



Discipline Appeal Committee

[Redacted]

Appellant

v

Danielle Soulliere

Respondent

Representative for the Appellant: Self-represented  
Representative for the Respondent: Self-represented

Discipline Appeal Committee (DAC)  
Prof. Reem Bahdi (Chair)  
Ms. Grace Liu  
Ms. Zeina Mehreb (Student Member)

I. Issues and Burden of Proof:

[Redacted] is alleged to have cheated on a make-up exam that he wrote on November 3, 2017. As a result, he was given a grade of zero on the exam. He has appealed the finding of cheating made by the Associate Dean and the sanction imposed. The issue on appeal is whether sufficient evidence has been presented to substantiate an allegation of cheating or a lesser allegation of attempting to cheat.

It should be noted that s. 6.9.10 of Bylaw 31 on Academic Integrity which governs these procedures affirms that the Committee is "not bound by the laws of evidence applicable to judicial proceedings but shall be guided by the principles of fairness and justice." But, this does not change the fact that the burden of proof of demonstrating the allegation made against the student rests with the Associate Dean's office.

On the facts of this particular case, as set out in more detail below, the Associate Dean must, in discharging the burden of proof, also rule out any reasonably plausible alternative explanations for the conduct alleged. This requirement flows from the fact that, in the circumstances of this case, the student does not have the power of proof.

II. Finding:

[Redacted] did not cheat on his exam. As we set out below, the evidence is clear on this point. The Committee might uphold the appeal on this basis alone. However, the Associate Dean presented some evidence about whether [Redacted] attempted to cheat. For the sake of completeness, the Committee has addressed this lesser allegation. It has also found that the appeal should be allowed on this point.

III. The Allegations:

The course instructor [Redacted], alleged that [Redacted] cheated by accessing the course Blackboard site using his phone while writing a make-up exam for Course [Redacted] in Fall 2017. No one

saw [REDACTED] use his phone during the exam. There was a proctor present and the proctor sheet signed at the time of the exam by the proctor clearly indicates "No Aids" under the title "Special Instructions For Proctor." The proctor would have been aware that no phones were allowed. But, the proctor did not see [REDACTED] use his and did not recall if he even had his phone with him.

The allegation of misconduct was not raised until several days after the exam. It arose because the instructor reviewed the Blackboard's Performance Dashboard and noticed that the student's course account had been accessed at 1:35 pm on November 3. Because [REDACTED] was writing the exam at that time, the instructor reasoned that he had cheated on the exam.

The instructor advised the student on November 9, 2017, by e-mail, of his concerns and informed him that the matter would be referred to the Department Head, [REDACTED] for investigation. The student was also advised that his test would be marked as incomplete. The instructor did not meet with the student. Instead, on November 15, 2017, [REDACTED] met with [REDACTED] to discuss the allegations. During that meeting, [REDACTED] insisted that he did not have his phone in the exam room. [REDACTED] referred the matter to Associate Dean Danielle Soulliere with the following note,

He claims that he did not have his phone because it was an exam. I asked the proctor, she has no recollection if he did or did not have his phone. Not sure if we trust BB [Blackboard] enough as evidence. Your call.

On January 18, 2018, Dr. Soulliere met with [REDACTED] regarding the allegation. He remained insistent that he did not have his phone with him and that he did not know why Blackboard showed that he had accessed the site. On January 22, Dr. Soulliere met with [REDACTED] of UWindsor's IT Service Desk to explore the possibility that the Blackboard access notation may have been recorded either in error or by some other means without [REDACTED] knowledge. [REDACTED] examined the Blackboard access logs and confirmed that they showed access on November 3, 2017, but indicated that he could not explain if the activity might have taken place without the student's knowledge. He therefore contacted Blackboard support for assistance. His request to Blackboard support included the following notation:

I checked our log analyzer and found some mobile app activity, but no direct accesses to the course in question. Could this activity:

- a) have been done by the app itself, not the student?
- b) count as "access" to the course?

