

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on July 10, 2008;

AND IN THE MATTER OF the *University of Toronto Act*, 1971, S.O. 1971, c. 56 as amended S.O. 1978, c. 88

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters*, 1995;

BETWEEN:

THE UNIVERSITY OF TORONTO

- and -

L. Y.

Members of the Panel:

- Ms. Lisa Brownstone, Chair
- Professor Magdy Hassouna, Faculty Panel Member
- Mr. Jeffrey Clayman, Student Panel Member

Appearances:

- Mr. Robert Centa, Assistant Discipline Counsel
- Ms. Tina Lee, Assistant to Mr. Centa
- Professor Scott Graham, Dean's Designate, University of Toronto at Mississauga

Preliminary Issue

- [1] The trial division of the University Tribunal was convened on December 1, 2008 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters* 1995 (the "Code"), set out in a Notice of Hearing dated October 29, 2008.
- [2] Neither the student nor a representative for the student appeared at the hearing. The University proposed to proceed in the student's absence. To this end, the university called evidence and made submissions about the reasonableness of notice provided to the student.

- [3] The University commenced by introducing the following exhibits: the Notice of Hearing; a letter dated May 15, 2007 outlining the charges against the student arising out of her alleged behaviour on or about August 22, 2006 (“the first set of charges”) with a covering letter dated May 15, 2007; and a letter dated February 8, 2008 advising the student of the offences alleged to have been committed on or about April 18, 2007 (“the second set of charges”).
- [4] The University advised that it had had no contact with the student for an extensive period of time and proceeded to lead evidence about the historical contact and the subsequent attempts it had made to effect further contact with the student.
- [5] The Panel heard from Lucy Gaspini, Academic Affairs Officer in the Dean’s Office at the University of Toronto, Mississauga. She testified that on May 28, 2007 she sent a letter to Ms Yao at the address Ms Yao had provided to the University as the address at which she could be reached. That letter advised that a report had been received that the student had used unauthorized assistance during the writing of an examination, and provided the student with an opportunity to meet with the Assistant Dean or her representative in respect of the alleged incident. The letter advised the student to contact Ms Gaspini before Friday, June 15, 2007 to arrange a meeting time. Ms Gaspini testified that this kind of letter is always sent by registered mail, and that she received no indication that the letter was not received. Ms Gaspini testified that since no response had been received, she began a quest to get a hold of the student. She made several telephone calls to different numbers that had been provided by the student to the University, and, in mid-August, emailed the email address that the student had provided to the University. No response to the email was received. One of the telephone numbers that the student had provided to the University was not in service.
- [6] During the week of August 20, 2007, the student was expected to attend to write an examination in a different course, which had been deferred at the student’s request. Ms Gaspini intended to reach the student at that examination. However, the student did not attend for the examination.
- [7] On August 22, 2007, August 24, 2007 and September 18, 2007, Ms Gaspini tried different numbers to get a hold of the student and left voicemail messages asking for Ms Yao to contact her about an urgent matter. Ms Gaspini also asked that, if the telephone number was incorrect and the student was not reachable at that telephone number, whoever got the message telephone Ms Gaspini to advise her that the number was incorrect. No response of any kind was received to these messages.
- [8] Further telephone calls were made on September 20, 2007 and September 30, 2007. On September 20, 2007, Ms Gaspini tried to call all of the numbers listed in Canada 411 under the same surname as the student, but did not receive any response.
- [9] On September 27, 2007, Ms Gaspini obtained an internal email providing a second possible email address for the student.

