

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on December 9, 2009;

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 -

Y. M

Date of Hearing: December 20, 2010

Members of the Panel:

Ms Lisa Brownstone, Barrister and Solicitor, Chair
Professor Graeme Hirst, Faculty Panel Member
Mr. Albert So, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Barristers
Mr. Maurice Vaturi, Counsel for the Student, Campione and Vaturi Law Firm

In Attendance:

Ms Jane Alderice, Director, Quality Assessment and Governance, School of Graduate Studies
Mr. Y M , the Student
Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

Preliminary

- [1] The Trial Division of the University Tribunal was convened on December 20, 2010 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "*Code*") laid against the Student by letter dated December 9, 2009, 2010 from Professor Edith Hillan, Vice-Provost, Faculty & Academic Life.

Hearing on the Facts

- [2] The charges facing the student were as follows:
- (1) On or about April 20, 2009, you knowingly did or omitted to do something for the purpose of assisting M A to obtain unauthorized assistance in connection with the final examination in BIO304H5, contrary to sections B.I.1(b) and B.II.1(a)(ii) of the *Code*.
 - (2) In the alternative to Charge #1, on or about April 20, 2009, you did or omitted to do something for the purpose assisting M A to engage 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 BIO304H5, contrary to section B.I.3(b) and B.II.1(a)(ii).

Attempts

- (3) On or about April 20, 2009, having an intent to commit an offence under the *Code*, you did or omitted to do something for the purpose of carrying out your intention to assist M A to obtain unauthorized assistance in connection with the final examination in BIO304H5, contrary to sections B.I.1(b), B.II.1(a)(ii), and B.II.2 of the *Code*.
 - (4) On or about April 20, 2009, having an intent to commit an offence under the *Code*, you did or omitted to do something for the purpose of carrying out your intention to assist M A to engage 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 BIO304H5, contrary to section B.I.3(b) B.II.1(a)(ii), and B.II. 2 of the *Code*.
- [3] Particulars of the charges were set out as follows:
- (1) You were enrolled at the University at all material times.
 - (2) The final examination in BIO304H5 ("Examination") was scheduled to be written on April 20, 2009, between 4:00 and 6:00 p.m.

- (3) One student, who was registered with the AccessAbility Resource Centre, was scheduled to write the Examination on April 20, in the South Building, Room 1104, between 1:40 p.m. to 6:40 p.m.
 - (4) You were hired to act as an invigilator for the Examination that was to be written in the AccessAbility Resource Centre. Your duties included keeping the Examination confidential and secure. You were given the script of the Examination, which you were to give to the student writing Examination in the AccessAbility Resource Centre.
 - (5) On April 20, you used a digital camera to take photographs of the Examination script. You sent these digital photographs by e-mail to Mr. A ; a student registered in BIO304H5, who was scheduled to write the Examination starting at 4:00 p.m., sometime before 2:15 p.m.
 - (6) You sent the photographs to Mr. A via an email account with the address jason.catamar@gmail.com, which is an e-mail account that you control or to which you have access. You did so for the purpose of assisting, or attempting to assist, Mr. A to obtain unauthorized assistance in the final examination.
 - (7) You sent these photographs knowing that you were engaging in a form of cheating, academic dishonesty, misconduct or fraud.
 - (8) You sent these photographs knowing that you were assisting, or attempting to assist Mr. A to engage in a form of cheating, academic dishonesty, misconduct or fraud.
- [4] The parties provided the Panel with an Agreed Statement of Facts, which provided in relevant part as follows:
- (i) In November 2008, the Student graduated from the University with an Honour Bachelor of Science (with High Distinction). In Fall 2008, the Student enrolled in the Master of Management Innovation program, in the School of Graduate Studies. The program is housed at the University of Toronto Mississauga ("UTM"). At all material times, the Student was a student member of the University of Toronto, within the meaning of the *Code of Behaviour on Academic Matters*.
 - (ii) The Student was a casual employee of the AccessAbility Resource Centre ("AARC"). He invigilated examinations for students registered with the AARC. He had invigilated examinations for such students on many occasions and was very familiar with the policies and procedures in place for ensuring that examinations written in the AARC were written in a secure environment. These

policies and procedures are contained in a copy of the AARC Invigilator Handbook.

- (iii) On April 13, 2009, Wynne Yeung, the Examination Coordinator for the AARC, sent an e-mail message to the student. She offered him the opportunity to invigilate an examination on April 20, 2009. His shift would run from 1:10 p.m. to 6:00 p.m. The examination itself would start at 1:40 p.m. Ms Yeung did not advise the Student which examination would be written at that time. Shortly after receiving Ms. Yeung's message, the Student accepted her offer to invigilate on April 20.
- (iv) On April 20, 2009, at approximately 1:10 p.m., the Student arrived at the AARC, which is located in Room 2047 of the South Building at UTM. He picked up the examination package for the examination he was to invigilate. The package consisted of an unsealed envelope with a cover sheet attached to it. The envelope contained the following documents:
 - (a) one copy of the final exam in the course BIO 304H5S, Physiology of Neural Systems, which was taught by Prof. J. Koprach.
 - (b) an Invigilator Checklist.
 - (c) a Student Information Sheet.
 - (d) a copy of the Test/Examination Policy: Electronic Devices.
 - (e) an Invigilator Documentation Report.
 - (f) a Forfeit Adjusted Time Sheet and Exam and Test Reminders for Students.
 - (g) a Test in Progress sign to be placed on the door of the examination room.
- (v) The cover sheet incorrectly listed the examination room as Room 1140. The examination was written in Room 1104. The cover sheet also advised the Student that he would be invigilating an examination for BIO304S.
- (vi) As set out on the information sheet, the rest of the students in BIO304S would write the final examination later that day, April 20, 2009, from 4:00 to 6:00. The student writing the examination in the AARC (the "Student with Special Needs") would start his examination 2 hours and 20 minutes before the remainder of the class. The two examinations would end at the same time.

