

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on August 26, 2014,

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

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

B E T W E E N:

UNIVERSITY OF TORONTO

- and -

N [REDACTED] P [REDACTED]

REASONS FOR DECISION

Hearing Date: Friday, May 15, 2015

Members of the Panel:

Mr. Paul Schabas, Lawyer, Chair

Dr. Chris Koenig-Woodyard, Department of English, Faculty Panel Member

Ms. Yusra Qazi, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, for the University of Toronto

Mr. N [REDACTED] P [REDACTED], the Student

Mr. R [REDACTED] P [REDACTED], the Student's Father

In Attendance:

Professor Eleanor Irwin, Dean's Designate, University of Toronto Scarborough

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

I. Agreed Facts and Finding of Guilt

- [1] This matter proceeded by way of an Agreed Statement of Facts. In short, after writing an exam on April 17, 2014, in course BIOC14, Mr. P■■ attempted to break into an office at UT Scarborough where he knew the exams were stored in order to alter his exam paper. This occurred late on Saturday evening, April 19, 2014 over the Easter long weekend. He was apprehended by campus police, and the Toronto Police Service was also called, who charged him under the *Criminal Code*. Although Mr. P■■ initially claimed he was there for another purpose, he admitted his reason for attempting to break in to the office when he met with the Dean's Designate on July 16, 2014.
- [2] The police charges were withdrawn on July 10, 2014. Mr. P■■ agreed to perform 30 hours of community service, write a letter of apology and attend counselling.
- [3] Mr. P■■ admitted all these facts and the Panel made a finding of guilt on the first count that, with intent to commit an offence under section B.I.1.(a) of the *Code of Behaviour in Academic Matters, 1995*, he did something for the purpose of carrying out the intention contrary to section B.II.2 of the *Code*. The second count, under the so-called "basket clause" in section B.I.3(b) was then withdrawn.
- [4] The sole issue remaining is the appropriate penalty. The University seeks a recommendation of expulsion, while Mr. P■■ urges us to order a suspension. Important in our consideration is the fact on January 30, 2014, just weeks before attempting the break in, Mr. P■■ had admitted earlier academic misconduct – also involving premeditated dishonest activity on several occasions (described as a "sophisticated scheme" by the Panel) – and had been ordered suspended for four years, commencing on May 1, 2014. The delay in commencing the suspension allowed him to complete his course work. Accordingly, when Mr. P■■ committed the offence before us he was already facing a lengthy suspension and was the beneficiary of an indulgence of the Tribunal in being permitted to complete his courses, including BIOC14.
- [5] Counsel for the University directed us to the well-known and accepted considerations for determining penalty set out by Mr. Sopinka in the C■■ case (Case No. 1976/77-3; November 5, 1976), at page 12, as well as other more recent cases in order to support the request for recommendation of expulsion.

II. The Student's Conduct and Seriousness of the Offence

- [6] Mr. P■■■■'s attempt to break in was organized and premeditated. He decided earlier that day to try it, and went home to construct a break-in tool. A surveillance video of the actual break-in showed that he had constructed a wire rod mechanism to slip under the door and, using rope and wire, he was able to manipulate it to unlock the door from the inside. He came to the office with his notes and other papers to help him change his answers before the exams were graded.
- [7] This misconduct is extremely serious. It was planned and deliberate. Although the criminal charge was withdrawn, he admitted to the Dean's Designate that he was attempting, in a carefully thought out way, to change his exam answers. This is dishonest conduct that cannot be treated as an impulsive act, and goes to the heart of the integrity of the University.

