

Discipline Appeal Committee

[REDACTED]

Appellant

v

Philip Dutton**Respondent**

Appearing for the Appellant: Ms. Kira Passell (Paralegal, ELM Legal Services)

Appearing for the Respondent: Self-represented

Discipline Appeal Committee (DAC)

Professor Reem Bahdi (Chair)

Professor Michael Potter

Ed King (Student Member)

DECISION

[REDACTED] is appealing a finding of academic misconduct made by Associate Dean Phil Dutton. Dr. Dutton found that [REDACTED] had attempted to cheat on an exam (Course and Section: 03-62-126-01). The basic claim is that [REDACTED] attempted to copy answers from [REDACTED] another student who was writing the same exam at the same time.

Associate Dean Dutton determined that an admonition was the appropriate sanction on the facts of this case. This is the lowest level of sanction available but the relative lack of severity of the offence does not change the fact that the onus is on the Associate Dean to establish that it is more likely than not that [REDACTED] committed the academic offence of attempting to cheat on an exam.

Allegations of academic misconduct arising from this set of events were also brought against [REDACTED] who decided to accept the sanction imposed rather than proceed with a hearing.

[REDACTED] was represented by Ms. Passell. He presented most of his testimony through an interpreter. The Associate Dean presented his case on his own behalf and also introduced two witnesses: [REDACTED] is a graduate student who helped proctor the exam in question and [REDACTED] is the professor who brought the cheating complaint forward to the Associate Dean for investigation. [REDACTED] was described as an experienced proctor who brought several years of teaching experience from another country to his proctoring duties at the University of Windsor. Both the Associate Dean and [REDACTED] placed significant weight on his experience managing an exam and his ability to identify clues that (a) student(s) might be cheating.

Having heard the witnesses and examined the evidence, we conclude that it is more likely than not that [REDACTED] attempted to see [REDACTED]'s exam. We base our conclusion on the totality of the evidence. In particular, we find that: [REDACTED] and [REDACTED] knew each other before the exam; [REDACTED] persisted in moving his body to one side while sitting in

front of [REDACTED] despite at least one warning from [REDACTED]; [REDACTED]'s movements made his exam paper visible to [REDACTED]. [REDACTED] saw [REDACTED] looking in the direction of [REDACTED]'s exam; [REDACTED] warned [REDACTED]; [REDACTED] did not address the warning; [REDACTED] left the exam after his paper was exchanged by [REDACTED] and did not remain to demonstrate his knowledge of the course material even though he contended that he understood that material; [REDACTED] was not honest about his total performance in [REDACTED]'s course but instead presented a theory that he did not need to cheat because he is an A student; [REDACTED] conceded that he is not an A student only when presented with another picture of his overall academic performance by the Associate Dean at the hearing; and, [REDACTED]'s faltering performance in the course in question suggests, again on his own theory, that he had sufficient motive to engage in academic misconduct.

We elaborate on each of the above findings below, starting with [REDACTED]'s evidence so that we can address the admissibility of an affidavit presented by him from [REDACTED].

[REDACTED]:
[REDACTED] is a first year [REDACTED] student [REDACTED]. He began his studies in January 2016 and his English language skills are not yet fully developed. [REDACTED] acknowledged that he knew [REDACTED] but indicated that they are not friends. He urged the Committee to conclude that: he had no need to cheat; could not physical cheat; did not cheat; and, did not attempt to cheat. He stressed to the Committee that the allegations made against him have caused him significant stress and have interfered with his studies.

[REDACTED] contended that he is an A student, had performed very well in the course in question and knew the material on which he was being examined. He therefore argued that he had no reason or motive to cheat. In a note sent to Associate Dean Dutton, [REDACTED] claims "I am a 90+ student...."

[REDACTED] further contended that he could not have cheated because [REDACTED]'s paper was too far away from him to afford him the possibility of seeing any answers. [REDACTED] presented a picture of the room in which the exam was taken to prove this point. We note that this theory proves relevant primarily to the question of whether [REDACTED] did in fact cheat but does not prevent attempts at cheating.

