

**THE UNIVERSITY TRIBUNAL**

**THE UNIVERSITY OF TORONTO**

**IN THE MATTER OF** charges of academic dishonesty made on March 18, 2015

**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:**

**THE UNIVERSITY OF TORONTO**

- AND -

S [REDACTED] E [REDACTED] [REDACTED]

**REASONS FOR DECISION**

**Date of Hearing: November 23, 2015**

**Members of the Panel:**

Mr. John A. Keefe, Barrister and Solicitor, Chair

Dr. Joel Kirsh, Faculty Panel Member

Mr. Hayden Rodenkirchen, Student Panel Member

**Appearances:**

Robert A. Centa, Assistant Discipline Counsel, Paliare Roland Barristers

Ms. Lauren Pearce, Articling Student, Paliare Roland Barristers

Mr. Neil Wilson, Counsel for the Student, Stevenson Whelton MacDonald & Swan LLP

Dr. Kristi Gourlay, Manager, Office of Student Academic Integrity, University of Toronto

Mr. Martin Loeffler, Director, Information Security and Enterprise Architecture,

University of Toronto

Associate Professor Karen Reid, Department of Computer Science, University of Toronto

**In Attendance:**

Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

Krista Osbourne, Administrative Assistant Appeals, Discipline and Faculty Grievances

## INTRODUCTION

1. The trial division of the University of Tribunal was convened on Monday, November 23, 2015, to consider charges under the University of Toronto *Code of Behaviour on Academic Matters*, 1995 (the “Code”) laid against the student (the “Student”) by letter dated March 18, 2015, from Professor Sioban Nelson, Vice-Provost, Faculty & Academic Life. The charges are set out below:

## THE CHARGES

2. The charges against the Student in the Notice of Hearing are as follows:

### *Charges related to altering an academic record*

1. On or about October 26, 2014, you knowingly forged or in any other way altered or falsified an academic record, namely, the mark recorded for you on Assignment #1 in the Course CSC 369 H1F (the “course”), or you uttered circulated or made use of that forged, altered or falsified academic record contrary to section B.I.3(a) of the Code.
2. On or about October 27, 2014, you knowingly forged or in any other way altered or falsified an academic record, namely, the mark recorded for you on Assignment #1 in the Course, or you uttered circulated or made use of that forged, altered or falsified academic record contrary to section B.I.3(a) of the Code.
3. On or about October 29, 2014, you knowingly forged or in any other way altered or falsified an academic record, namely, the mark recorded for you on Assignment #1 in the Course, or you uttered circulated or made use of that forged, altered or falsified academic record contrary to section B.I.3(a) of the Code.
4. In the alternative to charges 1, 2, and 3, around November 9, or 10 you 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, contrary to section B.I(3)(b) of the Code.

### *Charges related to Assignment #2 in the Course*

5. On or about November 9, 2014, you knowingly used or possessed an unauthorized aid or aids or obtained unauthorized assistance in connection with Assignment #2 in the Course by viewing the work of Spencer Christie, another student in the Court, contrary to section B.I.1(b) of the Code.

6. On or about November 10, 2014, you knowingly represented the ideas of another, or the expressions of the ideas of another, as your own work in your answer to Assignment #2, which you submitted in partial completion of the requirements in the Course, contrary to section B.I.1(d) of the Code.
7. In the alternative to charges 5 and 6, around November 9 or 10, you 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, contrary to section B.I.(3)(b) of the Code.

### **THE PLEA**

3. The Student did not appear in person at the hearing, but he did appear through his counsel, Neil Wilson. Counsel for the Student indicated that he would not be entering a plea and would not be challenging the evidence. In effect, this was equivalent to a no contest plea. The hearing proceeded on the basis that the University would nonetheless prove its case even though the Student would not be challenging the evidence.

### **THE FACTS**

4. The Student was registered at the University of Toronto at the St. George Campus in the Faculty of Arts and Science, majoring in computer science. He was registered in CSC 369 HIF (the "Course"). The Course was being taught by Professor Karen Reid with the assistance of a teaching assistant Jacqueline Bermudez.
5. In the fall term of 2014, the Student hacked into the University of Toronto's computer system and he gained access to Ms. Bermudez's computer account. He then used the account to change his mark in Assignment #1 from an incomplete grade to 20/40 on October 27, 2014 and 33/40 on October 29, 2014. This conduct occurred in the period from October 24 to October 29, 2014.
6. With respect to Assignment #2, the Student hacked into the account of a fellow student Steven Christie and copied the work that had been submitted by him on Assignment #2 and submitted it as his own work. These events occurred between November 9, 2014 and November 10, 2014.