- [10] On October 1, 2007, Ms Gaspini couriered a letter and sent the letter by regular mail to the student's most current address as listed on the University records. Both were returned to the University on October 22, 2007.
- [11] The Panel next heard from Betty Ann Campbell, a law clerk at Paliare Roland, the firm that is counsel for the University. Ms Campbell testified that the first set of charges was delivered by the University to the firm in April, 2007. Disclosure materials were assembled and sent to the student's address that was provided on the University Record as the student's most recent address. No reply was received. At that point, Paliare Roland received information that there were additional investigations into what would become the second set of charges. Therefore, no further steps were taken at that time to schedule the first set of charges. The second set of charges was received by the firm in February 2008. Ms Campbell prepared disclosure materials for those charges and sent them by courier. That documentation was returned to her office. She ordered an updated Record of Student Information from the University, which listed the same address and email address as those previously provided to the firm by the University. Therefore, Ms Campbell emailed the student, advising that there had been no responses to correspondence, that she had been unable to reach her by telephone, and had not received any response to voicemails. Ms Campbell advised the student in the email that she would be proceeding to schedule the case for a hearing before the Tribunal in relation to both sets of charges in April or May, 2008, and proceeded to suggest various dates. The student was asked to advise Ms Campbell within the next few days whether any of the dates posed a conflict for her, and was advised that if the student did not contact Ms Campbell, Ms Campbell would assume that the student would be available to attend. Ms Campbell received no response to the email, and no indication that the email address was not active.
- [12] Ms Campbell testified that she then hired Don Colbourn, a private investigator, who located the student in Ottawa. The following day, Ms Campbell wrote a letter and sent it by courier to the Ottawa address. She sent everything that had been delivered previously in respect of both sets of charges, including the letters and the disclosure briefs. Delivery confirmation was received on May 1, 2008. No response was received from the student.
- [13] In October, 2008, Ms Campbell again emailed the student suggesting several dates for the hearing and asked for confirmation of her availability to attend. Ms Campbell received no response to that email, including no indication that the email was not delivered.
- [14] The Notice of Hearing was sent by email to the two email addresses that the University had for the student. The week before the hearing, Ms Campbell again retained Mr. Colbourn, who reported that he could not find the student, who had moved from the Ottawa address.
- [15] The Panel was further advised that the student attended a meeting with Scott Graham, Dean's Designate at the University of Toronto, Mississauga, with respect to the incident that led to the first set of charges on February 27, 2007.

- [16] Counsel for the University submitted that the notice given to the student was reasonable, and in accordance with the requirements of the *Statutory Powers Procedure Act*. Counsel submitted that the evidence shows that the student had no interest in taking part in the proceedings, and had made a conscious choice not to participate. Counsel relied in part on a University policy which became effective September 1, 2006 indicating that 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. The policy indicates that students are expected to monitor and retrieve their mail, including electronic messaging accounts issued to them by the University, on a frequent and consistent basis, and are responsible to recognize that certain communications may be time critical.
- [17] After consideration, the Panel concluded that the University had provided reasonable notice to the student. While the Panel was of the view that as of May 1, 2008 it likely would have been preferable to use the mailing address in Ottawa received through the private investigator for all future correspondence with the student, in addition to the email addresses, the Panel noted that as of the date shortly before the hearing, the private investigator reported that the student was no longer at that address and that her whereabouts were unknown. The private investigator reported that an extensive investigation was conducted in attempts to locate contact information for the student, who commonly uses an alias, resulting in two names being searched for. The private investigator advised that the student does not maintain typical records which generally indicate information as to a person's whereabouts nor does she maintain a stable lifestyle or remain in one location for extended periods of time. He describes her as nomadic and transient in her behaviour. Therefore, the private investigator was unsuccessful in finding her the second time.
- [18] The Panel was satisfied that the University, both before and after counsel had been retained, had taken many steps to try to locate the student, and that the student had failed to make herself available to the University or to acknowledge communications from the University repeatedly, even going so far as not to attend for an examination that had been deferred at her request in August, 2007. There were no "bounced-back" email messages indicating that any of the email accounts were no longer active; and the package of disclosure documents and notice of the charges were signed for and received on May 1, 2008. By that time, the student would know that she was facing two sets of charges and that a hearing into these charges was likely to be scheduled in the near future. She would also know the details of those charges. She was again invited to contact the University directly or through its counsel. Nonetheless, she made no effort to contact the University directly or through counsel. This pattern of behaviour continued until the date of the hearing. The Panel therefore concluded that reasonable notice had been provided, and that it would be improper to permit a student to avoid facing charges by a complete failure to respond to the University's many attempts to reach her. Further, the Panel considered that adjourning to permit further attempts at service would not assist, given that the student appeared to have moved again without providing any further contact information.