The response from Blackboard's Mobile Support to [REDACTED] on March 7, 2018, was copied to Associate Dean Soulliere and included the following,

The course map is the initial call to the mobile B2 to load the content tree of the course when the app accesses it. So, this would be the action of selecting a course from the course list in the app. It may also be accessed from a push notification link for "New Course Available." Other linked actions from different push notification types should go directly to the related content item or grade.

Associate Dean Soulliere made her decision that same day. She determined that the academic misconduct has occurred because "the app did not connect on its own but was initiated by end user" as she had been advised by Blackboard's Mobile Support representative. Associate Dean Soulliere also noted that "although it is difficult to say whether the student made use of any of the course material, accessing the course site implies that the student intended to make use of it in some way." In her testimony, Associate Dean Soulliere explained that she determined that the appropriate sanction was to assign a zero on the exam, based on the Sanctioning Guidelines set out in Bylaw 31. On March 8, 2018, the student was advised of the academic misconduct finding and the sanction imposed.

Four days later, on March 12, 2018, [REDACTED] formally reported back to Associate Dean Soulliere as part of the process of closing the IT Desk file. His comments included the following,

We have determined from speaking with the vendor that all the actions we see in the logs were deliberately done.

The logs reflect that the student logged in through the app at 1:35pm on November 3, 2017, and then selected the course in question through the app 10 seconds later. This is what caused the dashboard to reflect a course access. There was no other activity after this.

██████████ note also added new and crucial information:

*Our logs do support that the student did not access any course material on November 3 2017 (emphasis added).*

In her testimony, Associate Dean Soulliere explained that when she learned, four days after imposing the sanction for cheating, that the student did not access the course material, she questioned the decision but noted that she did not believe that she had much room to change the finding because the chart included under Appendix A, "Sanctioning Guidelines" of Bylaw does not differentiate between "cheating" and "attempting to cheat" or "intention to cheat." She therefore had to treat attempting to cheat or intending to cheat and cheating as the same offences. While she may have come to the conclusion that ██████████ had not actually cheated, she remained of the opinion that he had attempted to cheat because he had visited the course Blackboard site during the exam.

Associate Dean also explained that if ██████████ failed the course, he will be required to take 6 courses rather than 5 to complete his degree. The practical consequence of this additional course is that he will be required to enroll as a student for two additional terms rather than one. There are some substantial economic consequences to the student at stake in this appeal in addition to a reputational interest. While these consequences do not drive the Committee's findings with respect to the alleged misconduct, the Committee must, at minimum, take these factors into consideration when considering sanction (Bylaw 31, Appendix A, "Sanctioning Guidelines", s. 1a)). This is ██████████ first alleged offence.

a) ██████████ Position:

██████████ denies cheating or attempting to cheat. He denies that he used his phone during the exam. He has been consistent with this position since being approached by ██████████ about the matter. He also explained to Associate Dean Soulliere, as she conveyed in her testimony, that there were no course materials on the exam site. He therefore would have gained nothing from going to the site and would not have done so. As he put it in his e-mail communication with the Secretariat that was entered into the record as his submission, "the blackboard course site does not have any answers...so this whole theory of me using blackboard to cheat makes no sense" (Exhibit 1).

b) Participation of Parties in the Hearing:

██████████ did not appear before the Committee and he did not send a representative. He failed to attend a prior hearing date without advising the Discipline Appeal Committee that he would be absent. He also failed to respond to several e-mails and phone messages left for him by the Secretariat. Nonetheless, after he missed the first hearing date, a new hearing date was set for June 22 to give ██████████ additional time to contact Community Legal Aid, make further submissions or arrange to attend the hearing. ██████████ was advised that the rescheduled hearing would proceed in his absence if he did not attend or send a representative. ██████████ responded to the Secretariat by e-mail, indicating that he would not attend because he was out of town and that he had nothing further to add to the comments he had already made to the Associate Dean and the e-mail communication that was received by this Committee via the Secretariat. While he did not attend in person, ██████████ indicated in phone conversation that took place shortly before the rescheduled hearing that he would be available to answer questions by phone during the scheduled hearing time. On the start of the hearing, the Committee made efforts to contact ██████████ by phone. At that point, he indicated that he was on his way to a meeting but could take some questions while driving. The Committee determined that this was not a wise way to proceed. The Chair explained to ██████████

[REDACTED] that the Committee would hear the Associate Dean's submissions and would call him back at 4 pm should there be any questions. Either way, a decision would be rendered after the hearing.

