms. F [REDACTED] had been in possession of an unauthorized aid. The precise charge is appended to this Decision as Appendix “B”.

Medical Evidence

5. As will shortly be seen, the issues surrounding the asserted violations of the Code were, at various times, associated in the evidence with certain medical conditions from which Ms. F [REDACTED] suffered. These connections were recognized and accepted by the University in certain contexts.
6. For example, and as explained below, Ms. F [REDACTED] received certain accommodations in the writing of tests and examinations. While we heard no specific evidence on the point, it is fair to assume that the agencies within the University responsible for designing and approving such accommodations had been provided with medical information of one sort or another that satisfied them that such accommodations were appropriate. These recognized accommodations were not the subject of dispute in this hearing.
7. However, Ms. F [REDACTED]'s disability assumed arguable significance in another respect. Specifically, it was suggested from time to time, particularly in Ms. F [REDACTED]'s own evidence, that her disability provided at least a partial explanation for some of the behaviour that led to the charges. For example, in the allegation of being in possession of an unauthorized aid in an examination,

Ms. F [REDACTED] suggested, albeit very indirectly, that her medical condition was such that the creation of the aid in question was necessary in order to allow her to cope with her medical problem. This in turn suggested that the University's recognized accommodations fell somewhat short of what was truly required in order to provide Ms. F [REDACTED] with the "level playing field" to which she is undoubtedly entitled under the Ontario *Human Rights Code*.

8. Similarly, in the allegation concerning what was referred to in our hearing as "self-plagiarism", Ms. F [REDACTED] suggested that her condition impaired her ability to internalize the many prohibitions regarding certain conduct that were obviously available to her. This in turn was used to support the suggestion that it would be unfair if not unlawful for the University to hold her to the same standards as other students.
9. These suggestions arose with sufficient frequency and their implications were sufficiently important that ultimately the Panel indicated to both counsel that if either party wished to "medicalize" the disciplinary issues before us, it would be necessary to adduce proper expert medical evidence rather than relying upon the impressionistic lay evidence of Ms. F [REDACTED].
10. This, in fact, is ultimately what occurred. Ms. F [REDACTED] led expert testimony concerning her conditions through Dr. Mostafa Showraki, a licensed psychiatrist who had provided medical assistance to Ms. F [REDACTED] since October, 2012.
11. It will immediately be seen that Dr. Showraki's involvement with Ms. F [REDACTED] began after the various events that gave rise to the charges before us. Consequently, it was readily acknowledged that he was not in a position to comment on her conditions as they had existed when those events occurred,
12. Perhaps for this reason, but probably as well due to the nature of the conditions in question, Dr. Showraki's evidence was essentially speculative. By this it is meant that he was, when pushed, never in a position to say that Ms. F [REDACTED]'s medical challenges actually did have an impact on the way in which events unfolded. The most he was able to say was that her conditions "might have" played a part in her behaviour.
13. It should also be noted that Dr. Showraki agreed that the various accommodative strategies that were employed by the University at the relevant times would have gone a long way towards reducing or eliminating the impact that Ms. F [REDACTED]'s disabilities would have had upon her.
14. The Panel does not doubt the sincerity of Dr. Showraki's views or that Ms. F [REDACTED] genuinely believes that her behaviour was explicable, at least in part, because of her conditions. However, the issue of the accommodation of disabilities in the academic context is one that must be approached with judicious caution. On the one hand, a person who is subject to disabilities must be treated

in a way that, to the extent reasonably possible, neutralizes their impact. That is only fair. At the same time, however, fairness demands equally that accommodations be demonstrably justified. To do otherwise runs the risk of granting unwarranted advantages to the disabled person in the context of an academic environment that is, at least in certain respects, competitive.

15. As stated, the medical evidence we heard did not establish causation as a matter of probability. Under these circumstances, the Panel concluded that it would be improper for it, through our hearing, to expand upon the accommodations that had been established for Ms. F [REDACTED] through the formal process that the University has put in place. For this reason, the medical evidence of Dr. Showraki has been given no weight by the Panel in reaching the decisions expressed below.
16. We shall now address the various allegations in turn.