- [19] Therefore, the Panel concluded that reasonable notice had been provided and was prepared to have the hearing proceed in the student's absence, in accordance with the provisions of the *Statutory Powers Procedure Act*.

Notice of Hearing and Charges

- [20] The charges are as follows:

MAY 15, 2007

- i. On or about August 22, 2006, you knowingly used or possessed an unauthorized aid or aids or obtained unauthorized assistance in an academic examination or term test, namely the final examination in ECO336Y5Y – Public Economics, contrary to Section B.I.1.(b) of the University's *Code of Behaviour on Academic Matters, 1995 (Code)*.
- ii. In the alternative, on or about August 22, 2006, 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 during the final examination in ECO336Y5Y – Public Economics, contrary to Section B.I.3.(b) of the *Code*.

FEBRUARY 8, 2008

- i. On or about April 18, 2007, you knowingly used or possessed an unauthorized aid or aids or obtained unauthorized assistance in an academic examination or term test, namely the final examination in PHL290H5 - "Psychoanalysis", contrary to Section B.I.1(b) of the University's *Code of Behaviour on Academic Matters, 1995 (Code)*.
- ii. In the alternative, on or about April 18, 2007, 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 during the final examination in PHL290H5 - "Psychoanalysis", contrary to Section B.I.3.(b) of the *Code*.

- [21] Particulars of the Charges are as follows:

MAY 15, 2007

- i. At all material times you were enrolled in ECO336Y5Y. This course was taught by Professor McMillan
- ii. You wrote a deferred final examination in this course on August 22, 2006. The only aid permitted in the examination room was a calculator.

- iii. During the examination, you were found to be in possession of a piece of paper containing text related to the examination.

FEBRUARY 8, 2008

- i. At all material times you were enrolled in PHL290H5. This course was taught by Professor André Gombay. In advance of the PHL290H5 final examination, Professor Gombay provided the class with the final examination questions for use as a study aid.
- ii. You were instructed that the only aid permitted in the final examination room was the Sigmund Freud text, Introductory Lectures on Psychoanalysis. You were instructed not to write anything in the Freud text.
- iii. You wrote a final examination in this course on April 18, 2007. During the examination, you were found to be in possession of a copy of the Freud text in which full answers to the final examination had been written. You used those answers as an unauthorized aid.

[22] In support of the charges, the University called four witnesses.

The First Set of Charges

[23] The first witness was Wendy Norman, the Examinations Officer employed in the Office of the Registrar since 2004. Ms Norman testified that she was supervising a special deferred examination in Economics 336 in August, 2006. Ms Norman testified that she recalled Ms Yao's arrival at 9:25 am, twenty-five minutes after the start of the examination and only five minutes before she would not have been permitted to write the examination. Ms Norman was invigilating the examination with two other people. After a moment or two, during which the student had commenced writing the examination, Ms Norman checked her identification and the aids allowed. The only aid allowed was a calculator. Ms Norman testified that it is her habit to check every aid at every examination. This is her routine practice because there have been occasions where there are known to be notes hidden in calculator covers or other aids. In this case, Ms Norman picked up the student's calculator, saw that it had a cover and saw that there were notes under the cover. Ms Norman identified the calculator for the Panel as the one that was taken from the desk of the student. She testified that inside the calculator, folded carefully into three parts, was a double-sided piece of paper that contained notes written in small print. These notes were entered into as an exhibit at the hearing. When Ms Norman discovered the note, she asked the student whether it was her calculator. The student initially replied that it was, and Ms Norman asked whether the notes were hers. According to Ms Norman, the student said that she didn't know what that was, that the calculator belonged to a friend of hers. At this point, Ms Norman took the calculator and provided the spare calculator to the student. After the examination, the student asked for the calculator back but Ms Norman advised her that it was her practice to confiscate the aid and to make a report and sent it to the department. That report was also entered into

evidence. Ms Norman could not recall whether she saw the student use the calculator. A copy of the report was sent to Ms Gaspini and Ms Norman had no further contact with the student.