The allegation of attempting to cheat turns on the nature and significance of an exchange between [REDACTED], [REDACTED] and [REDACTED]. While there are some inconsistencies in the details provided by the witnesses concerning this exchange, key facts are uncontested. [REDACTED] explained that he was about half way through the time allocated for the exam when [REDACTED] spoke to him and said "last warning." [REDACTED] prepared notes and took to a meeting with Associate Dean Dutton prior to this hearing. The notes read:

GA approached [REDACTED] but I did not hear what he said; and then approximately one hour later, GA again went to [REDACTED] and said something and then turned to me and said, 'last warning'. I did not have a clue what he was talking about so I just continued writing my exam.

Out of no where, [REDACTED] came and took my exam and gave me a new exam. I was confused so I raised my hand and asked her why I had to rewrite a new exam. She said the GA saw me looking at [REDACTED]'s exam. I said, no, I wasn't. [REDACTED] said that we would talk about it later.

Unfortunately, [REDACTED] did not continue writing his exam. After this exchange with [REDACTED], he packed up and left the exam room before his time for writing the exam had expired.

[REDACTED] attempted to present the Committee with an affidavit from [REDACTED]. The affidavit included, among other things, a brief account of what happened during the exam, a denial of cheating and an explanation that [REDACTED] accepted the sanction imposed because of the stress involved in the proceedings to date. The affidavit was not disclosed to the Associate Dean prior to the hearing and the Associate Dean objected to the admission of the affidavit.

The Committee chose not to admit ██████'s affidavit primarily because it made representations about key, contested events but ██████ was not being called as a witness to testify in person to those events. The document is thus not helpful to the Committee's decision-making. The fact that the affidavit was not disclosed to the Associate Dean prior to the hearing also means that admitting the document would delay the hearing as the parties would have to adjourn to allow the Associate Dean sufficient time to study the document. The value of the affidavit in the absence of ██████ testimony is not sufficient to warrant such a delay. The Committee notes that it has not drawn an adverse inference from ██████ decision not to appeal his own sanctions. In the present case, the Committee's conclusions are based only on the arguments and evidence presented at the hearing.

Associate Dean Dutton:

The Associate Dean determined that ██████ did not cheat but had attempted to do so. In this respect, as is noted below under ██████ testimony, Associate Dean Dutton disagreed with ██████ who believes that ██████ did actually cheat. After conducting his investigation, Associate Dean Dutton preferred not to proceed with the allegation that there had been actual cheating. The sanction he imposed was not based on a finding of actual cheating.

Associate Dean Dutton came to his conclusions largely on the basis of his interviews with ██████ and ██████. He also explained that ██████ is in fact not an A student; his marks are inconsistent and he has an overall average around the C+ range. ██████ accepted this to be true when presented with the Associate Dean's statement.

██████:
██████ contends that ██████ and ██████ came to his attention before the exam began because he observed ██████ sitting at an awkward angle with his body off to the side. He noted that ██████ body posture exposed his exam paper to ██████. ██████ did not say anything at that time but resolved to keep an eye on the pair.

The exam was written in a tiered classroom so that individuals in one row are sitting behind and slightly above the individuals sitting in front of them. The Committee notes that the exam was handwritten so that students did not have obstructions such as computer screen between them and the exam in front of them. Only the back of the student sitting in the row immediately in front obstructed a given student's view of the exam in front. The way a student sits in his/her chair is thus important to classroom management and the integrity of the exam process.

Part way into the exam, ██████ again saw ██████ moving his body to the side in a way that looked awkward and allowed ██████ a view of ██████ exam. ██████ approached ██████ and expressed his concern that ██████ was intentionally giving ██████ a view of his exam paper. ██████ denied the allegation. ██████ accepted the denial but warned ██████ to sit up straight so that his exam paper was not visible to ██████. ██████ also testified that he observed ██████ looking in the direction of ██████ paper.

At this point, ██████ testimony contradicts that of ██████. ██████ testified that in addition to telling ██████ to sit up straight, he also directly addressed ██████ and said something to the effect of "look at your own exam." ██████ was unclear about whether ██████ acknowledged or responded to these instructions. For his part, however, ██████ denied hearing ██████ direct instructions to keep his eyes on his own exam and denied responding to him. Given that ██████ was not clear in his testimony, we find that ██████ did not hear ██████ speak to him at this point in his intervention and find that ██████ did not respond to ██████.

