THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on February 14, 2011

AND IN THE MATTER OF the *University of Toronto Code of Behaviour on Academic Affairs*, 1995 (the "Code")

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 –

M[redacted] B[redacted]

Date of Hearing: October 26, 2011

Members of the Panel:
Bernard S. Fishbein, Chair
Professor Gabriele D'Eleuterio, Faculty of Engineering, Faculty Panel Member
Mr. Omar Gamel, Student Panel Member

Appearances:
Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Barristers

In Attendance:
Professor Eleanor Irwin, Dean's Designate, University of Toronto, Scarborough
Mr. Christopher Lang, Director, Appeals Discipline and Faculty Grievances
Mr. Jason Marin, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Not In Attendance:
Mr. M[redacted] B[redacted], the Student

REASONS FOR DECISION

(A) Reasonable Notice – Whether to Proceed

1. A hearing of the Trial Division of the University Tribunal was convened on Wednesday, October 26, 2011, at 5:30 p.m. in the Boardroom (Room 209), Simcoe Hall, concerning charges against M[redacted] B[redacted] ("the student") under the *Code of Behaviour on Academic Affairs,* 1995 (the "Code").

2. The hearing notice indicated the hearing was to commence at 5:30 p.m. At 5:30 p.m. the student had not yet appeared. As a result, the Panel held the matter down till after 6:00 p.m. The student had still not appeared.

3. As a result, the University then requested the Tribunal proceed in the student's absence.

4. The revised notice of hearing, dated September 26, 2011, was entered as Exhibit 1. Not only did the notice clearly indicate the time and place of the hearing, but it further stated:

> "You may choose to attend the hearing with or without representation, or not to attend at all. If you do not attend, the hearing may take place without you and you will not be entitled to further notice in the proceeding. If you do not attend, you will be notified in writing of the outcome."

The notice of hearing was sent by e-mail and courier.

5. Also marked as Exhibit 2 was the affidavit of Betty Ann Campbell, a law clerk employed by Paliare, Roland, Rosenberg, Rothstein ("University Discipline Counsel"). Ms. Campbell was also present at the hearing in the event it was necessary for her to give *viva voce* evidence. In the circumstances, it was not necessary.

6. The University's Policy on Official Correspondence with Students ("the Policy") provides 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 that meets the standard of service set by the Vice-President and Provost.
>
> Failure to do so may result in a student missing important information and will not be considered acceptable rationale for failing to receive official correspondence from the University."

The Policy further provides that:

> "Students are expected to monitor and retrieve their mail, including electronic messaging account(s) issued to them by the University, on a frequent and consistent basis. Students have the responsibility to recognize that certain communications may be time critical. Students have the right to forward their University-issued mail account to another electronic mail service provider address but remain responsible for ensuring that all University or electronic message communication sent to the officially University-issued account is received and read."

The policy is highlighted on the University of Toronto Scarborough Campus ("UTSC") calendar as being of particular importance to students and in the Registration Guide and the online Registrar's letter for UTSC students.

7. The student was registered at UTSC in the fall of 2009.

8. These charges relate to an incident during the final exam and MATA33 on or about August 13, 2010. They involved another student, L[redacted] Q[redacted] ("Q[redacted]"). Initially, the University, in particular Professor Eleanor Irwin ("Irwin"), the Dean's Designate at the UTSC, wrote to the student requesting he attend a meeting to discuss the incident. The letter was sent to the address indicated on the then current student record. That letter was not answered. It was followed up by another letter on November 18, 2010.

9. Meanwhile, Irwin had met with the other student, Q[redacted], whose student records indicated that she resided at the same address as the student. Irwin asked Q[redacted] to advise the student of the importance of the student meeting with her. Ultimately, Q[redacted] arranged a meeting between Irwin and the student for January 5, 2011. The student, by e-mail confirmed the meeting on January 5, 2011.

10. The meeting on January 5, 2011 took place. The incident was discussed with the student and the student was advised that the matter would be sent to the Vice-Provost to lay charges under the Code.

11. A letter confirming what transpired at that meeting was sent to the student on January 7, 2011. By that point in time and in order to register for a fall course, the student had updated his student records to indicate a new address on December 15, 2010. The letter was sent to that address.

