

**Grand Moot 2023**

**Artificial Intelligence and  
Administrative Decision-Making**

*Park v Flavelle College*

Official Problem by Sanghyun Park and Ben Grondin

**Park v Flavelle College**

1. This Appeal addresses the privacy implications of AI surveillance and the viability of AI as a decision-making aid in the administrative context.
2. The year is 2026. This appeal takes place in Falconer, a common law province in the country of Flavelle. The Constitution, judicial system, statutory law, common law, and social and political history of Flavelle and Falconer are identical to those of Canada and Ontario, respectively.
3. Flavelle’s highest court is the Supreme Court of Flavelle. All Canadian legislation is binding on the Supreme Court of Flavelle, but the Court is not bound by Canadian jurisprudence. However, decisions of Canadian courts, particularly the Supreme Court of Canada, are considered highly persuasive.
4. The Divisional Court of Falconer, the Falconer Court of Appeal, and the Supreme Court of Flavelle all have jurisdiction over the issues raised below.

**Facts**

5. The following information was gathered throughout the course of the Ben Park’s application for judicial review before the Divisional Court of Falconer. It represents the totality of the relevant evidence.

***Flavelle College***

6. Flavelle College (“the College”) is a public post-secondary institution established in 1826 under the *Colleges Act*.<sup>1</sup> In 2026, the student population was recorded as 50,000. It is the largest college in Flavelle. Its mascot is the national bird of Flavelle, the red-chested meadowlark.
7. The College is governed by a Board of Directors consisting of 11 members. Directors on the Board are appointed and removed by the Minister of Training, Colleges, and Universities (“the Minister”). The Minister designates one member from the Board of Directors as the Dean of Academic Integrity (“the Dean”). It is the Dean’s responsibility to handle the administration of the College’s *Code of Conduct*, including the adjudication of academic discipline hearings.
8. The College is a thought leader in several fields and is considered the premier post-secondary institution in computer engineering. A vanguard for technological advancements, the College is known to produce world-class entrepreneurs, engineers, and scientists. Ironically, despite its significant advancements in digital information technology, the College’s academic practices and policies have not significantly changed in over two decades.

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<sup>1</sup> Appendix A.

### ***The Proliferation of AI and its Impact on the College***

9. In recent years, artificial intelligence (“AI”) has seen exponential growth in its accessibility and sophistication. For the College, these developments created an unprecedented threat to the integrity of its academic programs, jeopardizing its reputation for excellence.

10. In particular, the College experienced a significant rise in cheating on exams and assignments through the use of unauthorized study aids, including TalkGBP. TalkGBP is an AI-language model capable of generating text from prompts, emulating the authorship of a person. TalkGBP’s textual outputs are virtually indistinguishable from authentic written work, rendering the vast majority of plagiarism detection tools all but obsolete.

11. The College’s struggles to monitor student work were exacerbated by increases in take-home exams and otherwise remote assignments which had only become more common in the years since the COVID-19 pandemic. In 2023, the College’s Faculty Association lodged formal requests to the Board of Directors urging them to address the detrimental effects of AI-related plagiarism on their ability to evaluate and educate students.

12. The College found itself compromised not only in its ability to monitor for academic offences but also in the enforcement of its *Code of Conduct*. Due to spiraling increases in academic offence allegations, the docket for discipline hearings developed a significant backlog. The College also struggled to establish the culpability of students accused of using unauthorized study aids on take-home assignments and remote exams. Since 2020, students were 90% less likely to be found guilty of such offences compared to other types of academic misconduct.

### ***The College Begins Implementing AI***

13. To address these issues, the College chose to fight fire with fire. On August 1, 2024, the Board of Directors made the ground-breaking decision to enhance the College’s proctoring and disciplinary policies. AI would be implemented to proctor all student submissions for credit and as a decision-making aid in academic discipline hearings.<sup>2</sup>

14. The College did not have to look far to find a partner to provide this technology. A world-renowned expert in AI and an alumnus of the College, Dr. Jovana Pajovic had spent the last decade developing exciting applications of motion recognition, automation, and machine learning. Her goal was to provide greater accuracy and efficiency to any field that stood to benefit from a reduction in the risks and pitfalls of human error. Through the College’s funding program for young “tech” entrepreneurs, Dr. Pajovic had spent much of this time developing two pieces of software that could assist with proctoring and adjudication: ExamTech and DecideAI.