Later in the exam period, ██████ again saw ██████ move to the side and again believed ██████ was attempting to see ██████ paper. At that point, ██████ spoke again to ██████ and then turned to ██████ and said "last warning."

We accept that it is more likely than not that ██████ was seated in such a way as to permit ██████ the possibility of looking at his exam and that ██████ took this position on at least two occasions despite being warned by ██████ to sit up straight so that ██████ would not be able to see his paper. It is uncontested that ██████ gave the last warning to ██████ who heard it and understood that it was directed at him but did not respond to it.

█████ said that he observed █████ looking at █████'s exam two or three times. █████ was standing at the front of the room when he observed, according to his testimony, █████ looking at █████'s exam. The two were sitting approximately half way up the exam room and to █████'s right. Unfortunately, no one in the exam room prepared an incident report while the exam was still going on or shortly thereafter. █████ simply denied looking at █████'s exam. The Committee must therefore choose between these two versions of events based on the testimony and evidence available at the hearing.

We prefer the testimony of █████ over █████'s on the question of whether █████ looked towards █████'s exam when █████ moved and allowed a view of his paper. █████ did not know the students and had no reason to exaggerate or fabric his concerns at the time that he expressed them. █████ clearly recalled where the two students were sitting in the class and this recollection was confirmed by █████'s own evidence. █████ was positioned to witness the behaviour and was sufficiently concerned from the start of the exam to watch the two students closely and assess their conduct. The Committee therefore finds that it is more likely than not that █████ was looking in the direction of █████'s exam while █████ was positioned in an angle that allowed █████ to see the paper.

█████:
█████ brought the complaint forward to Associate Dean Dutton on the basis that █████ had actually cheated. She came to this conclusion based on her review of █████'s exam and not exclusively on the exam room behaviour witnessed by █████. █████ contends that the answer provided by █████ and █████ at question 10 of the exam constitutes evidence of actual cheating because the answers demonstrate sufficiently similar mistakes or anomalies to suggest that the two students had shared information during the exam. When asked to rate the possibility that the overlap in answers was simply a coincidence on a scale of 1 to 10, █████ said "10/10" with 10 being highly unlikely that the overlap was simply a coincidence. █████ explained that she randomly pulled 10 out of the 80 or so papers of the students in her class and found no one else had provided the same response. We note that █████ testified that he studied alone for his exam.

█████ also provided her version of events as they transpired in the exam room. She testified that she was occupied with other incidents, including other concerns about cheating during the exam, and thus did not have the opportunity to observe the alleged cheating behaviour of █████ and █████ herself. She relied entirely on █████'s report about cheating when she went to exchange █████'s exam with a new exam. █████ explained that she exchanged the papers quietly and without incident. There was in fact no reason for others in the exam room to see what was happening. She also explained that she had exchanged exams for 3 other students during the same exam.

The Committee understands that it is Senate policy to provide students with a fresh exam paper and permit them to continue writing where there are concerns about cheating. Providing a fresh paper allows the instructor to isolate possibility tainted and untainted portions of the exam at the time of marking.

We note that █████ instructs proctors to bring concerns of cheating to her attention so that she can directly assess the behaviour herself and so that there are two witnesses to an alleged cheating event. This did not happen in this particular instance. Instead, █████ relied on █████'s report of attempts to cheat given his experience with exams, albeit outside of the University of Windsor. While not ideal, we find that it was reasonable for her to have so relied on █████ given that she was busy addressing what appeared to be a demanding exam to manage. Obviously it would have been better for two witnesses to observe impugned behaviour but nothing requires it in so far as academic misconduct proceedings are concerned. As already noted, it would also have been better for all concerned to have an incident report made while the exam period is still in progress.

█████ also testified about █████'s performance in her class. She testified that she recognized █████ from class because he diligently attended at first but she had noted that his attendance had waned significantly towards the end of term. She also advised that █████ had performed very well on earlier assignments before the exam in question. But, he appeared not to know the material on which he was being examined. █████ came to this conclusion because she had marked █████'s answers on the exam in question. He had sat for at least half of the

exam period before ██████ gave him a fresh exam, he managed only 10% on the exam overall and many of his responses were wrong.