12. On February 17, 2011, the University sent to the student the University's disclosure brief and proposed hearing dates. These documents were delivered by courier to the newly-changed address of the student. The package was returned because the courier could not find anyone at the address to accept it, and there was no secure place to leave it. The student was next sent an e-mail at the e-mail address disclosed on his amended student records (which also indicated the new address) enclosing the disclosure material and requesting the student make contact so that hard copies of the University's disclosure could be delivered and a hearing date could be arranged. No unsuccessful delivery notification or any other type of bounce back came back from that email.

13. However, the student failed to respond. As a result, a further email dated September 13, 2011 was again sent to the student. Again, no unsuccessful delivery notification or any other type of bounce back resulted from that email.

14. Again, the student did not respond.

15. As a result there was communication between the offices of the University Discipline Counsel and the University indicating that a hearing date should be set. Copies of all of the correspondence both from the Discipline Counsel and from the University were sent to the student by email. Again, none of the emails received an unsuccessful delivery notification or any other type of bounce back.

16. On September 26, 2011, the hearing notice was sent to the student by email. Again there was no unsuccessful delivery notification or any other type of bounce back with respect to this email. The same occurred with the revised hearing notice sent later that same day.

17. In addition, the University also delivered the hearing notice by courier to the student to the most recent address (the changed one) on his student record. This time the courier was instructed to leave the package even if no one was present. The courier did so.

18. At no time did the student contact anyone at the University or University Discipline Counsel about these charges.

19. In the circumstances, the University submits that this hearing should proceed, notwithstanding the non-attendance of the student. The Code in section C.II. (a) outlines the Tribunal procedures. Section 7 of that section provides that the procedures of the Tribunal shall conform to the requirements of the *Statutory Powers Procedure Act* ("SPPA").

20. Section 6(1) of the SPPA requires parties to a proceeding to be given "reasonable notice of the hearing by the tribunal". Section 6(3) of the SPPA provides for an oral hearing that the notice must include:

> "A statement that if the party notified does not attend at the hearing, the tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding."

21. Section 7 of the SPPA further provides:

> "Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding."

22. The University submits that both its notice and the way it has proceeded, complies with the SPPA. Moreover, the University points to its Policy requiring students to provide a current and valid postal address as well as the address for a university-issued electronic mail account, and that failure to do so would not be considered "an acceptable rationale" for failing to receive official correspondence from the University. In the circumstances, the University asserts that reasonable notice has been given to the student and points to the fact that the student has at least updated the university records to provide a new address and to register for a fall course.

23. In all of the circumstances, the panel unanimously ruled that it was prepared to proceed in the absence of the student. The panel was prepared to conclude that reasonable notice was given to the student both by delivery of the material by courier to his address as recently changed on the university records (even if it was merely dropped off) and by email to his last indicated email address. Moreover, it was reasonable for the university to rely on its Policy requiring students to keep the university records current with respect to both address and email accounts, and not permitting failure to do so to

constitute an adequate justification for failing to receive notice from the University. Not only was the Policy well distributed and publicized, but finding otherwise would not only aid and abet a student seeking to evade or avoid receiving notice, but would impose extraordinary costs on the University (with no guarantee of success) in a time of restricted resources which might otherwise be more usefully devoted to educational purposes. This seemed particularly so when the student himself had changed his address and used the university system to register for a course as recently as the preceding fall.

(B) The Charges

24. Having determined that the hearing would proceed in the absence of the student, the University proceeded to establish the merits of the charges. The charges were that:

> 1. On or about August 13, 2010, you knowingly had another person, L[redacted] Q[redacted], personate you at a final examination in MATA333 ("the exam in the course" contrary to section B.I. 1(c) of the Code).
>
> 2. On or about August 13, 2010, you knowingly forged, altered or falsified a document or evidence required by the University and did utter, circulate or make use of any such forged, altered or falsified document, namely, the cover page of your examination booklet in the exam, contrary to section B.I. 1(a) of the Code.

There were also alternative charges that the student had knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation contrary to the Code, but it was not necessary in the circumstances for the University to proceed with these alternate charges.

