

Case No.: 1047

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL**

IN THE MATTER OF charges of academic dishonesty filed on July 25, 2019

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

- and -

M [REDACTED] D [REDACTED] (the “Student”)

REASONS FOR DECISION ON FINDING

Hearing Date: October 21, 2019

Members of the Panel:

Ms. Cynthia B. Kuehl, Barrister & Solicitor, Chair
Professor Richard B. Day, Faculty Panel Member
Ms. Alice Zhu, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
The Student, self-represented

Hearing Secretary:

Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances

A. Charges and Hearing

1. The Trial Division of the Tribunal held a hearing on October 21, 2019 to address the following charges brought by the University of Toronto (the "University") against the Student under the *Code of Behaviour on Academic Matters* (the "Code").
2. Those charges were detailed in a letter dated July 25, 2019 and are set out in Exhibit 2 and reproduced below:

Charges:

1. On or about April 26, 2019, you knowingly used or possessed an unauthorized aid or obtained unauthorized assistance in connection with the final examination in MIE334H1 ("Course"), contrary to section B.I.1(b) of the *Code*.
2. In the alternative to charge #1, on or about April 26, 2019, you knowingly did or omitted to do something for the purpose [of] engaging 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 final examination in the Course, contrary to section B.I.3(b) of the *Code*.
3. The particulars related to the charges are as follows:
 - (a) At all material times, you were a registered student in the Faculty of Applied Science and Engineering, University of Toronto.
 - (b) You were enrolled in the Course and wrote the final examination on April 26, 2019, at the Test/Exam Centre. You knew that you were permitted to possess only one aid sheet during the examination.
 - (c) You knowingly used or possessed a second and unauthorized aid sheet during the final examination.

B. Summary of Facts/Particulars

3. The Student was a student in the Course, taught by Professor David Steinman, for the Winter 2019 session. Professor Steinman, who gave evidence at the hearing, explained that the Course taught how to use computer methods to solve engineering problems.
4. Professor Steinman set a closed book examination for the final examination but allowed the students to bring in one double-sided aid sheet. He explained that there are numerous formulas which the students would either have to memorize or choose to put on an aid sheet. He was content

for them to have the aid sheet so long as it was prepared by the student individually (i.e., not prepared by a group and copied) and handwritten. By insisting that it be written by hand, there could be no micro-copying and the students would be forced to prepare their own aid sheet. The parameters of what constituted a permissible aid sheet were communicated to the students, including the Student, in advance. There is no dispute that the Student knew what was, and was not a permissible aid sheet.

5. The final examination was worth 50 percent of the Course final mark, and students were advised that, while the examination would cover the entire course content, it would be weighted to course content taught since the mid-term examination.

6. The Student had a valid reason for not writing the mid-term. As a result, in his case, the final examination was worth 80 percent of the Course final mark.

7. The Student attended at the Test/Exam Centre on April 26, 2019 to write his examination. The Student has medical issues for which he received accommodation during the examination. He was allowed additional time, and he wrote his examination in a semi-private carrel. This was not a situation where there were numerous other students writing the same examination, with the same start and stop times, as him.

8. The Student was initially screened by an invigilator who, according to the Test/Exam Administration Form (Exhibit 10), confirmed that the Student was only allowed one double-sided aid sheet. The Student confirmed in writing that he was not in possession of any other aids. As the Student had arrived 11 minutes late for the start time, he also acknowledged in writing that he would have less time to finish the examination. Though he was to have three hours and eight minutes to complete his examination, he was given two hours and 57 minutes to reflect his late attendance.

9. The Tribunal heard evidence from Julius Haag, an experienced invigilator who now trains other invigilators. Mr. Haag explained that the standard protocol is to ask students to turn out their pockets and there is often a visual inspection of a student's bag as well. This is an attempt to ensure that the students do not by accident or otherwise bring into the examination any material that is not allowed.

10. The Student was assigned semi-private carrel, D05. Mr. Haag was the invigilator assigned to the Student's row. His evidence was that the carrels were cleaned and tidied between examinations to make sure that no materials were left behind from a previous student. Mr. Haag was quite confident that carrel D05 was clean before the Student wrote his examination, as that is the practice.

11. Mr. Haag gave a 10 minute warning before the end of the examination, and then attended at carrel D05 to collect the Student's examination (either by picking it up off the desk or having it handed to him by the Student) when the time for the examination had lapsed. At this point, the versions of events provided by Mr. Haag and the Student diverge.

