

UNIVERSITY OF WINDSOR
JUDICIAL PANEL

Decision No. JPH-12/13-7

Related decision: JPS-12/13-7 and DAC-12/13-7

The University of Windsor

Complainant

and

[Student]

Respondent

Members of the Panel:

Dr. Emir Crowne, Chair
Dr. Scott Martyn, Faculty Member
Ms. Kim Orr, Student Member

Counsel for the University:

Mr. Wissasm Aoun

Counsel for the Student:

Mr. Jonathan Lall, Community Legal Aid

Introduction

1. The Respondent was charged with "cheating in the final examination with use of an unauthorized aid in engineering 92-411 (Winter 2012 semester)". The Respondent, through his representative, pled not guilty during his first appearance on August 22nd, 2012, and the matter was set down for a one (1) day trial.
2. At trial, the Complainant called one (1) witness: [the Professor], a lecturer and postdoctoral fellow in the Faculty of Engineering. The Respondent himself testified, and did not call any additional witnesses.
3. The impugned conduct concerned the Respondent's possession of a previously graded assignment, and chapter four (4) of the Solutions Manual for the course textbook (together, the "unauthorized aids"). The Solutions Manual is ordinarily only available to course Instructors, but the Respondent testified that 'anyone can download it from the Internet'.
 - i. [The Professor] testified that the previously graded assignment would be of no assistance to the Respondent during the final examination in question. Whereas Chapter four (4) of the Solutions Manual would have been of direct assistance to the Respondent in answering questions 2 and 3 on that exam.
4. [The Professor] testified that she discovered, and confiscated, the unauthorized aids about half way through the exam (i.e. somewhere around 1.5 hour mark). The unauthorized aids were inserted within a printed copy of an e-text that students were permitted to have during the exam.
5. In contrast, the Respondent testified that [the Professor] discovered, and confiscated, the unauthorized aids around the 15 – 20 minute mark. The Respondent testified that although the unauthorized aids were clearly in his possession, he did not use them during the exam. He testified that he kept each Chapter of the Solutions Manual at the end of the corresponding Chapter in his printed copy of the e-text. He removed all of the Solutions Manual Chapters prior to the exam, but evidently failed to remove Chapter four (4).
6. Upon questioning from myself, [the Professor] indicated that after she confiscated the unauthorized aids, she permitted the Respondent to continue writing the exam with the same examination booklet. No unused examination was provided to the Respondent. This unfortunately is problematic.
7. Problematic because it violates Senate Policy E3: Rules for Conduct of Examinations and Examination Medical Emergency Procedures. In particular, section 3 and sub-section 6.2. The relevant excerpts are reproduced below:

3. CONDUCT OF CANDIDATES

...
If the Presiding Examiner, or an invigilator, is convinced that this regulation has been or is being violated, the Presiding Examiner, or the invigilator observing the infraction in the absence of the Presiding Examiner, shall at once and quietly (to avoid distracting other candidates) collect all evidence and answer books of the candidate(s) involved. The Presiding Examiner will provide unused answer books to the candidate(s) who shall continue writing the examination, and will advise the Registrar without delay.

6. EXAMINATION/TEST SECURITY PROCEDURES

...

6.2 If illegal material is found to be accessible to a candidate(s), the Presiding Examiner or Invigilator shall:

6.2.1.3 quietly (to avoid distracting other candidates) collect all evidence and answer books of the candidate(s) involved, briefly explaining the reason for these actions. The Presiding Examiner or Invigilator will provide unused answer books to the candidate(s) who shall continue writing the examination.

8. By allowing the Respondent to keep his examination booklet, the evidence that the Complainant seeks to rely upon for "use" of the unauthorized aids is tainted by that wrongdoing. Confiscation of the booklet would have allowed us a reasonable and lawful starting point to assess whether or not the Respondent in fact relied upon the unauthorized aids.

9. The procedural problems with Bylaw 31 aside (see JPH-11/12-5), the overall integrity and fairness of these Judicial Panels would also be brought into question if we relied on such evidence. This limb of the charge must therefore fail.

10. Possession of the unauthorized aids, however, was not disputed. This limb of the charge prevails. There was, however, some debate about the appropriate mental state required to satisfy this offence. Indeed, possession of an unauthorized aid may well be a strict liability offence. But we need not decide that point here.

i. The fact that Chapter four (4) of the Solutions Manual for the course textbook was shrunk down as to fit nine (9) pages per 8.5 x 11 inch piece of paper is sufficient *prima facie* evidence of intent.

ii. If however, as the Respondent testified, the reduction in size was merely a paper preservation tactic, then the Respondent was 'negligent' in failing to ensure that all unauthorized materials were separated from the authorized materials before the exam began. Leaving behind an entire Chapter of a Solutions Manual is hardly *de minimis*, an oversight, or an 'error in judgment'.

iii. Furthermore, as the burden of proof in these proceedings is a balance of probabilities it may be unwise to directly import criminal law concepts into academic misconduct proceedings, especially where legal principles developed under the civil standard of proof (like tort law) function well.

11. The Respondent is, therefore, liable for possessing unauthorized aids. He is not liable for use of those aids during the final exam in question. In closing, both Mr. Aoun and Mr. Lall are to be commended on their rigorous yet collegial submissions.

So ordered.

Dated this 3rd day of December, 2012

[signature]

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Dr. Emir Crowne, Chair