25. The University called Irwin, the Dean's Designate at UTSC, to testify. Irwin testified what took place at her meeting with the student on January 5, 2011 (described earlier). Irwin testified that the student acknowledged receiving the letters of October 26, 2010 and November 18, 2010, which outlined the purpose of the meeting on January 5th, namely, the possible Code violations arising out of the final examination in MAT333. In particular, Irwin explicitly reviewed the student's rights with him, including his right to counsel and his right to refuse to admit anything; that if he did, anything he admitted might be used against him. In fact, Irwin said she specifically read to him Article C.1(a) No. 6 of the Code which provides:

> "Before proceeding with the meeting, the Dean shall inform the student that he or she is entitled to seek advice, or to be accompanied by counsel at the meeting, before making, and is not obliged to make, any statement or admission, that shall warn that if he or she makes any statement or admission in the meeting, it may be used or receivable in evidence against the student in the hearing of any charge with respect to the alleged offence in question. The Dean shall also advise the student, without further comment or discussion, of the sanctions that may be imposed under section C.1. (b) and that the Dean is not obliged to impose a sanction but may instead request the Provost lay a charge against the student. Where such advice and warning have been given, the statement and admissions, if any, made in such a meeting, may be used or received in evidence against the student in any such hearing."

26. Irwin showed the student his examination candidate form and the final exam that bore his name and student number. She asked the student if he had written this exam and he admitted that he had not. She showed him another exam that bore the name Stephen Zhu and the student indicated that he had written that exam. There was no

Stephen Zhu registered in the class. The student indicated that when he entered the exam, Q[redacted] had passed him a note saying that she would put his name and student number on her exam. Q[redacted], who was living with the student at the time, had admitted basically the same thing (although not identical in all respects) in an earlier interview with Irwin. The student explained that he had originally put his name and student number on this exam but had crossed it out after receiving the note from Q[redacted] and then put on the made-up name of Stephen Zhu and the made-up student number on the exam. The student explained that he did not put Q[redacted]s name on his exam because he did not know her student number (it ought to be noted that had he done this, it is unlikely that this violation of the Code would ever have been detected). Irwin indicated that because of the seriousness of this offence which she discussed with the student, she advised the student that she would not be imposing sanctions at her level but rather send this onward to the Vice-Provost so that charges could be laid under the Code. Irwin indicated to the student that the reason she was doing this was because the limit of her authority to impose sanctions at her level was a one-year suspension, and she regarded this as a far more serious academic offence that warranted much greater penalty. To Irwin, the student appeared neither uninterested nor unable to appreciate what was told with him. Again Irwin indicated that the student was advised at the outset that any admission might be used against him and that her assistant, Janis Jones, sat in on the meeting taking notes which was quite visible to the student.

27. That was the only evidence that the University called. Needless to say, in the absence of the student, it was uncontradicted and not challenged.

28. In the circumstances, the University submitted that the facts and the admissions spoke for themselves. The student had been warned by Irwin both of his right to counsel and his right to remain silent and the consequences of any admission being used against him. The student admitted that someone else had completed the examination in his name and that he had completed an examination in the name of a non-existent person.

29. In the light of the unequivocal and uncontradicted evidence, it was the unanimous ruling of the panel that the charges of the personation contrary to section B.I. 1(c) of the Code and the charges of forgery and altering or falsifying a document required by the University contrary to section B.I. 1(a) of the Code had been fully made out and established.

(C) Penalty

30. The University then made its submissions with respect to sanctions. The University sought:

(a) A grade of zero in the course.

(b) A suspension of 5 years from the University.

(c) A notation of that suspension on the student's record for 7 years (in other words, two years past the suspension); and

(d) Publication of the decision and the sanction imposed with the student's name withheld.

The University indicated that it regarded the offences as very serious. The only reason the University was not seeking the ultimate sanction of a recommendation of expulsion was because the student's conduct and plan did not appear to be unduly premeditated (such as the purchase of a false exam, etc.) but merely taking advantage of the opportunity of Q[redacted] leaving the University and offering to do this for the student. However, it was still an extremely serious offence and, quite frankly, if the student had been aware of Q[redacted]s student number and written it and her name on his exam, the offence would likely never have been detected.

31. University counsel reviewed a number of previous Tribunal decisions which suggested varying sanctions depending on the circumstances.

32. After consideration of the University's submissions, the panel unanimously determined to accept those submissions. Specifically, the student would:

a) Receive a final grade of zero (0) in the course MATA33;

b) Be suspended from the University for a period of five (5) years commencing October 26, 2011, and ending on October 25, 2016;

c) Have the sanction recorded on the Student's academic record and transcript from the date of the Order until October 25, 2018; and,

d) 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 Student's name withheld.

33. The hearing then concluded.

Dated this 30th day of November, 2011

Bernard Fishbein