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<sup>2</sup> Appendices B and C.

## 1) ExamTech

15. ExamTech is a software application tailor-made for combatting academic dishonesty. Under section 21 of the College's *Code of Conduct*, students must complete all exams and written assignments through ExamTech. When a student is taking an exam, ExamTech must be on for the entirety of the exam period. For assignments, ExamTech must be on whenever a student is drafting submissions for credit.

16. Once ExamTech is opened, the program will:

- Screen-record on that device until ExamTech is turned off;
- Record video and audio from the device's camera and microphone, including a quick scan of the entire room or space that a student is situated in;
- Track and record keystrokes;
- Analyze syntax and word choice for potential AI-generated texts; and
- Identify the general geographic location of the device.<sup>3</sup>

17. ExamTech analyzes this data in real-time, flagging any behaviour it deems "suspicious".

18. All recordings are purged after one year. Unless flagged as suspicious, no human observes any of the data collected by ExamTech. Students who opt to write assignments or exams by hand may continue to do so, but they must ensure that ExamTech is being used on a nearby device and that the camera is angled to capture their face and their paper. The College allows students to borrow laptops if needed. Students who require accommodations for exams may write them in person but will still be subject to the use of ExamTech.

19. If a student is flagged for over five instances of suspicious behaviour, they are provided with an email notice stating that they have been accused of an academic offence. The notice also directs them to an online portal where they are permitted to view the captured instances of suspicious behaviour and provide explanations via an exhaustive list of excuses contained in a dropdown menu.<sup>4</sup> Once completed, the flagged instances of suspicious conduct as well as the students' explanations are forwarded to DecideAI.

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<sup>3</sup> ExamTech only tracks geographic location data for limited purposes: to confirm whether a student was on-campus for an in-person examination or to flag highly suspicious conduct such as an extreme change in location after a short period of time. ExamTech's location-tracking accuracy is to the nearest square kilometer.

<sup>4</sup> Appendix C.

## 2) DecideAI

20. DecideAI is a software application that employs machine learning and algorithms to determine the likelihood of cheating during exams or assignments. It also recommends sanctions to the Dean and is programmed to make recommendations consistent with past academic discipline decisions. Dr. Pajovic described this feature to the College's Board of Directors as "a faster, more efficient version of *stare decisis*; its perfect form." Under section 23 of the *Code of Conduct*, the Dean is required to consider DecideAI's reports when determining a student's guilt and the appropriate sanction. DecideAI operates in four steps:

i. Step One: Extraction of Data from ExamTech

21. Integrated with ExamTech, DecideAI selectively accesses the data flagged as suspicious, extracting pertinent features such as screen glances, keystroke patterns, audio and video data, text patterns, and screen transitions.

ii. Step Two: Statistical and Algorithmic Analysis

22. By subjecting this data to algorithms and rules developed during the software's "training" phase, DecideAI contrasts the student's behavior with established norms and cheating patterns.

23. Identified anomalies are weighted based on their significance and correlation with cheating. Aggregating these weights produces a percentage that indicates the likelihood of cheating. The software also considers a student's explanations for their behaviour by allowing them to choose from a set of standard form categories on the online portal's dropdown menu.<sup>5</sup>

iii. Step Three: Recommendation of Sanction

24. If the likelihood of cheating exceeds 50%, DecideAI recommends a sanction. DecideAI's recommendation considers a student's academic history as well as sanctions dealt in prior academic disciplinary decisions by the Dean. The factors considered by DecideAI<sup>6</sup> were designed through consultation with the Dean to broadly mimic the considerations relevant to deciding an appropriate sanction. DecideAI has in its database and at its disposal the record from every disciplinary decision since the year 2000. Decisions from before the year 2000 have not been put into the standard form required for DecideAI to review them.

