

UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL
TRIAL DIVISION

IN THE MATTER OF charges of academic dishonesty filed on February 13, 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.

BETWEEN:

THE UNIVERSITY OF TORONTO

- AND -

S [REDACTED] J [REDACTED]

REASONS FOR DECISION

Hearing Date: December 8, 2015

Members of the Panel:

Mr. Andrew Pinto, Lawyer, Chair

Professor Kathi Wilson, Chair, UTM Geography, Faculty Panel Member

Ms. Yusra Qazi, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland Barristers

Ms. Lauren Pearce, Student-at-Law, Paliare Roland Barristers

Professor John Carter, Dean's Designate, Faculty of Applied Science and Engineering, University of Toronto

Mr. Neeraj Sood, Teaching Assistant (Course ECE241H1)

Prof. Piero Triverio, Assistant Professor, Faculty of Applied Science and Engineering

Mr. Jaro Pristupa, Director, Information Technology

Prof. John Carter, Academic Integrity, Faculty of Applied Science and Engineering

In Attendance:

Christopher Lang, Director, Appeals, Discipline and Faculty Grievances, Office of the Governing Council, University of Toronto

Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances, Office of the Governing Council, University of Toronto

Preliminary

- [1] The Trial Division of the University Tribunal was convened on December 8, 2015 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "Code") laid against the Student by letter dated February 13, 2015 from Professor Sioban Nelson, Vice-Provost, Faculty and Academic Life.
- [2] The Student did not attend the hearing; nor did a representative acting on the Student's behalf. The Tribunal questioned Discipline Counsel concerning the University's efforts to bring the charges and the hearing to the Student's attention. The University provided an Affidavit of Service which confirmed that the Student had been served by email and by courier on November 18, 2015 with the Notice of Hearing which included the charges. The email and address used for service were those provided by the Student in the Repository of Student Information (ROSI). The Affidavit of Service confirmed that there was no bounce back from the Student's email address and the courier package sent to the Student was not returned.
- [3] Discipline Counsel also provided the Tribunal with a document containing email correspondence between a lawyer acting on behalf of the Student and the Director, Appeals, Discipline and Faculty Grievances at the University. In an email dated December 8, 2015, the lawyer advised the University that he was only retained on a limited basis by the Student and not to appear at the hearing. The lawyer's email did not seek an adjournment of the hearing and, instead, asked the Director to "advise as to the outcome of the proceedings today". The email also confirmed that the Student would not be attending the hearing "for medical reasons of which both the University and The Tribunal are aware."
- [4] The Tribunal concluded that not only did the Student have deemed notice of the charges and the hearing by virtue of service via email, but also actual notice as confirmed by the Student's lawyer. The lawyer's email did not request an adjournment of the hearing and, by asking to be notified about the outcome of the proceedings, the Student tacitly acknowledged the legitimacy of the hearing proceeding in his absence.

- [5] Discipline Counsel submitted that the Tribunal should not consider the lawyer's reference in his email to "medical reasons" as a request or a motion to adjourn the hearing due to the Student's medical condition. Discipline Counsel submitted that the content of the lawyer's email was not evidence that was properly before the Tribunal. The information in the email was not presented via sworn affidavit or through a witness at the hearing. There was no way for the University to test the veracity of the Student's purported medical reasons. Further, the barebones reference to "medical reasons" did not, in any way, comply with the required presentation of medical evidence as required by Rule 72 of the Tribunal's *Rules of Practice and Procedure*.
- [6] The Tribunal was satisfied that the Student had been properly notified and determined that it would be appropriate for the hearing to proceed in the Student's absence. The Tribunal held that the lawyer's reference to "medical reasons" did not constitute a request for an adjournment and, in any event, the purported "medical reasons" were not properly before the Tribunal and would not be considered as evidence that could be taken into account by the Tribunal.