Self Plagiarism

17. This allegation arises out of Ms. F [REDACTED]'s participation in the development of a group assignment in the 2011 Summer Term offering of APS112T, a first-year engineering design course. As part of the course, Ms. F [REDACTED] was included in a group with three other students working together on a Conceptual Design Specification ("CDS"). A CDS is a written description of a product (in this case, an automatic cookie maker) regarded from a wide variety of conceptual and practical perspectives. This project was worth 10% of the course mark.
18. The work was divided by the four group members amongst themselves, with some components of the document to be worked on as a group. Ms. F [REDACTED] was assigned the task of individually developing the portion of the document dealing with "Preliminary Economics", which was itself divided into three parts identifying "Initial Costs", "Ongoing Costs" and "Final Costs". In total, the Preliminary Economics section barely exceeded half a page of single-spaced type.
19. Importantly for the purposes of this hearing, Ms. F [REDACTED] had taken APS111H in the Winter Term of 2010. This course is related to APS112T in that APS112T continues to develop the themes and skills introduced in APS111H. The "T" designation refers to the fact that the particular offering is given as a "transitional" course, primarily to students who have been unsuccessful in the "H" version of the course on a prior occasion. Students may also be permitted entry to the "T" course for other reasons.
20. As a part of her successful completion of APS111H in the 2010 Winter term, Ms. F [REDACTED] had created a CDS concerning a water toy.

21. As is customary, registrants in APS112T were given explicit instructions regarding academic offences. In this case, the Course Syllabus (which Ms. F [REDACTED] received) dealt expressly with what, in our hearing, came to be called "self-plagiarism". Under the Syllabus heading of "Plagiarism", the following appeared:

While it is acceptable to re-use your own material in the iterative process within a given project, it is considered plagiarism to re-use your own material for another project. If you are ever in doubt whether something constitutes plagiarism ask a member of the teaching team.

22. The Syllabus also advised registrants that their written work would be submitted through Turnitin.com, "a software package licensed by the University of Toronto that is designed to detect plagiarism".
23. In addition to this warning, the instructing professor of the course, Professor Grenier, spoke to this issue on the first day of class. On a PowerPoint slide entitled "Cheating, Plagiarism and Academic Integrity", the item "Self-plagiarism" was specifically identified. Students were once again advised "When in doubt or facing a difficult situation – talk to us!". He testified that he was particularly clear on this issue because of the fact that this was a "T" course, and therefore included many students who had already taken the "H" version unsuccessfully.
24. Shortly after the first lecture, the PowerPoints were posted on a website dedicated to the course that was accessible to all students, as were the PowerPoints for all subsequent lectures. The existence of this website was made known to the class through identification of it in the written syllabus.
25. Finally, Prof. Grenier took the further step of posting a specific email to all APS112T students on the website. The reference line was "Academic Integrity". In addition to reinforcing the messages noted above, the e-mail provided links to Chapter 6 of the Undergraduate Calendar: Academic Regulations. Moreover, the email stated:

Given that APS112T is a repeat offering of APS112, I wanted to highlight one of the offences that I've dealt with in my previous teaching experiences. It is an offence for students..."to submit, without the knowledge and approval of the instructor to whom it is submitted, any academic work for which credit has been previously obtained or is being sought in another course or program of study in the University or elsewhere", which comes from page 4 of the [Undergraduate Calendar: Academic Regulations].

26. When the project was handed in, all group members (including Ms. F [REDACTED] [REDACTED]) were required to and did sign a "Declaration of Original Authorship" which certified, among other things, that each member of the group had

...read the excerpt of the Calendar of the Faculty of Applied Science and Engineering (found below on this document) and that they understand all definition [sic] of academic offense including (but not limited to) all forms of plagiarism.