12. According to Mr. Haag, when he attended to pick up the examination paper, the Student protested initially, asking for additional time to complete his examination. That request was refused. Mr. Haag gave evidence that he then saw a folded piece of paper on the Student's carrel, which was tendered at the hearing as Exhibit 8. Exhibit 8 is a double-sided sheet of paper which, according to Professor Steinman, contains photocopies of previous problems and their solutions from the Course. There is no dispute that Exhibit 8 is not an appropriate aid sheet and would not have been allowed in the examination. In comparison, Exhibit 7 was the Student's permissible one-sided aid sheet. Professor Steinman indicated that Exhibit 7 would be the type of aid sheet that he would expect students to bring into the examination.

13. According to Mr. Haag, the Student immediately denied that Exhibit 8, the unauthorized aid sheet, was his. He was asked by Mr. Haag to wait at the Test/Exam Centre while Mr. Haag began filling out some forms. According to Mr. Haag, he later questioned the Student in the kitchen (a private spot) about the second unauthorized aid sheet. He gave evidence that the Student claimed that he was allowed to have the unauthorized aid sheet and that Professor Steinman would confirm this. Mr. Haag subsequently completed his invigilator report (Exhibit 11). The information in that report is consistent with his evidence at the hearing.

14. The Student presented a different version of events. He indicated that he handed his examination paper to Mr. Haag, who then walked away. As the Student was packing up his material in the carrel, Mr. Haag returned, now with the second unauthorized aid sheet, and claimed

that it was among the Student's examination papers. The Student insisted it was not his. He adamantly denied that Mr. Haag ever found it in the carrel.

15. There is no real suggestion that another student had placed the unauthorized aid sheet in the carrel. The Student explained that there was another invigilator sitting near him, which confirms that it is unlikely someone else dropped the aid sheet in the carrel during the examination, unnoticed. There was also no evidence to counter that of Mr. Haag that the carrel was cleaned before the Student arrived. While the Student did (or could) not explain how Mr. Haag came into possession of the second unauthorized aid sheet, he appeared to suggest that somehow Mr. Haag mixed it up in the Student's papers between the time when Mr. Haag picked up the Student's examination and when he returned.

16. The Student explained, further, that when he and Mr. Haag discussed this matter in the kitchen, he was quite sick and needed to use the toilet. We note that the Student later had surgery for a medical condition. On that day, because of his illness, he was distressed. He believes that his answers about the unauthorized aid sheet were misinterpreted; it appears that he thought he was speaking about the authorized aid sheet in confirming that he was allowed to bring in the sheet, and not the second unauthorized one. He denied that the second unauthorized aid sheet was his.

17. This is, in essence, a case of credibility, and the argument centred on who was to be believed: Mr. Haag or the Student.

C. Argument from the University

18. Counsel for the University argued that the evidence of Mr. Haag, the invigilator, should be preferred to that of the Student where they conflicted. He referred the Tribunal to the discussion on the assessment in credibility at paragraph 27 of the decision in *Atlantic Financial Co. v. Henderson*, 2007 Carswell Ont 2813, in which the court noted that, when considering conflicts in the evidence of interested witnesses, an assessment of the personal demeanour alone is insufficient. Quoting from the British Columbia Court of Appeal's decision in *Faryna v. Chorny*, the versions of events must be viewed for consistency "with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

19. A similar discussion can be found in *Adams v. Ginsberg*, 1994 Carswell Ont 3718, in which the court emphasized the necessity to look not just at the demeanor of the witnesses in the witness box but also how the evidence relates to the evidence as a whole.

20. Counsel for the University argued that the factors to consider when evaluating credibility weighed very heavily in favour of finding that it was Mr. Haag's version of events that was most likely true. While the Student's denial of the facts is one factor, it should not be given undue weight. Mr. Centa pointed to the following as relevant to the assessment of credibility:

- Mr. Haag's evidence was logical and consistent with the role of the invigilator for which he had been trained.
- Mr. Haag followed the correct protocol when the unauthorized aid sheet was discovered and made contemporaneous notes immediately thereafter.
- Mr. Haag's evidence was entirely consistent with his contemporaneous notes.
- The evidence did not support any other way in which the unauthorized aid sheet, which was only germane to the Course, could have otherwise been found by Mr. Haag. There is simply no other plausible explanation for the presence of Exhibit 8 other than it was in the possession of the Student.
- There is no dispute that the unauthorized aid sheet was not permitted. The Student's evidence was that he knew that it was not something he could possess during the examination.

21. It is an offence for a student to knowingly "use or possess an unauthorized aid or aids or obtain unauthorized assistance in any academic examination or term test or in connection with any other form of academic work." Where an offence requires "knowledge" (i.e., includes the language of "knowingly"), the offence is deemed to have been committed if the Student ought reasonably to have known. In this case, the Student would, by mere possession of the material, know of its existence. The University argued that there was actual knowledge because the sheet was on the Student's desk along with his exam paper and his authorized aid or, at the very least, he reasonably ought to have known that he possessed an unauthorized aid sheet. Moreover, it was clearly in his

possession. Accordingly, the University argued that charge #1 had been established on a balance of probabilities.