██████ was not aware that his exam had been marked and has not had an opportunity to review his answers or compare them to a marking guide.

Was there actual cheating?

It is open to the Committee to draw its own conclusions about the nature of the misconduct and the sanction imposed. The Associate Dean concluded that ██████ did not cheat but ██████ disagreed. We note that ██████ is the subject matter expert and the instructor of this course; her opinion carries weight. However, the disagreement between Associate Dean Dutton and his witnesses coupled with the lack of clarity about whether the physical environment of the exam permitted cheating leads us to determine that there is insufficient evidence to find that ██████ actually cheated on the exam on the balance of probabilities.

Was there an attempt to cheat?

We find that in all the circumstances of this case, it is more likely than not that there was an attempt to cheat. We note that the testimony of the Associate Dean and the witnesses called by the Associate Dean about the interactions between ██████ and ██████ proved confusing at times and the parties disagree about certain facts. The main disputed fact relates to whether ██████ sought to look at ██████'s exam. We have already determined that we prefer ██████ account of events over ██████'s with respect to this issue.

██████ did not deny that he heard ██████ say "this is your last warning" and did not deny that he understood that ██████ was speaking to him. ██████ explained that he chose to ignore that the warning was given simply because he did not think that it applied to him even though he understood that it was addressed to him. At best, ██████ failure to correct ██████'s perceptions constituted a poor decision. There may have been language barriers or cultural reasons for ██████ failure to advocate for himself in the exam room and correct any wrong impressions that may have arisen about his behaviour during the exam. But, this theory was not presented to us either directly or indirectly and it would be inappropriate for us to speculate in the abstract about whether culture played any role in, for example, ██████ failure to correct ██████ interpretation of events when he issued his warning. In any event, we note that ██████ had no problems advocating for himself with ██████ immediately upon receiving a new exam paper and while the exam was still in progress. He also made strenuous attempts to advocate for himself at various points with different individuals before and after the Associate Dean's investigation.

On the evidence presented to us, we conclude that ██████ did indeed understand the warning and the reasons for the warning, namely that ██████ had serious concerns that ██████ and ██████ were cheating on the exam. Viewed through this lens, we accept that ██████ was in fact surprised when ██████ took his exam but cannot accept that he did not understand the reasons for it. It is possible, for example, that ██████ was surprised that ██████ had taken any action given that ██████ had simply issued a "final warning." As noted above, ██████ decision to take the exam conformed with Senate policy, was made in respect of other students in the same exam room, and was not intended as punishment or sanction.

We accept that ██████ was thrown off when his exam was replaced and that he must have felt some level of shame or humiliation from having this happen. We also accept, however, that the exam was replaced with as little disruption as possible to ██████ and that students sitting close to ██████ likely did not know what was happening.

It would appear that ██████ had sufficient motivation to try to gain an advantage on the exam. His performance on the exam based on the responses that he had the opportunity to write were poor and contradict ██████ claim that he had no need to cheat on the exam. He earned a 10% having written over half the exam according to ██████. It appears unlikely that he would have performed well on the exam even without the interruption from ██████. We note that it is possible that the exam mark may still be adjusted based on the possibility of an incorrect evaluation appeal; but, we accept that, notwithstanding the possibility of appeal, the exam results demonstrate that ██████ did not have a good grasp of the material on which he was being tested.

We close by noting that there is no doubt that [REDACTED] has been adversely affected by this unfortunate series of events. It is difficult to adjust to a new school, new program of study, and new courses even in the most serene circumstances. Traveling to a new country and adjusting to a new language and culture compounds the difficulties immensely. The Committee hopes that [REDACTED] will be able to re-focus on his studies, put this incident behind him, and apply himself fully to his courses as he appears most eager to do. The Committee also urges the Faculty of Science to continue to provide as much support as possible to [REDACTED] as he strives to put this matter behind him and continues with his best efforts to meet the challenges that lie ahead.

In light of the above, we find that an admonition is the appropriate sanction given that this is a first offence, [REDACTED] is adjusting to a new program of study, and that there is no finding of actual cheating.



Professor Reem Bahdi
Chair, Discipline Appeal Committee

DATED THIS 21st day of July 2016