27. Within the excerpt was quoted the text of the section set out in Prof. Grenier's email, prohibiting the submission of work previously submitted for credit
28. This is, of course, the very offence with which Ms. F [REDACTED] was charged. This occurred because, despite the warnings noted above, in creating her section on "Preliminary Economics" for the CDS, Ms. F [REDACTED] essentially adopted verbatim the text from the "Economics" portion of the CDS she had previously created for credit in APS111H.
29. In the hearing before us, Ms. F [REDACTED] did not deny having copied from her previous CDS. Rather, she claimed to have been unaware of the rule against self-plagiarism. Indeed, in advancing her primary defence of ignorance of the violated rule, she was quick to point out how obvious her violation was and how its detection through Turnitin.com was inevitable. She relied upon this as evidence supporting her primary claim: she agreed that while in retrospect her actions clearly violated the Code, her conduct nevertheless showed that she was being truthful in asserting that she had no idea at the time that she was doing anything wrong.
30. While not denying her actions, Ms. F [REDACTED] sought to explain them by asserting that she had not had time to review the various warnings, that her ability to do so was interfered with by her medical conditions and that, in any event, she believed she already had a sufficiently firm grasp on the concept of plagiarism so as to make unnecessary the commitment of the further energy needed to review the University's various statements about it.
31. Although Ms. F [REDACTED] claimed that her medical condition made it challenging for her to attend to and internalize the various warnings that were given (or, at the very least, were available) to her, there was no medical evidence that satisfactorily supported this contention. Rather, the Panel ascribes any failure of Ms. F [REDACTED] to internalize the University's rules to an attitude of inattention verging on wilful blindness. Bluntly put, Ms. F [REDACTED] testified that she was confident that she knew what plagiarism was and that it did not include "plagiarizing from yourself". She indicated that she could see (or at least at the time saw) no reason why a student should not be permitted to re-use his or her own original work. On more than one occasion in cross-examination, she essentially stated that the confusion arose because Prof. Grenier and the University had not been sufficiently clear about the issue of self-plagiarism.
32. The Panel concludes that it was this attitude, rather than any medical issues, that led to her failure to internalize the many warnings given to her. It was an attitude she adopted at her own peril.
33. The Code specifically states:

Wherever in this Code an offence is described as depending on "knowing", the offence shall likewise be deemed to have been committed if the person ought reasonably to have known.

34. Ms. F [REDACTED]'s submission of her prior work was deliberate rather than inadvertent or accidental. Her subjective attitudes towards plagiarism and self-plagiarism may be relevant to the submissions of both the University and the student in addressing the matter of sanction for this offence. For the purposes of this stage of the hearing, the Panel has no hesitation in concluding that Ms. F [REDACTED] knowingly submitted, without the knowledge and approval of her instructor, academic work for which she had previously obtained credit in another course in the University, and consequently was guilty of a violation of Section B(i)(e) of the Code.

Academic Dishonesty

35. This allegation is procedurally more complicated than the other two. It arises out of the submission to Prof. Grenier by Ms. F [REDACTED] of a Portfolio in the APS112T course described above. This Portfolio was a summative project that was intended to demonstrate how the student's work had developed over the duration of the course. It was worth 25% of the final grade.
36. As will be described below, Prof. Grenier was initially concerned by the possibility that Ms. F [REDACTED] was enlisting the aid of another person in the completion of the Portfolio. As matters unfolded, a second concern emerged, namely, that Ms. F [REDACTED] was deliberately misleading Prof. Grenier in his attempts to look into his original concern. As will be seen, it is ultimately the second concern that has led the Panel to a finding of guilt on this allegation as well.
37. The Portfolio was due to be physically handed in at or before 4:30 p.m. on June 20, 2011, just before the final class of the course. Late submission would result in the loss of 10% per day. After 72 hours, a delinquent student's Portfolio would not be accepted. Ms. F [REDACTED] was aware of all of these rules.
38. At 4:41 p.m. on June 20, Ms. F [REDACTED] emailed Prof. Grenier advising that she would be late and attaching to her email a copy of her Portfolio. Prof. Grenier's attention was caught by the fact that Ms. F [REDACTED] was in fact (and probably unintentionally) simply forwarding to him an email she had herself received at 10:16 that morning from another person's hotmail account. That email, bearing the re line "portfolio", had attached to it the Portfolio, and contained the following statement:
- Its due at 4:30...this is what YOU need to do. Print all of the documents attached and fill out the coverPage [sic]. Photocopy of [sic] two of your best pages in your engineering notebook which helps show communication. Let me know if you need anything.
39. The email was "signed" by a person who shall be referred to herein as "M", and that name bore some relationship to the email address of the sender. Not surprisingly, Prof. Grenier became concerned that M had either authored the

Portfolio or had provided undue assistance to Ms. F [REDACTED] in its preparation.