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<sup>5</sup> Appendix C.

<sup>6</sup> Appendix C.

iv. Step Four: Generation and Provision of Report

25. Upon completion of its calculations, DecideAI generates a comprehensive report for both the student and the Dean. This report is provided over email and includes timestamped instances of the suspicious behavior captured by ExamTech, the explanations provided by the student for each instance of suspicious behavior, the calculated likelihood of cheating, recommended sanctions (if applicable), and a copy of the impugned assignment.

26. Students are entitled to an oral hearing with the Dean following receipt of the report. At the hearing, students may make oral submissions and produce evidence and they may be questioned by the Dean. Previously, students were granted up to a day to make submissions. Now, the College limits the hearings to one hour. The College states that this is justified given how DecideAI's reliability has streamlined the disciplinary process.

27. While the Dean's decisions had previously been subject to review by a tribunal, the College removed this internal appeal mechanism, deeming it unnecessary in light of the increased accuracy and consistency of decisions formed with the assistance of ExamTech and DecideAI.

***Training and Testing of ExamTech and DecideAI***

28. ExamTech and DecideAI were developed through supervised training on a diverse pool of over 100,000 random research subjects instructed to either cheat or not cheat on various kinds of exams. ExamTech was taught to identify suspicious conduct, whereas DecideAI was taught to determine a likelihood of cheating based on the accumulated instances of suspicious conduct flagged by ExamTech during a particular exam. During this training period, ExamTech and DecideAI were told whether a student would be cheating or not before they were fed video, audio, and textual data about those students.

29. From this training, both programs developed algorithmic rules for mapping the input data to a corresponding output. ExamTech learned to identify suspicious conduct, and DecideAI learned to predict whether certain sets of suspicious conduct were indicative of cheating.

30. When tested on a subsequent pool of research subjects, ExamTech and DecideAI successfully identified cheating students 90% of the time.

### *The Expulsion of Ben Park*

31. At the time ExamTech and DecideAI were implemented, Ben Park was an engineering student at the College. He had enrolled in Flavelle College in 2022 as a mature student in order to become a professional engineer. Despite being a hard worker, Mr. Park struggled academically. At the College, he maintained a 2.1 GPA.

32. In April 2026, two months before his expected graduation, Mr. Park was preparing for a crucial final exam in his computer science class. A failing grade would prevent him from graduating. Without his degree, Mr. Park would not be eligible to apply for a professional engineering license.

33. Per the instructions, Mr. Park completed the exam on April 13<sup>th</sup>, 2026, within the 3-hour time limit. Because it was a remote exam, he decided to write it at his one-bedroom apartment. Mr. Park had a routine for remote exams. He would rotate his bedroom desk so that when he took the exam, his laptop camera faced his bookshelf and not the rest of his bedroom. The bookshelf was close enough that the laptop camera could capture some family photos, a collection of Christmas cards, and a couple rows of books with visible titles including *Happiness for Beginners*, *Coding for Dummies*, and George Orwell's *1984*.

34. The exam proved to be very difficult, placing Mr. Park under severe stress from start to finish. At one point during the exam, he left the frame of the ExamTech recording for nearly 10 minutes. He returned shortly, completing the exam.

35. On April 18<sup>th</sup>, 2026, Mr. Park received an email notifying him that he had been accused of an academic offence based on 11 suspicious incidents flagged by ExamTech during his exam. The incidents were described in the email as follows, and occurred over a period of 45 minutes:

1. **Incident 1:** You left the frame of your device's recording for 9 minutes and 52 seconds. During this absence, an audio recording with multiple voices conversing was captured. The contents of the conversation could not be discerned.
2. **Incidents 2-6:** After your return to the frame, you repeatedly and for prolonged periods looked off-frame. There were a total of five instances of prolonged off-frame eye movement.
3. **Incidents 7-11:** After each instance of off-frame eye movement, your keystroke pace increased relative to the rest of the Examination.