Hearing on the Facts

[7] The charges against the Student were as follows:

1. In or around November 2014, the Student knowingly represented the ideas or the expressions of the ideas of another as his own work in a project that he submitted in ECE241H1, contrary to section B.I.1(d) of the Code.
2. In the alternative, in or around November 2014, the Student knowingly obtained unauthorized assistance in connection with the project that he submitted in ECE241H1, contrary to section B.I.1(b) of the Code.
3. In the further alternative, in or around November 2014, the Student 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 in connection with the project that he submitted in ECE241H1, contrary to section B.I.3(b) of the Code.
4. On or about December 8, 2014, the Student knowingly personated another person, namely Professor Reza Iravani, in connection with the final examination in ECE212H1, contrary to section B.I.1(c) of the Code.

5. In or around November and December 8, 2014, having an intent to commit an offence under the Code, the Student did or omitted to do something for the purpose of carrying out his intention to obtain unauthorized assistance in the final examination in ECE212H1, contrary to sections B.I.1(b) and B.II.2 of the Code.
6. In the alternative, in or around November and December 8, 2014, the Student 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 in connection with the final examination in ECE212H1, contrary to section B.I.3(b) of the Code.
7. On or about December 9, 2014, the Student knowingly obtained unauthorized assistance in the final examination in ECE212H1, contrary to section B.I.1(b) of the Code.
8. In the alternative, on or about December 9, 2014, the Student knowingly represented the ideas or the expressions of the ideas of another as his own work in the final examination in ECE212H1, contrary to section B.I.1(d) of the Code.
9. In the further alternative, on or about December 9, 2014, the Student 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 in connection with the final exam that he submitted in ECE212H1, contrary to section B.I.3(b) of the Code.

- [8] Discipline Counsel suggested that the charges against the Student fell into three categories.
- [9] The first category comprised the three charges related to the Student allegedly committing plagiarism in or around November 2014 with respect to ECE241H1 (Digital Systems). Charge 1 was the main plagiarism charge and Charges 2 and 3 were brought in the alternative.
- [10] The second category comprised the three charges related to the Student's alleged attempt in or around December 2014 to obtain an advance copy of the final examination in ECE212H1 (Circuit Analysis) by personating, via email, a professor of the course. Charge 4 was the main personation charge and Charges 5 and 6 were brought in the alternative.

- [11] The third category comprised the three charges related to the Student allegedly using unauthorized assistance in the final examination of ECE212H1 (Circuit Analysis) by copying from another student during the examination. Charge 7 was the main unauthorized assistance charge and Charges 8 and 9 were brought in the alternative.
- [12] The University indicated that if the Student was convicted of Charges 1, 4 and 7, the other charges would be withdrawn.
- [13] Four witnesses provided evidence on behalf of the University: Neeraj Sood, a Teaching Assistant in the Digital Systems course; Professor Piero Triverio, the Student's Professor in Circuit Analysis and the recipient of the alleged personation email; Jaro Pristupa, Director of Information Technology at the University; and Professor John Carter, the Dean's Designate who met the Student to discuss the charges.
- [14] The University's first witness Mr. Sood, a graduate student, testified that he had been a teaching assistant since 2011. The Digital Systems course taught by Professor Chow was an introductory course about how digital logic circuits are constructed. There are around 200 students in the class and Mr. Sood was one of a group of Tutorial Assistants (TAs) who guided students in the lab associated with the course. The TAs also graded and mentored the students.
- [15] Mr. Sood was in charge of approximately 9 groups of two students each which included the Student and his student partner. The project at issue was worth 10% of the course grade. The project deliverable involved each student group developing and submitting, *inter alia*, several hundred lines of programming code in respect of a digital circuit. The group submitted the project but students were marked individually.
- [16] Mr. Sood stated that the Student's group was struggling with the last two of the seven labs in the course. Yet, when the Student's project was submitted, the code was remarkably professional and complete, using syntax and ideas that had not even been taught in the course. Mr. Sood's suspicion was raised about the true authorship of the code when, in discussions with the Student and his partner, neither was able to explain the code.
- [17] Mr. Sood determined that the code in the Student's project was virtually identical to program code found in a publicly available software repository. The Student's project was identical to modules in the repository, except for indicators that revealed the original authorship, which appeared to have been deleted. For instance, the repository sections on "Copyright" and "Acknowledgments" were missing from the Student's project. Revealingly, however, the Student's project still contained the repository time stamp

showing when the original code was created, namely January 25, 2012, which predated the November 2014 Student project by over two years.