- [24] Next, the Panel heard from Professor McMillan who testified by videoconference from North Carolina. He testified that he had taught Economics 336 every year since he arrived at the University except 2006-2007 when he was on sabbatical, and that there are about 75 students in the course each year. The course is graded by one term test each semester and a comprehensive final examination. He remembered the student as she had missed a term test. He had had occasion to review the handwritten note that was found folded up in the calculator cover and described its relevance to the examination as very high. Indeed, two portions of the note related directly to questions that were found on the examination. The remainder of the note covered material that was covered in the course and was generally relevant to the examination.
- [25] The University then called Scott Graham, an Associate Professor of Computer Science and Forensic Science, and Dean's Designate at the University of Toronto, Mississauga. Professor Graham advised that he met with the student on February 27, 2007 about the incident described by Ms Norman. According to Professor Graham, the student agreed that she had an unauthorized aid, and agreed that that was not good, but indicated that she did not believe that she was guilty. She told him that a friend had given her the calculator after graduation, that it had been used for a term test, that the handwritten notes which were in her writing, had been prepared as a help sheet, to study for a make-up term test. In leaving the term test, she had checked the help sheet to see if her answers on the test had matched up with her study notes, and folded it up on the bus on the way home and inserted it into the cover of the calculator. By the time of the August examination, she had forgotten that they were there. Professor Graham testified that he was not satisfied with that explanation and that he recommended the case move to the Tribunal.

The Second Set of Charges

- [26] The Tribunal then heard from Professor Gombay, who came to the University in 1973 and was a Professor of Philosophy, specializing in 17th Century Rationalism. He also teaches a course of Philosophy and Psychoanalysis (PHL290). Professor Gombay identified his course description for the Panel, which set out that grades would be based on a test, an essay and a final examination. The final examination was to be worth 40% of the course mark. Professor Gombay testified that it was his practice on the last day of classes to give to the students a list of questions, and to advise the students that the final examination would be a sub-set of that list. Professor Gombay identified the examination for the Panel. The examination indicated that the text used in the course was allowed, but that no other text or aid was allowed. He advised that he had told them they were not allowed to write the answers in a book, but that they could have markers for page numbers on the pages that they felt would be relevant to their examination. He, along with a teaching assistant, supervised the examination. He testified that the teaching assistant told him that two students were cheating and showed him where the students were. He went to the desk and asked to see the book that they were using. He took the student's book, which was the assigned course textbook and opened the front cover, inside of

which was the student's name, which was marked as an exhibit at the hearing. Inside the book Professor Gombay also saw a lot of handwriting. He therefore took the book from the student and the examination booklets in which she had written thus far. In the book were handwritten answers to the questions he had provided to the students in advance. The answers in her examination booklet were identical to those that were in the book; that is, the student had copied out, word for word, her handwritten answers in the textbook into the examination booklets. Professor Gombay testified that he told the students at the beginning of the course that they would be allowed to bring the book into the examination, and no other aids. He also testified that he let the student continue to write the examination after he confiscated the book. The examination itself indicates: "Text allowed: Freud's Introductory Lectures; no other text or aid allowed."

- [27] After the examination, the student came running after him and the teaching assistant and asked him not to report the incident. He advised the student that it was too late, and that he had already reported it. She pleaded for a few minutes with him and he repeated that it was too late.

The University's Submissions

- [28] The University, in its closing submissions, submitted that the acts were similar in that aids were allowed in each examination, and yet extra, unauthorized aids were used in each. The differences were in the timing of when the student was caught. In the Economics course, she had not yet used the aid, while in the Philosophy course, she had. In the University's submission this difference was immaterial in that it is possession of the unauthorized aid that is the offence. The onus of proof, the University reminded the Panel, is on the University and the standard is on the balance of probabilities. In the words of the Supreme Court of Canada, "there is only one standard of proof" in civil cases and that is proof on the balance of probabilities. That is, is it more likely that not that an alleged event occurred? (*FH v. McDougall*, [2008] S.C.C. 53, para. 49).

Decision of the Tribunal

First Set of Charges

- [29] The Panel, having reviewed and considered the evidence, including the note written in very small writing and carefully folded into three to fit precisely within the covers of the calculator, concluded that the note did not have the appearance of a study note, but rather that of a "cheat sheet". It had a very high degree of relevance to the final examination. The student knew or ought to have known that the aid was there, as she bears the responsibility for ensuring that she does not bring in any unauthorized aid into the examination.
- [30] The Panel concluded that the University had discharged its onus and proven the offence on the balance of probabilities.