36. The email also provided a link to the online portal. Mr. Park was confused by the limited explanations available for him to select. He wanted to claim that his absence was due to a moment of severe panic, and that he had briefly left the room to settle his nerves. Because he did not believe any of the limited options accurately conveyed this explanation, he selected the "No Explanation" option with the hope of explaining his position to the Dean in an oral hearing.

37. On May 5<sup>th</sup>, 2026, at an hour-long hearing before the Dean, Mr. Park submitted that his absence from the frame was caused by an anxiety-induced panic attack and that he was alone for the entirety of the exam. When questioned by the Dean on the nature and extent of his anxiety, Mr. Park did not produce any medical record of a diagnosed anxiety disorder and admitted that this was his first time experiencing such an attack. Considering these facts alongside the conversational audio captured by ExamTech, the Dean did not believe that Mr. Park was being truthful in his submissions.

38. On May 12<sup>th</sup>, 2026, Mr. Park received another email to his school account. The email stated that the Dean had decided to expel him for accessing an unauthorized study aid during the exam. A copy of the Dean's reasons for the decision were attached to this email.<sup>7</sup>

### ***The College Faces Significant Backlash From its Students***

39. Despite Ben Park's experiences, the College's new policies were widely considered a success. The faculty and the Dean reported significant improvements in their abilities to enforce the *Code of Conduct*. As word spread, several other colleges and universities expressed interest in entering licensing deals for the use of ExamTech and DecideAI.

40. While the College was being hailed by the press and its peers for pioneering the future of education in the world of AI, student journalist Joshua Schwartz remained highly skeptical of its recent decisions. Since the implementation of ExamTech and DecideAI, rumours had swirled about the confusion and difficulties experienced by students accused of academic offences. After conducting a series of student interviews, Mr. Schwartz published a scathing report in the College's student newspaper, *Super Vires*.

41. The article quickly caught the attention of the student body. The College's initial praise rapidly devolved into intense scrutiny, and the Flavellian Students' Association (the "FSA") quickly emerged as one of the most vocal critics. Upon reading Mr. Schwartz's article, the FSA conducted a review of the academic discipline decisions in which ExamTech and DecideAI were used. The FSA published their findings in an open letter to the College:

To the College's Board of Directors and the Minister of Training, Colleges, and Universities,

We write to you as deeply concerned members of the student body and academic community regarding the College's use of Artificial Intelligence in the surveillance and disciplining of students.

The DecideAI software application lacks the basic hallmarks of transparent decision making that we as students are owed. We demand an inquiry and explanation of the precise manner

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<sup>7</sup> Appendix E.



through which DecideAI makes the calculations and recommendations submitted in its reports to the Dean of Academic Integrity.

We refer you to these concerning trends documented since the implementation of ExamTech and DecideAI in the College's proctoring and disciplinary policies:

- 71% of DecideAI's recommendations on sanction to the Dean of Academic Integrity have been followed.
- In every instance where DecideAI determined an above 90% likelihood of academic misconduct, the Dean also found that the student committed an academic offence.
- Students with a grade point average below 2.7 are 150% more likely receive a suspension.
- Students with a history of academic misconduct are twice as likely to be given a more serious sanction.
- Several students have reported that they do not recall the reported instances of "suspicious" behavior captured by ExamTech and are unable to adequately respond to allegations of misconduct.

No one knows how DecideAI's algorithms generate its outputs. The over-reliance on DecideAI by the Dean of Academic Integrity turns the entire academic discipline process into a black box. It stands to aggravate disparities and biases in the sanctioning of students and is an arbitrary tool that is ill-equipped to make decisions where the rights and professional careers of students are at stake.

We demand disclosure of the method and extent of data collected by ExamTech, and a clear explanation of how DecideAI makes its decisions.

Sincerely,  
The Flavellian Students' Association

42. In response, the current Dean of Academic Integrity, Dr. Sang Grondin, dismissed the FSA's concerns and doubled down on the College's use of AI in a public bulletin posted on the College website:

While we appreciate your concerns, the College stands by its decision to implement this technology into its proctoring and disciplinary policies.