7. During the hearing, we were presented with evidence from Professor Reid describing how these events were uncovered. We also heard evidence from Martin Loeffler, the Director of Information, Security, and Enterprise Architecture at the University of Toronto who described the investigation that was conducted which formed the basis for establishing that the Student had in fact hacked into the University's computer network and with specific details of the exact time of entry and the exact activity that was the subject matter of the charge. The evidence was quite overwhelming and it was not challenged by the Student.

### **DECISION OF THE TRIBUNAL**

8. Based on the evidence presented at the hearing, we had no difficulty concluding that the offences had been made out by the University. Accordingly, we found the Student guilty on Counts 1, 2, and 3 relating to the altering of his academic record on Assignment #1. The University then withdrew Count 4. We also had no difficulty finding the Student guilty on Counts 5, and 6. The University then withdrew Count 7.

### **SANCTIONS AND REASONS**

9. Following the finding of guilt on the Counts referred to above, the University and the Student, through his counsel, provided the Tribunal with an Agreed Statement of Facts and Joint Submission on Penalty.
10. In the Agreed Statement of Facts and Joint Submission on Penalty, it was acknowledged that the Student has been suspended from the University under the *Code of Student Conduct* since December 5, 2014. This suspension related to the incident referred to above involving the Student gaining access to the University's computer system.
11. In the Agreed Statement of Facts and Joint Submission on Penalty, the Student agreed to permanently withdraw from the University and not to seek admission or readmission to the University at any time in the future.
12. The Joint Submission on Penalty, proposed the following sanctions:

***Joint Submission on Penalty:***

5. The Provost and Mr. E [REDACTED] submit that, in all the circumstances of the case, the University Tribunal should impose the following sanctions on Mr. E [REDACTED]:

- (a) a final grade of zero in the Course CSC 369;
- (b) a suspension from University from the date the Tribunal makes its order until December 5, 2019; and
- (c) a permanent notation of the sanction on his academic record and transcript

6. The parties submit that this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with the name of the student withheld.

13. The Tribunal then heard the submissions of counsel for the University and the Student and we were referred to a number of decisions dealing with the circumstances in which a Tribunal should accept or reject a joint submissions on penalty.

14. The basic principles are as follows:

- (a) The Tribunal is not obliged or required to accept a joint submission on penalty. The Tribunal retains the obligation and responsibility to impose a fit sentence in the circumstances of every case including those where a joint submission on penalty has been proposed;<sup>1</sup>
- (b) The companion obligation is that a joint submission on penalty may be rejected only in circumstances where to give effect to it would be contrary to the public interest or bring the administration of justice into disrepute.<sup>2</sup>
- (c) A good expression of the test is that the Tribunal should only reject a joint submission on penalty if it concludes that it is unreasonable or “unconscionable” for it to be accepted.<sup>3</sup>

<sup>1</sup> *University of Toronto v. S [REDACTED] F [REDACTED]* (2014) at para 16

<sup>2</sup> *R. v. Tsucism* (2006) 216 O.A.C 104 at paras 18

<sup>3</sup> *Law Society of Upper Canada v. Stephen Alexander Cooper*, 2009 ONLSAP 007 at para 19 – referred to and adopted in Sheran Fernando above.

15. The Tribunal concluded that it would accept the Joint Submission on Penalty based on these principles.
16. An important aspect of our decision was the Student's agreement to permanently withdraw from the University and not seek admission or readmission to the University at any time in the future.

### ORDER

17. Accordingly, the Tribunal makes the following order:
  - (a) impose a final grade of zero in Course CSC 369;
  - (b) a suspension from the University from the date the Tribunal makes its order until December 5, 2019; and
  - (c) a permanent notation of the sanction on the Student's academic record and transcript;
  - (d) That this case should be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed with the name of the Student withheld.

Dated at Toronto, this <sup>18<sup>th</sup></sup> day of December, 2015.

John A. Keefe, Chair

A handwritten signature in black ink, appearing to read 'J. Keefe', written over a horizontal line. The signature is stylized and cursive.