- [18] Mr. Sood had no doubt that the Student's project was plagiarized from the publicly available software repository and was not authored by the Student or his lab partner.
- [19] Professor Piero Triverio was the University's second witness. Prof. Triverio taught one of three sections of ECE212H1 (Circuit Analysis). The other two sections were taught by Professor Iravani. The final exam was worth 50% of the course grade. Prof. Triverio explained that he received an email at about 7 p.m. on the day before the final examination purportedly from Prof. Iravani stating:

Please send me the PDF for the ECE212 final examination, as soon as possible. Require the PDF.

- [20] Prof. Triverio considered the authenticity of the email suspect since the examination had already been finalized and the wording "Require the PDF" was strange. Upon a closer review, Prof. Triverio noticed that the email had been sent from an email address with the extension "utoronto.co", not the usual "utoronto.ca". Prof. Triverio sent an email about this "phishing" email to Jaro Pristupa, the Director of Information Technology (IT) in the Department of Electrical and Computer Engineering (ECE).
- [21] Prof. Triverio was present when the Student wrote the final examination in Circuit Analysis on December 9, 2014. One of the course TAs noticed similarities between answers provided by two students who had written the examination. The two students were the Student and his lab partner. A comparison of the two students' examinations revealed several points where the answers were identical but mathematically incorrect. Prof. Triverio concluded that the Student had copied from his lab partner during the final examination.
- [22] Jaro Pristupa, the Department's IT Director, was the University's third witness. Mr. Pristupa had been contacted by Prof. Triverio concerning an apparent phishing attempt to obtain a copy of the final examination in Circuit Analysis. Mr. Pristupa explained that the email looked like it was sent from the Engineering Computing Facility (ECF) on campus. However, an investigation revealed that the source of the email was a computer on the Rogers network, likely at someone's home. Log files showed that someone on the Rogers network connected to one of the ECF workstations as a user and then stepped through several more workstations before running a web browser.

- [23] The apparent user was a first year student, however, it did not make sense for a first year student to be asking for a second year examination. Further investigation revealed that the same computer on the Rogers network was used previously for remote connections and the student login account for those remote connections traced back to the Student.
- [24] Additional investigation revealed that the Student possessed the login-names and passwords of three university students, likely obtained through the use of a keystroke logger device. Based on the electronic log trail left by the Student, and by correlating the time that the impugned files were created with the Student's presence in the ECF lab, Mr. Pristupa was able to conclude with substantial certainty that the Student was responsible for the phishing email.
- [25] Mr. Pristupa's investigation also indicated that the Student had unsuccessfully attempted to breach Prof. Iravani's ECF account and a university file containing encrypted passwords.
- [26] Mr. Pristupa concluded that the Student had sent an email to Prof. Triverio as if coming from Prof. Iravani using another student's userID. The Student had used elaborate tactics to cover his tracks such as connecting through several ECF workstations and using a domain name whose registrant was anonymized.
- [27] Professor John Carter, the Dean's Designate, was the University's fourth and final witness. In separate meetings, he met with the Student, Professor Triverio, Prof. Najm (ECE Chair) and Prof. Chow on January 9, 2015.
- [28] Prof. Carter stated that the Student admitted to looking at and copying from his lab partner's examination but stated that the other student was not involved in the scheme. The Student also admitted to sending the phishing email but said he did not know why he did so. With respect to the lab project, the Student admitted that he obtained the programming code from an online software repository. The Student suggested that he was having a bad term, was depressed, not thinking clearly or rationally during the course of the term, and was not his right self. The Student suggested that he had been doing meditation over the holiday break and that if the University gave him a warning, he would be fine, and there would be no further problems.
- [29] Prof. Carter advised the Student that, given the severity of the allegations, he would have to pass the matter on to the Provost's office and charges could be laid.