As the Dean of Academic Integrity, I can assure you that I am the one making the ultimate decision on whether a student has committed an offence. I also maintain the discretion to decide on an appropriate punishment. Lastly, I am responsible for deciding the credibility of student testimony. The reports created by DecideAI are merely one factor I consider in this process.

Dr. Sang Grondin, Dean of Academic Integrity

43. Galvanized by the FSA's reports and the Dean's dismissive response, Ben Park decided to challenge the College's use of ExamTech and DecideAI as well as the Dean's decision to expel him.

44. Ben Park applied for judicial review of sections 21 and 23 of the *Code of Conduct*, in addition to a review of the Dean's particular decision to expel him from the College. In particular, Ben Park makes four claims:

1. That section 21 infringes on his right against unreasonable search guaranteed by section 8 of the *Flavellian Charter of Rights and Freedoms* ("the *Charter*").
2. That this infringement is not justified under section 1 of the *Charter*.
3. That the Dean's decision to expel him was procedurally unfair and/or unreasonable.
4. That the College's decision to implement section 23 was an unreasonable exercise of the College's discretionary power to establish its own disciplinary procedures.

### **Procedural History**

#### ***Decision of the Divisional Court of Falconer***

45. Justice Fogel agreed with Mr. Park that the College's use of ExamTech violated section 8 of the *Charter* and could not be saved under section 1:

As technology becomes increasingly present and influential in its various forms, the law has responded by recognizing and fortifying the right to privacy. Artificial intelligence will undoubtedly leave its mark on our current systems, and it may even re-invent them entirely in some respects. It is during these transitions that fundamental rights are most at risk, and it is the role of the courts to ensure those rights are protected.

While I appreciate the College's desire to uphold academic integrity, that does not give them a license to collect and track student behaviour to such extreme lengths. Such an intrusion could only be justified by the most pressing and substantial objectives, and upholding the academic integrity of a single institution is not. This is not a matter of public health and safety, as was the case with mandatory vaccination policies. The section 8 violations incurred through the use of ExamTech cannot be justified under section 1.

46. Before moving to the procedural and substantive review of the impugned decisions, Fogel J granted leave for the College to present fresh evidence in order to fully understand the interests and technologies at issue. The College called five professional recruiters from key Flavellian industries and Dr. Pajovic as witnesses.

47. The professional recruiters gave evidence on the detrimental effects of unchecked academic misconduct before the implementation of ExamTech and DecideAI. They explained that the College's graduates were struggling to find and maintain employment in the five years following graduation. Each recruiter provided data demonstrating marked decreases in both the employment rate of the College's graduates and their pass rate on a variety of licensing exams. Both declines began in 2022, approximately when TalkGBP and the hybrid learning environment rose to prominence.

48. Next, Dr. Pajovic testified that at the time of DecideAI's implementation into the College's disciplinary process, the algorithm had a 90% success rate in its calculation of whether a student was cheating. She also testified that both ExamTech and DecideAI were subject to monthly inspections for quality assurance and were trained and then tested on a statistically significant amount of data, as stipulated by her agreement with the College.

49. Considering Dr. Pajovic's testimony, Fogel J accepted as a finding of fact that both ExamTech and DecideAI could make their predictions in a reliable and consistent way. However, Dr. Pajovic refused to disclose DecideAI's underlying machinations and programming on the basis that they were trade secrets and strictly confidential.