Associate Dean Soulliere appeared on behalf of the Faculty of Arts, Humanities, and Social Sciences. She provided the Committee with her notes and copies of e-mail communications between the student and the instructor, a copy of the Blackboard Performance Dashboard for November 3 as printed by the course instructor, [REDACTED] brief report, and e-mail communications from IT Services as well as Blackboard. All of this documentation was admitted as evidence (Exhibit II). It should be noted that the Blackboard Performance Dashboard provides the course instructor with information about which student accounts visited the course site. Student names are listed next to a date and time of visit. Associate Dean Soulliere called no witnesses.

**c) Analysis:**

**1. Cheating:**

The finding of cheating is clearly not substantiated on the facts. There is no evidence that [REDACTED] actually accessed course materials or that he actually cheated on the exam. On the contrary, the evidence indicates that he did not access the course material and that he did not cheat on the exam. He may have visited the course site but only on the home page and he did not actually attempt to open any of the course materials.

For the sake of completeness, the Committee will consider whether the evidence substantiates the concern that [REDACTED] accessed the course site with the intention of cheating even if he did not look at any of the course materials.

**2. Intent to Cheat:**

Is there sufficient evidence from which intent might be inferred? The main evidence of intent to cheat put to the Committee is the Blackboard Performance Dashboard print out which shows that the course site had been visited by [REDACTED] account on November 3 at 1:35pm. But, [REDACTED] has consistently maintained that he did not access the course site during his exam. In support of his contention is the fact that a proctor did not report that [REDACTED] accessed his phone. It is reasonable to conclude that if the proctor had observed [REDACTED] using his phone during the exam, then she would have made note of this observation given that she had been instructed, in writing, that the student was to write the exam without the benefit of aids.

It should be noted that [REDACTED] contention that the Blackboard site contained no course information was countered in an e-mail from the instructor to the Associate Dean dated November 3, 2017, in which the instructor noted that the site contained lecture notes (Exhibit II). However, the instructor did not attend the hearing and was not able to provide clarity on this point. In her testimony, the Associate Dean did not appear willing to reject [REDACTED] claim that the site contained no information that would be pertinent to the exam. At the very least, she was unable to confirm for the Committee that the site contained pertinent information.

The question of whether [REDACTED] intended to cheat turns on whether he intentionally went to the course site to look up course materials. The instructor imputed intention to [REDACTED] because he accepted that [REDACTED] had visited the site while writing the exam at 1:35 pm and because he assumed that [REDACTED] visited the site intentionally. As he put it, "I can only conclude that he accessed the site and the lecture notes with a smartphone while the test was in progress" (Exhibit II, p. 5) It is eminently clear that [REDACTED] did not access the lecture notes. But, did he access the course site intentionally even if he did not access any course material? If there is sufficient evidence that he accessed the course site intentionally, then there is a reasonable basis to conclude that there was an intent to cheat.

The Committee is of the view that there is insufficient evidence to conclude that [REDACTED] accessed the course site with the intention of cheating. The Committee notes that the Faculty bears the burden of proving that [REDACTED] accessed the course site with intention to cheat and that the burden of proof in this instance includes

eliminating other reasonable explanations for the Blackboard Performance Dashboard notation. The student does not have access to Blackboard records or procedures. The Committee further notes that the responsibility of considering all reasonable explanations was not contested by the Associate Dean who, in the course of her investigation, sought to do exactly that. In providing her testimony, Associate Dean Soulliere explained that she does not know technology and relied solely on IT's analysis and the e-mail communications from Blackboard Support to arrive at her conclusion of what happened and why.