40. Prof. Grenier ultimately required Ms. F [REDACTED] to attend a Dean's Meeting on June 27 to explain the situation. Ms. F [REDACTED] advised Prof. Grenier and Professor Carter (who chaired the meeting) that she had, in fact, created the Portfolio herself. She explained the suspect email by saying that she had arranged for a friend to forward her paper on the morning of June 20 from the computer upon which she had created it. She claimed that the text "Its due at 4:30...this is what YOU need to do. Print all of the documents attached and fill out the coverPage [sic]. Photocopy of [sic] two of your best pages in your engineering notebook which helps show communication." was, in fact, a note she had composed to herself to give herself instructions. She claimed that this was a strategy she used to assist herself in coping with attentional challenges that she faced in completing basic administrative tasks.
41. Ms. F [REDACTED] showed Prof. Grenier and Prof. Carter a printout of an email dated June 20 that purported to be sent *both from and to* her own live.ca email account at 4:37:15 in the morning that began "Heylo gg", followed by the text quoted above. She claimed that the salutation "Heylo gg" was her way of addressing herself in such emails. This was offered as evidence that the troubling words of the email had actually been written by her.
42. Neither Prof. Grenier nor the Prof. Carter was convinced by this explanation. Their suspicions were well-founded, for none of it was true, as Ms. F [REDACTED] subsequently confirmed during the tribunal hearing. It was agreed at the meeting that Ms. F [REDACTED] would supply Prof. Grenier with an electronic version of the document that was presented at the meeting, as well as a screen shot of that e-document.
43. These documents were emailed by Ms. F [REDACTED] to Prof. Grenier at 4:58 a.m. on June 29. However, Prof. Grenier immediately noted that although the "re line" on the copies of the June 20 email Ms. F [REDACTED] had just provided was "Portfolio" (as was that of the original email he had received on June 20), the word "Portfolio" was now spelled with a capital "P", whereas it had been written with a lower case "p" in the original.
44. To add to the confusion, Ms. F [REDACTED] had also sent Prof. Grenier a second set of copies at 7:51 a.m. on June 29, this time with the re line "portfolio" spelled with a small "p". These copies purported to have also been sent from and to Ms. F [REDACTED]'s live.ca email account on June 20 at precisely the same moment as the first set of copies described immediately above, namely at 4:37:15 a.m. on June 20. The impossibility of sending two emails at exactly the same cyber-moment with different re lines was evident to Prof. Grenier. He also determined for himself that it is possible to alter the "re lines" and transmission times in the course of purporting to forward an email, and concluded that this was occurring in the case before him.

45. Prof. Grenier, who has some considerable background in IT, then subjected these various emails to certain meta-data analyses in terms of the fonts and the screen colours used in their creation. Without going into detail, these analyses confirmed that the "explanatory" emails that Ms. F [REDACTED] claimed she had sent to herself on the morning of June 20 were essentially forgeries.
46. All of this led Prof. Grenier to disbelieve Ms. F [REDACTED]'s claim that M had played no role in the development of the Portfolio.
47. As stated, all of these elaborate efforts were made in an attempt to persuade Prof. Grenier and Prof. Carter that Ms. F [REDACTED] had not plagiarized the work of M in submitting her Portfolio. These original concerns were, of course, left unresolved. Ms. F [REDACTED] was thereupon charged with the September 1, 2011 charges, namely, that she had obtained unauthorized assistance in connection with the creation of the Portfolio, had represented the work of another as her own and had, alternatively, "engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind".
48. It is convenient at this point to address the procedural issue that arose in the hearing of these charges. At the outset of the hearing, counsel to Ms. F [REDACTED] identified that, depending upon the way in which the hearing unfolded, Ms. F [REDACTED] might or might not testify in response to these charges, although it was made clear that she intended to testify with respect to the Unauthorized Aid and Self-Plagiarism charges dealt with elsewhere in this Decision. When Discipline Counsel led evidence regarding the charges arising out of the Portfolio, it was very clear that both the issues of plagiarism and Ms. F [REDACTED]'s subsequent attempts to mislead the University were being addressed.
49. As it happened, Ms. F [REDACTED] did elect both to call evidence and to testify herself regarding these factual matters.
50. In terms of the plagiarism charge, Ms. F [REDACTED] called M as a witness. M corroborated Ms. F [REDACTED]'s own testimony that M had been hired by Ms. F [REDACTED] as a tutor to assist her in her academic work. Briefly put, apart from helping her understand the concepts addressed in the course material and providing rather extensive editing advice, it seemed clear that the basic raw material found in the Portfolio was created by Ms. F [REDACTED]. Ms. F [REDACTED] claimed that she had not revealed this information earlier because of her understanding that she was not allowed to provide M as a corroborative "witness" during the earlier stages of the investigation leading up to the hearing.
51. Ms. F [REDACTED] also confirmed what Prof. Grenier had already determined, namely, that she had engaged in an elaborate attempt to mislead the University