Decision of the Tribunal on Charges

- [30] The Tribunal considered the University's witnesses as credible and saw no reason to doubt their evidence. The Tribunal also reviewed documentation which clearly supported the University's position that the Student had engaged in academic misconduct.
- [31] Following deliberation, based on the evidence presented by the four witnesses, the available documentation and submissions of Discipline Counsel, the Tribunal found the Student guilty. The Student was convicted of charges 1, 4 and 7. Accordingly, the other charges against the Student were withdrawn.

Penalty

- [32] The matter then continued with a hearing into the appropriate sanction.
- [33] The Student did not have any prior discipline history. The University sought a penalty that included:
 - a) a mark of zero in the ECE212H1 (Circuit Analysis) course;
 - b) a mark of zero in the ECE241H1 (Digital Systems) course;
 - c) a recommendation to the President of the University that he recommend to the Governing Council of the University that it expel the Student from the University;
 - d) a suspension of up to 5 years or until Governing Council makes a decision concerning expulsion;
 - e) a permanent notation of academic misconduct on the Student's transcript; and
 - f) publication of the Student's case on an anonymized basis.
- [34] Discipline Counsel provided submissions on penalty in light of the sentencing principles set out in the *University of Toronto and Mr. C* decision (November 5, 1976). She submitted that there was some overlap in respect of how the Student's circumstances related to the 6 factors in the *Mr. C* decision.
- [35] With respect to the Student's character, Discipline Counsel submitted that the Student had gone to extraordinary lengths to commit academic misconduct. By using another student's userID for the personation email, the Student implicated another student in the misconduct. The Student showed no sense of remorse when, in his meeting with the Dean's Designate, he suggested that a warning to him would suffice.

- [36] With respect to the likelihood of repetition of the offence, Discipline Counsel submitted that the Student had engaged in three separate offences (plagiarism of respository code, personation via email requesting a copy of the final exam, copying from another student during the exam) in a relatively short time (November and December 2014). The University suggested that the Tribunal consider the actions as three concurrent first offences rather than serial offences. However, the nature of the offences suggested that they were not "one-offs" that could be attributed to an error of judgment.
- [37] With respect to the nature of the offences committed and the detriment to the University, Discipline Counsel submitted that the phishing email was the most egregious and took considerable planning and deliberation. The University's investigation determined that there was a full two week period between the time a key logger was used to capture three student userIDs and passwords, and the time the phishing email was sent to Prof. Triverio. This was not an offence that was committed on the spur of the moment.
- [38] Discipline Counsel also noted that the act of personating a professor is a grave offence that calls for a serious sanction.
- [39] With respect to the plagiarism offence, Discipline Counsel cited the *University of Toronto and B [REDACTED] S [REDACTED]* (Case 697 Sanction; December 17, 2013) decision which affirmed that plagiarism is a serious offence that, due to the internet, is both increasingly prevalent and more easily detected.
- [40] With respect to the Student copying from another student during the final examination, Discipline Counsel relied on the *University of Toronto and S [REDACTED] R [REDACTED]* (Case 708; March 31, 2014) decision which pointed out that the offence "undermines the integrity of the University evaluation process, and the honesty that must underlie the teaching and learning relationship." (at para. 42).
- [41] Discipline Counsel suggested that, given the Student's deceptive conduct, the principle of general deterrence required that the most serious sanction be ordered. Also, the Student's statement that he was depressed and anxious, without more, did not rise to the level of sufficiency required for the Tribunal to consider it a mitigating circumstance.
- [42] In closing, Discipline Counsel suggested that the Tribunal consider the *University of Toronto and N [REDACTED] P [REDACTED]* (Case 722; January 30, 2014) decision which had factual similarities to the case at hand. In *P [REDACTED]*, the Tribunal ordered a four year suspension for a student who was found guilty of four charges: two of personation; one of obtaining unauthorized assistance; and one of academic dishonesty in relation to removing his