First, the Associate Dean considered the possibility that the access notation might simply have been an error and that no visit was actually made or the time of visit had been recorded in error. She canvassed this possibility with IT. IT advised the Associate Dean that there was no error. But, the Committee did not have the benefit of hearing from IT about the possibility that the log-in time noted on the Performance Dashboard might simply be wrong. Dr. Soulliere indicated in her testimony that it is not possible for log times to be wrong. But, she relied on her conversations with IT to draw this conclusion and could not provide any details about the basis on which IT had reached this conclusion. Other than the Associate Dean's report of her conversations with IT, there was nothing in the record to indicate that IT considered and dismissed the option that the time log records might simply have been wrong. On this basis alone, we cannot conclude that the Performance Dashboard printout conveys an accurate representation of [REDACTED] use of the course Blackboard site or that there is sufficient evidence to conclude that [REDACTED] visited the course site at 1:35 pm when he would have been writing the exam. [REDACTED] contention that he did not have his phone with him during the exam is consistent with the explanation that the visit was recorded by the system in error.

The Associate Dean also considered the possibility that [REDACTED] might have simply "pocket dialed" the course site in error. This explanation posits that [REDACTED] did have his phone on his person during the exam but also accepts that the visit to the course site may have been unintentional. The Associate Dean appears to have dismissed this possibility after her conversations with IT. But, we were not presented with evidence from IT that would reasonably eliminate the possibility of a "pocket dial" and, unfortunately, the Committee did not hear from IT directly. We note that IT indicated that "the student logged in through the app at 1:35pm on November 3, 2017, and then selected the course in question" but the use of the words "logged in" and "selected" are somewhat misleading in this context as they suggest a conscious decision to act. The Committee needed to hear more about the app's and Blackboard's functionality before concluding that the student had "logged in" and "selected" a course. In our view, the possibility of an unintentional visit by [REDACTED] to the course site remains a plausible explanation on the evidence presented to us. If there was other evidence to eliminate this possibility, it was not made available to the Committee which is restricted to rendering a decision on the basis of evidence submitted.

The Committee also notes that Associate Dean Soulliere made her conclusion about cheating and intention to cheat prior to learning from IT that [REDACTED] had not accessed any of the course materials. She indicated in her testimony before the Committee that this new information gave her significant pause. She was more inclined to accept [REDACTED] position after learning that he had not accessed course materials. But, she maintained "cheating" as the identified misconduct and did not change the sanction because she was not convinced that she had the discretion to change her decision in light of the Sanctioning Guidelines in Bylaw 31 which do not differentiate between cheating and intention to cheat. She therefore treated this matter as an instance of minor cheating.

Having found that there is no evidence that the student cheated and having further determined that the burden of proof in demonstrating intention to cheat has not been met, the Committee finds that no academic misconduct has taken place. Even if an intention to cheat had been substantiated, the Committee would have had a difficult time upholding a reduction of grade to zero on the exam because a letter of reflection and/or admonition were found to constitute appropriate sanctions in arguably more serious circumstances. (see for example [DAC-15/16-2](#)).

The Associate Dean responded to the Committee's request for further information about the exam grade by way of e-mail dated June 24, 2018 (Exhibit III). Associate Dean Soulliere forwarded an e-mail from the instructor which explained that [REDACTED] will have earned a 45% in the course regardless of whether the marked mid-term is

included in his class calculation or not. It should be noted that, of course, the student's right to appeal the grade assigned in the course is preserved.

A handwritten signature in black ink, appearing to read "Reem Bahdi". The signature is written in a cursive style with a horizontal line underneath it.

Professor Reem Bahdi  
Chair, Discipline Appeal Committee

DATED THIS 4<sup>th</sup> day of July 2018