in its investigation concerning the Portfolio. She did this because she did not think that her statements about M's true role would be accepted as accurate.

52. M's evidence regarding his guidance to Ms. F [REDACTED] might cause one to question where the academic line ought to be drawn between "tutoring" and "obtaining unauthorized assistance". However, Discipline Counsel did not actually take great exception to the evidence of M concerning his stated degree of involvement. Rather, she argued that Ms. F [REDACTED]'s determination to pursue an elaborate strategy of deception supported an inference that, on a balance of probabilities, Ms. F [REDACTED] had engaged in academic misconduct.
53. Had M not testified, we might have been persuaded, on the basis suggested by Discipline Counsel, to conclude that his involvement was inappropriate. However, we cannot ignore his evidence (which was not challenged). The University did not argue that, based upon his evidence, the offences of obtaining unauthorized assistance or passing off were proven, nor do we conclude that there is clear evidence upon which such a finding can be made.
54. Discipline Counsel also addressed Ms. F [REDACTED]'s efforts to deceive the University in its investigation of those issues. When this occurred, counsel to Ms. F [REDACTED] expressed surprise that this would form any part of the prosecution, since the concerns about the emails had not been particularized in the charges. This was, in fact, correct (see Appendix A). He took the position that Ms. F [REDACTED] could therefore not be prosecuted for these actions, asserting that she might not have testified about (and admitted) the allegations of misleading the University in its investigation.
55. The Panel appreciates, in a technical sense, the "procedural fairness" point Ms. F [REDACTED] raises. Having said that, the evidence amassed by Prof. Grenier and led by Discipline Counsel regarding the phony emails was overwhelming. It hardly needed Ms. F [REDACTED]'s corroboration to be accepted. Indeed, had Ms. F [REDACTED] denied the conclusions reached by Prof. Grenier, it is likely that such dissembling would have exacerbated her situation rather than ameliorating it.
56. In addition, the University did plead its case regarding unspecified "academic dishonesty" expressly and in the alternative.
57. The Panel also notes that, assuming that Ms. F [REDACTED] could not be prosecuted in this hearing regarding this example of academic dishonesty due to the technical point raised regarding the Particulars, there would seem to be no reason why a subsequent prosecution could not be pursued by the University independently of this hearing. That factor, combined with the view previously stated that the issue of the emails was quite evidently "on the table" throughout this portion of the hearing and the lack of substantive prejudice suffered by Ms. F [REDACTED] given the way this part of the hearing unfolded, inclined the

Chair to rule (and advise the parties) that the Panel would consider the matter of the emails in the course of this hearing, as requested by Discipline Counsel.

58. As stated, and in comparison to the evidence concerning M's involvement in the creation of the Portfolio, the evidence of guilt on this issue is clear. For reasons set out above, the Panel finds Ms. F [REDACTED] guilty of engaging in a form of academic dishonesty or misconduct, fraud or misrepresentation not otherwise described by the Code in order to obtain academic advantage.