examination from the examination room. But, unlike the case at hand, the student in *P* [REDACTED] appeared at the hearing and admitted his guilt.

- [43] Discipline Counsel submitted that, while the *P* [REDACTED] decision was factually similar, the Student here deserved a more stringent sanction because of the Student's theft of three students' userIDs and his elaborate attempts to avoid detection.
- [44] The Tribunal reviewed a number of Tribunal decisions presented by the University. The two decisions in which the student engaged in personation were of greater assistance. In the aforementioned *P* [REDACTED] decision, the student personated two professors in emails to other professors requesting a copy of an examination. The student also removed his own examination from the examination room. Essentially, there were two separate offences (personation, removal of examination) which resulted in a conviction on four charges. The student attended the hearing, pleaded guilty and received a four year suspension.
- [45] In *University of Toronto and O* [REDACTED] (Case 609; February 21, 2012), the Tribunal recommended the expulsion of a student who had engaged in four counts of personation of a course instructor and seven counts of attempting and/or using an unauthorized aid. The student did not attend the hearing or plead guilty.
- [46] In the Student's case, the Tribunal finds that The Student has no prior offence and that the Student engaged in three separate acts of misconduct: plagiarism; personation via email; and cheating by copying from another student's examination. The acts happened within a reasonably short amount of time such that they should be considered as three first-time offences.
- [47] The Student attended the Dean's Designate meeting and while he appeared to acknowledge the conduct giving rise to the charges, he did not at that time, or subsequently plead guilty to the charges.
- [48] At the Dean's Designate meeting, the Student mentioned being depressed and not his right self, but did not then or subsequently provide any medical or other evidence to support his claim.
- [49] The personation email took significant planning and deliberation effectively involving the identity theft of three university students' userIDs and passwords. The Student used one student's university online identity to personate a professor which demonstrated a high degree of cunning and deception. In this regard, the circumstances here are more egregious than in the *P* [REDACTED] case where the student personated two professors by purporting to use their email accounts but did so by creating fictitious

emails. The student in P█ did not capture the professors' actual userIDs and passwords. Furthermore, the Student here engaged in three distinct offences, not two. Finally, the student in P█ attended the hearing, pleaded guilty and expressed remorse. Here the Student did not. Accordingly, a more severe sanction is required than in P█.

- [50] In the present case there are no mitigating circumstances that the Tribunal can take into account. In fact, the scant evidence of the Student's insight into his conduct is troubling. The Student believed that he should receive a mere warning for his outrageous conduct.
- [51] In the Tribunal's view, the Student's conduct was so severe that it must be met with the most severe penalty available to the Tribunal: a recommendation for expulsion.
- [52] In light of the facts of this case, the Tribunal imposes the following sanction:
 - (a) a zero in the course ECE241H1 (Digital Systems);
 - (b) a zero in the course ECE212H1 (Circuit Analysis);
 - (c) suspension from the University of Toronto for a period of up to 5 years from the date of this order or until Governing Council makes its decision on expulsion, whichever comes first, and that a corresponding notation be placed on his academic record and transcript; and
 - (d) the Tribunal recommends to the President of the University that he recommend to the Governing Council that Mr. J█ be expelled from the University; and
 - (e) that the case be reported to the Provost, with Mr. J█'s name withheld, for publication of a notice of the decision of the Tribunal and the sanctions imposed

Dated at Toronto, this 1st day of March 2016.



Andrew Pinto, Co-Chair