- (vii) The Student then took the examination envelope to Room 1104. He entered the room alone and closed the door. Between 1:31 and 1:35 p.m. The Student took digital photographs of each page of the examination using the camera in his cellular telephone, which was a Sony Ericsson W810i ("Digital Photographs").
- (viii) When a photograph is taken using a digital camera, a file containing the digital image and other data ("meta-data") is created in Exchangeable Image File Format ("EXIF"). The EXIF meta-data includes the date and time the digital image was captured, and the make and model of the camera used to capture the data. The meta-data can be extracted from the EXIF file using various software programs, including a program called Aperture.
- (ix) The meta-data from the Digital Photographs confirm that the Digital Photographs were taken between 1:31 and 1:35 p.m. on April 20, 2009 using a Sony Ericsson W810i camera phone.
- (x) After he took the Digital Photographs, the Student let the Student with Special Needs into the classroom.
- (xi) The Student turned on a laptop computer that he had brought with him to the examination. As explicitly stated on the Invigilator Checklist, which the Student completed, he knew that he was not permitted to use a laptop computer while he was invigilating the examination. He transferred the Digital Photographs from his cell phone to his laptop computer.
- (xii) Using his laptop's modem, he connected to UTM's wireless network, UTORconnect, at 1:41 p.m. He remained connected to UTORconnect until 2:40 p.m. At that time Ms. Yeung arrived at the classroom to provide the Student with a break. She ordered him to turn off his laptop, which he did.
- (xiii) While he was connected to UTORconnect, the Student accessed a web-based e-mail account that he created and controlled.
- (xiv) At 2:01 p.m. the Student then sent e-mail messages attaching the Digital Photographs to another University student who was registered in BIO204S and was scheduled to write the examination later that afternoon. At 2:01 p.m. the Student sent the photos knowing that he was providing the other student with unauthorized assistance with the final examination in BIO204S. The Student sent this message of his own volition and not at the request of the other student. At 2:15 p.m. the other student forwarded the e-mail message he received to the course instructor Dr. James Koprach and the Teaching Assistant, Chad Jankowski.

- (xv) Dr. Koprlich immediately concluded that the final examination for BIO204S had been compromised. At 2:32 p.m. the AARC Examination Centre stopped the Student with Special Needs' examination because the examination had been compromised.
- (xvi) Dr. Koprlich decided to write a replacement examination. The start time of the examination for most of the students in the class was delayed from 4:00 p.m. to 5:25 p.m., but was written the same day.
- (xvii) At 5:00 p.m. the Student with Special Needs wrote the exam for the second time that day. The Student supervised the second examination.
- (xviii) On April 24, 2009, the Student met with Mark Overton, UTM Dean of Student Affairs, to discuss his invigilator's duties in connection with the BIO204S final examination. The Student denied taking photographs of the examination and sending them to anyone. The Student admitted that the email account from which the photographs were sent was his.
- (xix) On May 7, 2009, Dean Overton terminated the Student's employment.
- (xx) On July 20, 2009, Professor Berry Smith, School of Graduate Studies Vice-Dean, Students, wrote to the Student to invite him to discuss the allegation that he had violated the *Code of Behaviour on Academic Matters*. On October 21, 2009, the Student and counsel attended at the meeting with Vice-Dean Smith. The Student declined to say anything at that meeting.

[5] The Student pleaded guilty to Charge (1).

Decision of the Tribunal

[6] On the basis of the Agreed Statement of Facts, the Tribunal accepted the Student's plea and found contraventions of the *Code* as set out in the principal Charge (1). Charges (2), (3), and (4) were withdrawn by the University.

Penalty Phase

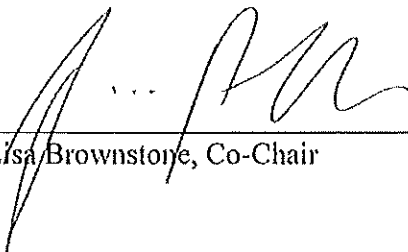
[7] The Student made a statement advising that he was ashamed of his actions and had no valid excuse for them. He had breached the trust placed in him by the University and deserved punishment. He was not motivated by greed or gain, had had no previous charges and was a hard working student. The act was not premeditated and he wished for the chance to rehabilitate himself.

- [8] The parties submitted a Joint Submission on Penalty, in which the following sanctions were jointly proposed:
- (i) a suspension from the University from December 20, 2010, until December 20, 2015;
 - (ii) a notation of the sanction on the Student's academic record and transcript from the date of the Order until December 20, 2015; and
 - (iii) this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanction imposed in the University newspapers, with the name of the student withheld.
- [9] Discipline counsel reminded the Panel that there is a high threshold for refusing to accept a joint submission. The Panel would have to be of the view that it would be contrary to the public interest and the administration of justice would be brought into disrepute by the acceptance of that joint submission in order to depart from it.
- [10] Having regard to the facts of the case, including that this was an egregious breach of trust, but that it was a first offence not motivated by personal academic gain, the Panel accepts that the proposed sanction falls within the appropriate range of sanction, and accepts the joint submission.

Sanction

- [11] The Panel therefore made the following order:
- (i) that the Student be suspended from the University commencing December 20, 2010, until December 20, 2015 with a notation of the sanction on his academic record and transcript from the date of the Order until December 20, 2015; and
 - (ii) that this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the name of the Student withheld.

Dated this 17th day of February, 2011.



Lisa Brownstone, Co-Chair