Possession of an Unauthorized Aid

59. This final allegation concerns the conduct of Ms. F [REDACTED] during a term test in CHE353F that took place on October 26, 2011. By this point in time, the University's allegations concerning the two alleged offences arising out of APS112T had already been brought to Ms. F [REDACTED]'s attention.
60. Ms. F [REDACTED] has recognized medical restrictions that require accommodation in writing exams. Specifically, she is entitled to a segregated writing space created by a three-sided "semi-private" carrel. This is provided in a special examination room that contains many such segregated spaces.
61. The exam room also contains a private washroom. We were advised that there is a sign on the washroom door instructing students to leave all pens, pencils and paper at their desk.
62. Ms. F [REDACTED] is also entitled to a specified amount of time in addition to that extended to students without special needs. Her use of this additional time (e.g., to take breaks) is recorded assiduously to ensure that she obtains no unauthorized advantage over other students. Ms. F [REDACTED] agreed in cross-examination that she understood that she was not permitted to use her break time for purposes associated with the exam, since that would give her more "exam time" than was allowed to her.
63. Students who write exams in this special environment are given the usual cautions regarding the impermissibility of unauthorized aids that might assist them in writing the exam. Although not introduced as an exhibit in evidence, there are evidently two 3'x3' signs in plain view that say "No cell phones or unauthorized aids". Students are asked specifically on arrival whether they have any unauthorized aids on their person and are directed to leave all of their possessions in a locker other than those strictly permitted within the examination room. They are specifically asked to ensure that they have nothing in their pockets.
64. Ms. F [REDACTED] had been permitted to use these special facilities for several years. She was very familiar with the environment.

65. We heard about the events of October 26, 2011 from two invigilators, Olivier Sorin and Tamara Powell, as well as from Ms. F [REDACTED]. There is little disagreement between the invigilators and Ms. F [REDACTED] with respect to the events that were common to them. There was also no material difference as between the evidence of the invigilators regarding events for which Ms. F [REDACTED] was not present.
66. From the invigilator's perspective, nothing unusual occurred until approximately 5:55 pm, just over an hour into the exam, at which point Ms. F [REDACTED] asked to take a break to go to the washroom. This in itself was not out of the ordinary, and Mr. Sorin escorted her to the washroom and noted the time in accordance with standard practice.
67. The unusual aspect of the event lay in the length of time Ms. F [REDACTED] remained in the washroom, a fact which Ms. Powell brought to Mr. Sorin's attention. Both then approached the closed washroom door. They confirmed verbally with Ms. F [REDACTED] that she was alright. Both invigilators testified that they heard clicking sounds coming from within the washroom.
68. These events were unusual enough to prompt Mr. Sorin to go to Ms. F [REDACTED]'s carrel and look at her exam paper. Despite the fact that the exam was well underway, Ms. F [REDACTED] had written almost nothing in her exam book. Mr. Sorin then left the carrel but moved to the carrel across the aisle, affording him a view of the interior of Ms. F [REDACTED]'s carrel through the open "fourth side" of her cubicle.
69. Ms. F [REDACTED] returned from the washroom, escorted by Ms. Powell. In total, she had been out of her carrel for 22 minutes.
70. At this point, it is convenient to describe events from the perspective of Ms. F [REDACTED]. As stated, she was aware of the prohibitions against bringing anything into the exam that was not authorized. She testified that she was having extreme trouble concentrating, an occasional feature of her disability. She decided to take one of her authorized breaks, recognizing that this would "stop the clock" for the purposes of her allowable exam time. Breaks need not be taken in the washroom – Ms. F [REDACTED] testified that there was a couch available to her – but she went to the washroom on this occasion because she was feeling nauseous.
71. Ms. F [REDACTED] testified that in the hour to that point, she had read the four exam questions over and over, but that no answers had come to her. She testified that while in the washroom, she began to settle down and answers to the questions started to come to her. Fearing that she might forget these answers once she returned to the exam environment, Ms. F [REDACTED] searched for something to write on. She had, as it happened, entered the washroom with a pencil (the kind that adjusts the lead through pressing the other end of the pencil) in her pocket. This, she agreed on cross-examination, was understood by her to

be against the exam rules. It is also to be noted that students writing the exam were provided with note paper at their desks in addition to their exam booklets.