Second Set of Charges

- [31] With respect to the second set of charges, the Panel found that, contrary to explicit instructions, the student had attempted to “sneak in” full answers to questions that she had pre-prepared, and then copied these out word for word into the examination booklets. The Panel noted that the answers carefully handwritten into wherever blank pages could be found in the textbook bore the same headings as those from the practice questions provided in advance of the examination, and were clearly meant to be, and were, directly copied into the examination booklet. The Panel was satisfied that the student knew or ought to have known that she was in possession of an unauthorized aid, (these pre-fabricated answers), during the examination. The Panel also noted that the student had written herself notes of where to find the answers to various questions at the front of the book. Again, the Panel found that the University had proven its case on the balance of probabilities on the second set of charges.
- [32] Accordingly, the Panel found, on both sets of charges, that the University had proven the offences as alleged under B.i.1(b) of the *Code of Behaviour on Academic Matters*. The University withdrew the counts on both sets of alternative charges under B.i.3(b) of the Code.

Penalty Phase of the Hearing

Evidence

- [33] The University called Scott Graham at the penalty phase of the hearing. Professor Graham advised the Panel that he had met with the student on July 27, 2006, and that she had made an admission to him in another course that she had been guilty of plagiarism. The University entered as an exhibit a document bearing the student’s signature in which the student admitted that she was guilty of plagiarism on July 27, 2006. It also entered as an exhibit a letter from the Assistant Dean to the student dated August 10, 2006 advising of her the sanction imposed, which was a reduction of 10% in her final mark in that course.

The University’s Submission

- [34] The University advised that it was seeking the following sanction to be imposed by the Panel:
- (a) final grades of zero in both ECO336 and PHL290;
 - (b) that the Panel recommend that the student be expelled; and
 - (c) that a report be made to the Provost to be reported in the press with the student’s name withheld.

The University counsel noted that an expulsion carries with it an automatic transcript notation.

- [35] The University took the Panel to the case of *Mr. C.*, in which John Sopinka, then a member of the University Tribunal of the University of Toronto, provided an outline of the principles to be followed in dealing with an appeal from sentence, which must also be principles to be applied in deciding on sentence in the first instance. He noted that punishment is not intended to be retribution to get even with the student, but must serve a useful function. The classical components of punishment are reformation, deterrence and protection of the public, and in applying these criteria, a tribunal should consider all of the following:
- (a) the character of the person charged;
 - (b) the likelihood of a repetition of the offence;
 - (c) the nature of the offence committed;
 - (d) any extenuating circumstances surrounding the commission of the offence;
 - (e) the detriment to the University occasioned by the offence;
 - (f) the need to deter others from committing a similar offence.
- [36] In the University's submission, the evidence clearly showed that the acts were carefully and deliberately planned by the student, which would put the acts at the more serious end of the spectrum. These were not acts that were done inadvertently or carelessly. Further, the acts occasioned significant detriment to the University. The fundamental form of evaluation of an in-class examination with a level playing field for all students was undermined by the student. The University submitted there is a strong need to deter others. The University referred to the case of SB in which a panel recently indicated in discussing a plagiarism case that a strong message had to be sent that academic offences will not be tolerated, and will be dealt with strongly.
- [37] University counsel submitted that a further aggravating factor was the timing of the offence. That is, on July 27, 2006 there was a meeting in respect of a plagiarism charge, which the student admitted, in another course. On August 10, 2006, a letter was sent (although there was no evidence available to the Panel about the date on which it was received) indicating that the sanction for that plagiarism would be a 10% reduction in the course mark. Nonetheless, on August 22, 2006, the student engaged in a further academic offence by possessing an unauthorized aid in an economics examination. On February 27, 2007, the student met with Professor Graham about that use of unauthorized aid. Yet, on April 18, 2007, about six weeks later, the student engaged in a further academic offence in the philosophy examination. University counsel asked rhetorically, what more could the University have done to bring to the student's attention the importance of academic integrity? This was a rapid series of events.
- [38] Further, in the University's submission, the onus was on the student to show evidence supporting a reduced penalty or mitigating factors. The student did not plead guilty, which would be the best evidence of some insight or remorse, and indeed, by her failure to attend, presented no evidence of any other mitigating factors. The likelihood of repetition, in the University's submission, was overwhelming given the timing and the evidence. The only character evidence that was available to the Panel was that related to the offences.