D. Argument from the Student

22. The Student denied that the unauthorized aid sheet was his, and stated repeatedly that Mr. Haag was being dishonest in his evidence by saying he found it on the Student's desk. The Student was adamant that it was found subsequently and that he had no idea where it came from. He submitted that it would have been impossible for him to have used the unauthorized aid because another invigilator was in close proximity to him and would have seen him using it. He also pointed out that the unauthorized aid sheet would have been of limited use to him during the examination because the contents of it were limited to only certain problems and solutions. If those problems were not asked on the examination, the sheet would be of no assistance.

23. The Student also submitted that when he has made mistakes in the past, including bringing an unauthorized cell phone to a previous examination, he has also admitted them and has taken full responsibility including re-taking courses where necessary. In this case, he has not done so because he did not commit this offence.

E. Findings of the Tribunal

24. The Tribunal finds that the Student ought reasonably to have known that he possessed the unauthorized aid sheet and, accordingly, is guilty of charge #1. In particular, the Tribunal finds that the University has established charge #1 on a balance of probabilities and with clear and convincing evidence.

25. The evidence does not establish that the Student used the unauthorized aid, and the Tribunal makes no finding in that regard.

26. In evaluating the evidence of the Student, who appeared to sincerely deny the charges, and the evidence of Mr. Haag, the Tribunal prefers the latter. Mr. Haag is an experienced invigilator who has conducted many examinations. He gave his evidence clearly and in a convincing manner. His evidence was supported by a contemporaneous note, which set out in detail the events of April 26, 2019. His actions were consistent with the processes and procedures expected of an invigilator for an examination.

27. Importantly, the evidence that he found the unauthorized aid sheet in the Student's possession is logical. There is no other reasonable explanation for how Mr. Haag could have come in possession of a Course-specific unauthorized aid other than if it was from the Student.

28. In particular, the Student was in a semi-private carrel. There was no evidence that there was anyone in close proximity to him who was able to place the unauthorized aid in his carrel. Counsel for the University indicated, in response to a question from the Tribunal, that there was only one other person who was writing the examination for the Course that day. There was no evidence of this fact, however, including whether this other person was writing it at the same time (i.e., with the same accommodated schedule), in the same row such that Mr. Haag was the responsible invigilator, or even in the same room. Thus, even if the Student's version of events were accepted, i.e., that Mr. Haag had not found the unauthorized aid at his desk but returned with it a few minutes later, there is still no evidence to explain how it came into Mr. Haag's possession other than it was part of the Student's paperwork.

29. The Tribunal is cognizant that there is no obligation on the Student to prove that the unauthorized aid sheet was not his; that is, the onus always remains on the University to establish its case on a balance of probabilities. The Tribunal finds that it has done so through the evidence of Mr. Haag. The fact that there is no other plausible or logical explanation for Mr. Haag coming into possession of the unauthorized aid sheet other than from the Student is supportive of Mr. Haag's evidence which the Tribunal otherwise accepts.

30. The Student's evidence that there was an invigilator sitting close to him does not affect the Tribunal's findings. The other invigilator may not have paid any attention to the Student, and may not have known the number or type of aids allowed for this particular course. Moreover, this Tribunal only finds that the Student was in possession of the aid. It makes no finding that he in fact attempted to or did use it during the course of the examination. Indeed, it appears that the aid would only have been useful if particular questions or problems were asked on the examination. There is simply no conclusion that the Tribunal can draw from the presence of another invigilator in close proximity to the Student other than it seems highly unlikely that, in those circumstances, another student could have placed the unauthorized aid sheet in the carrel during the examination without detection.

31. Finally, the Tribunal acknowledges that there is a process by which the students are searched prior to attending the examination. However, as is demonstrated by the Student's own evidence about bringing in a cell phone to a different examination, that search is not always effective.

32. The Tribunal accepts that the Student has accepted responsibility for his conduct in the past and that, especially in recent years, he has dedicated significant time and energy in the University robotics community. However, when all the relevant factors in assessing credibility are considered, the Tribunal accepts Mr. Haag's version of events, supported by his contemporaneous note, and finds that the University has proven its case on a balance of probabilities.

F. Conclusion on Charges

33. Following deliberation and based on the testimony, the Tribunal concludes that charge #1 has been proven.

34. Given the findings of guilt, the Tribunal understands that the University will withdraw charge #2.

DATED at Toronto, this 18th day of November, 2019



Cynthia B. Kuehl, Chair