72. Ms. F [REDACTED] also had with her a package of Excel gum. Ms. F [REDACTED] tore open the package, exposing the blank cardboard interior, and began to write notes to herself in crowded writing that were designed to assist her in case she lost her train of thought upon returning to her seat.
73. This, according to Ms. F [REDACTED], is precisely what occurred. Ms. F [REDACTED] then reached into her pocket to retrieve the notes she had made moments earlier. This was observed by Mr. Sorin from his vantage point from across the aisle.
74. There is a minor disagreement between Mr. Sorin and Ms. F [REDACTED] in terms of what happened next, relating to the degree to which Ms. F [REDACTED] attempted to conceal the fact that she had notes written on the inside of the Excel package. The Panel does not consider it necessary to resolve this minor dispute. Sorin testified that, when he confronted her, Ms. F [REDACTED] stated "Can you please not tell anybody or do anything about it?". Ms. F [REDACTED] did not contradict this evidence.
75. Mr. Sorin understandably assumed that Ms. F [REDACTED] had created the notes before entering the exam and had entered the room with them. The Panel heard evidence from Professor Yip, who had set the exam. He agreed in cross-examination that the notes seized by Mr. Sorin were not general study notes. Rather, their structure (e.g., sequencing, numbering) and responsiveness to the particular questions on the exam suggested very strongly that the author had seen the exam questions before writing them. Put differently, unless Ms. F [REDACTED] had somehow seen the exam before entering the exam room (a possibility he discounted based on the security precautions taken), she probably wrote them after she had seen the exam questions in the exam room, just as she has described.
76. Upon being confronted by Mr. Sorin, Ms. F [REDACTED] acknowledged to him that she had created the notes in the washroom. However, she did not try to satisfy him, by showing their connection to the exam, that they were not study notes brought in from outside. She testified that she did not believe he would be able to appreciate that they had been created by her in response to (and only after she had seen) the exam. She based this on his unfamiliarity with the course material.
77. Mr. Sorin invited Ms. F [REDACTED] to continue writing the exam in another test booklet. Ms. F [REDACTED] began to do so but soon decided to abandon the process.
78. In cross-examination, Ms. F [REDACTED] agreed that she was familiar with the rules prohibiting bringing unauthorized study aids into the exam room and agreed

as well that special care regarding these rules was necessary in the special needs environment, given the high level of privacy afforded the involved students. She knew that her "exam time" would stop while she was on her break and acknowledged that she wasn't to be "writing the exam" while on break. She maintained, however, that she was not obliged to "stop thinking" while she was on her break.

79. Ms. F [REDACTED] also stated on cross-examination that once she realized that the answers were not coming to her upon returning to her carrel, she simply planned to "peek" at her notes, to "sneak a look". While other comments made by Ms. F [REDACTED] suggested that she did not understand that her creation of and attempted reliance on these notes was improper, these remarks would indicate otherwise.
80. Based upon the foregoing, the Panel concludes that there is no doubt that Ms. F [REDACTED] was knowingly in possession of an unauthorized aid, contrary to the Code. This is not a case where a student inadvertently forgot to divest herself of unauthorized materials and accidentally brought such materials into an exam room (a scenario that might still result in a finding of guilt under the Code). In this case, Ms. F [REDACTED] created the aid herself for use in the exam – she obviously was "knowingly" in possession of it. The fact that it was created by her rather than someone else is, of course, irrelevant.
81. The only argument seriously pressed by Ms. F [REDACTED]'s counsel was to suggest that, despite knowing that she had an aid in her possession, Ms. F [REDACTED] was unaware that the aid was unauthorized. However, and as noted above, the Code specifically states:

Wherever in this Code an offence is described as depending on "knowing", the offence shall likewise be deemed to have been committed if the person ought reasonably to have known.

82. In this regard, the Panel concludes that Ms. F [REDACTED] "ought reasonably to have known" that the aid in question was unauthorized. It was created by her during a break from the exam in a private location that obviously was not intended to be used by students for advancing their completion of the exam. While she was not obliged to "stop thinking" about the exam, the creation of notes went far beyond that. Furthermore, the aid was created using materials that were expressly not to have been brought into the washroom. While Ms. F [REDACTED] is correct that the exam rules did not prohibit her from thinking about the exam while on a break, the exam-related work that she did perform (i.e., creating notes) was the kind of work students were required to perform at their desks while "on the clock". It may be that Ms. F [REDACTED]'s medical condition required that she be permitted some quiet time to allow her to distance herself from the exam itself and settle her mind. However, the Panel heard no such evidence.

Conclusion

83. In view of the findings on the three counts noted above, the Panel will hear from the parties on the issue of sanction at a hearing to be convened on September 12, 2013, at 5:45 p.m.

Dated this 23rd day of September, 2013



Michael Hines, Co-Chair