- [39] In the University's submission, the offences were not concurrent but should be treated as second and third offences. Given that the student met with Professor Graham before she committed the third offence and that the economics offence had been brought to her attention by the time the philosophy offence occurred, the third offence would merit the recommendation of expulsion taking the approach outlined in the SB case. In the University's submission, a five year suspension in this case was inappropriate. The chances of rehabilitation, in the University's submission, are none given that the student has been "ducking" the University for 18 months, and has completely refused to engage in the process. There is no reason for the Panel to believe, in the University's submission, that the academic relationship can be rehabilitated. The student's very failure to participate in the process was evidence that there was no prospect of rehabilitation.

Decision on Penalty

- [40] The Panel considered the University's submissions as well as the evidence provided to the Panel by University counsel.

- [41] The Panel notes that the first paragraph of the Code states the following:

The concern of the Code of Behaviour on Academic Matters is with the responsibilities of all parties to the integrity of the teaching and learning relationship. Honesty and fairness must inform this relationship, whose basis remains one of mutual respect for the aims of education and for those ethical principles which must characterize the pursuit and transmission of knowledge in the University.

- [42] The Code further states the following, under the heading "Offences":

The University and its members have a responsibility to ensure that a climate which might encourage, or conditions which might enable, cheating, misrepresentation or unfairness not be tolerated. To this end, all must acknowledge that seeking credit or other advantages by fraud or misrepresentation, or seeking to disadvantage others by disruptive behaviour is unacceptable, as is any dishonesty or unfairness in dealing with the work or record of a student.

- [43] The Panel agrees with the Panel in *DL* that it is a responsibility on the part of students to act with honesty as they pursue their academic studies, and that students who do not act with honesty undermine the reputation of the University and the hard work of other students who do act honestly.

- [44] The Panel considered the case of SB, in which the student had previously committed two plagiarism offences, which he had admitted to. In that case, there was evidence of significant extenuating circumstances and the University had submitted that it would have asked for a longer suspension if not for some of the extenuating circumstances. The Panel there noted that first time offenders in cases of plagiarism had been met with suspensions of two, three and four years; while repeat offenders had resulted in

suspensions of four months, sixteen months, 3 years, 5 years and expulsion. That Panel expressed its view that a serious breach of trust such as plagiarism and/or concoction should evoke a response of at least a 2 year suspension for a first offence and a suspension of 3 years or longer on a subsequent finding. In that case, the Panel concluded that a 3 year suspension for a third offence, having regard to the range of other circumstances, struck an appropriate balance of punishment, compassion, rehabilitation and deterrence.

- [45] In this case, the Panel was very concerned about the following:
- (i) the elements of pre-meditation and deceit in both offences;
 - (ii) the timing of the offences (each offence occurred after a previous offence had been brought to the attention of the student); and
 - (iii) the complete failure of the student to engage in the process or even respond to the University with respect to either sets of charges.

- [46] Further, given the student's failure to participate in the process, the Panel had no evidence of any mitigating factors. There was no acknowledgement, no explanation, no remorse, no extenuating circumstances, and no evidence of any prospect of rehabilitation brought to the attention of the Panel. Given all of the above, the Panel is of the view that the University should not be forced to continue in the relationship with the student, and that the student should not have the benefit of the University's resources.

- [47] The Panel therefore imposes the following sanctions:
- i. that the student receive a grade of zero in ECO336 and PHL290;
 - ii. that the Panel recommend to the President and the Governing Council that the student be expelled from the University; and
 - iii. that the facts and sanctions associated with the penalty be provided to the Provost to be published with the student's name withheld.

Dated this 27th day of June 2009



Lisa Brownstone, Co-Chair