III. Character of the Accused and Likelihood of Repetition

- [8] We know little about Mr. P■■■■ other than his misconduct is not an isolated event. Rather, he has now committed a series of dishonest acts directed towards falsifying his academic record at the University. The fact that he was already facing a suspension when he attempted the break-in, demonstrates more than a likelihood of repetition.
- [9] Although a student here since 2010, we can glean little from his academic record, which was filed, doing well in some courses and poorly in others. Mr. P■■■■ made brief submissions to us, asserting he was having a "really rough year" in 2013-2014, and had trouble controlling his impulses and was getting help. However, he filed no evidence about this. He only produced a one sentence letter, not even on letterhead, from someone describing herself as having an M.Ed., dated July 4 2014, stating that Mr. P■■■■ had seen her for counselling on July 3, 2014, and had booked an appointment for a second session on July 17, 2014. Mr. P■■■■ told us he got some counselling, but that it was expensive. He said he then got a job and has been working in a medical lab. Mr. P■■■■ apologized to the Panel, and urged us to impose a suspension, even a further suspension, rather than recommend expulsion, because he was "really close to graduating".

[10] Mr. P■■■■'s father also addressed us briefly, but provided no insights into his son's character that would assist us. He apologized on his son's behalf and urged us to give him one more chance.

[11] The prior misconduct is a strong aggravating factor. A lengthy suspension order did not deter Mr. P■■■■ from attempting another premeditated act of academic dishonesty. We have been presented with no evidence of any impulsive disorder or other mitigating factors.

IV. General Deterrence and Denunciation

[12] General deterrence and the need for the University to denounce such conduct is an important consideration. Standing alone, Mr. P■■■■'s misconduct would require a serious sanction. It challenges the integrity of the University's evaluation process and its academic standards. His actions are not only dishonest but can have an impact on the other students who do not cheat. Academic institutions need to be vigilant in sending a strong message to students that such misconduct cannot be tolerated or condoned. A very serious sanction is warranted.

V. Other Cases

[13] Counsel for the University cited other cases that involved students breaking and entering in order to cheat – either to gain access to exams or to falsify records. In one, E■■■■ (March 15, 1994), the Tribunal Appeals Board overturned a suspension order and recommended expulsion, noting that “students must be alerted to the fact that criminal conduct will not be tolerated.”[page 5] In that case there was no indication of previous discipline history, as there was here. In two other cases, that appear to be linked, B and K (June 4, 2003), students were given lengthy suspensions, but had no prior discipline record. On the other hand, in cases such as A■■■■ (Case No. 450; December 10, 2009) and K■■■■ (Case No. 614; May 19, 2011), students with prior discipline records were recommended for expulsion in cases involving falsifying documents and plagiarism.

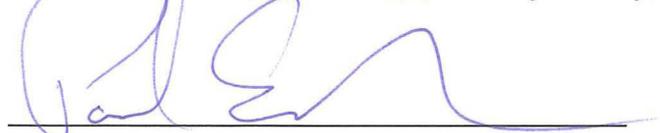
VI. Conclusion

[14] As counsel for the University put it, Mr. P [REDACTED] "reoffended in a very big way". And he did so while a suspension was pending, just weeks after his hearing in January 2014. In our view, a further suspension is not appropriate. Mr. P [REDACTED] is already serving a lengthy suspension, which did not deter him from committing a further offence – one which was very serious. Adding on more years to the four years already imposed makes no sense as any sentence that might be appropriate would be at the high end of the range, leading to a suspension for 8 or 9 years. In any event, the Panel is of the view, having regard to the factors in C [REDACTED] and reviewed above, that the appropriate penalty here is to recommend expulsion. The seriousness of the offence, the planned and deliberate manner in which it was attempted, especially following the recent imposition of a lengthy suspension which is a serious aggravating factor, and the lack of any mitigating factors that would explain his conduct, all compel this conclusion.

[15] Accordingly, we recommend to the President that he recommend to the Governing Council that Mr. P [REDACTED] be expelled from the University. We also make the following order respecting Mr. P [REDACTED]:

- (a) That he receive a final grade of zero in the course BIOC14;
- (b) That he be suspended for 5 years, commencing at the end of his current 4 year suspension, or until the Governing Council makes a decision to expel him;
- (c) That this sanction be recorded on Mr. P [REDACTED]'s academic record and transcript until graduation; and,
- (d) That this case be reported to the Provost, with Mr. P [REDACTED]'s name withheld, for publication of a notice of the decision of the Tribunal and the sanction imposed.

Dated at Toronto, this 21 day of May, 2015



Paul Schabas, Co-Chair