50. Notwithstanding the unconstitutionality of the ExamTech Policy, Fogel J accepted Mr. Park's submission that the Dean's decision to expel him was procedurally unfair. He held that the use of DecideAI displaced the Dean's responsibility to adjudicate academic discipline hearings and violated students' rights to an impartial decision maker:

While it is appropriate for decision makers to embrace decision-making tools in a general way,<sup>8</sup> they must ultimately be unconfined such that they make their decision in accordance with their own conscience and opinions.<sup>9</sup> It is unclear who is making the ultimate decision in the College's academic disciplinary process. This lack of transparency risks perpetuating arbitrariness and bias found in the prior disciplinary decisions on which DecideAI was trained. Indeed, the only thing we can reasonably apprehend from the reports of DecideAI is the likelihood of such bias.<sup>10</sup>

51. Fogel J went on to hold that the Dean's decision to expel Ben Park was also unreasonable due to the Dean's reliance on DecideAI's report:

As re-emphasized in *Vavilov*, a reasonable decision must be transparent, intelligible, and justifiable. Even if accompanied by explanations and reassurances of its accuracy, DecideAI does not offer sufficient insight into how its reports are formed on a case-by-case basis. It is unclear that DecideAI, and by extension the Dean, meaningfully grappled with Mr. Park's

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<sup>8</sup> [Canadian Association of Refugee Lawyers v Canada \(Citizenship and Immigration\)](#), 2019 FC 1126 (CanLII) at para 93.

<sup>9</sup> [Iwa v Consolidated-Bathurst Packaging Ltd.](#), 1990 CanLII 132 (SCC) at 332.

<sup>10</sup> [Committee for Justice and Liberty et al v Canada \(National Energy Board\) et al.](#), [1978] 1 SCR 369 at p 394.

submissions. The Dean placed significant weight on the report of DecideAI in his finding that Mr. Park accessed an unauthorized study aid. The superficial consideration of this issue in the Dean's own reasons is derivative, and not independent, of DecideAI's reports.

Even if the underlying computations of DecideAI were disclosed in full, they would not be intelligible to any reviewing court, let alone the person whose fate is subject to such calculations. To this point, DecideAI does not undertake any kind of legal justification. Its predictions and recommendations are the result of mathematical, causal analyses. They are not explainable such that they are justifiable within our normative legal system. Therefore, reliance on DecideAI by the Dean constitutes a fatal flaw in his decision to expel Mr. Park, rendering it unreasonable.

52. Because Fogel J found that the College's use of DecideAI violated the principles of procedural fairness, he held that the decision to implement DecideAI was necessarily an invalid exercise of the College's discretion over its own disciplinary procedures under section 97 of the *Colleges Act*. Therefore, Fogel J found that the College's decision to implement section 23 was unreasonable.

53. Sections 21 and 23 of the *Code of Conduct* were declared of no force and effect, and the Dean's decision to expel Mr. Park were quashed. The College appealed the decision to the Falconer Court of Appeal.

### ***Decision of the Falconer Court of Appeal***

54. On the issue of privacy, the Court of Appeal unanimously held that the use of ExamTech was reasonable within the meaning of section 8. Lyon JA wrote for the Court:

The transcendence of artificial intelligence poses unique challenges to the law. However, that does not absolve the judiciary of its duty or capacity to tackle difficult questions. The law on privacy accommodates changing social contexts through flexible, context-sensitive legal standards. We cannot ignore the profound and lasting effects of the COVID-19 pandemic, including the rise of online education and labour. As such, I find the reasonable expectation of privacy to be greatly diminished when engaged in such activities, which was the case here.

Moreover, I find that ExamTech's impact on student privacy is significantly lessened by the fact that most of ExamTech's data will only ever be viewed by a machine. I agree with my colleague Justice Fogel that we must be sensitive to the effects of burgeoning technologies on fundamental rights, and it is clear that ExamTech collects a significant amount of data about its students. But as counsel has impressed upon me, there is no human eye on the overwhelming majority of this data. When there is a human observer, it is only after preliminary measures and screening have already taken place. In other words, akin to the criminal law context, the real intrusion of privacy only happens when there is reason for that intrusion.

Before the implementation of ExamTech, AI had enfeebled the College's ability to pursue its most fundamental objectives: the fulsome education of its students. There is clear evidence of

this threat to the College,<sup>11</sup> and the significance of this objective to the College cannot be overstated. As such, I find that the impugned policy is reasonable under section 8.

55. On the procedural and substantive review of the Dean's and College's decisions, a majority of the Falconer Court of Appeal again allowed the appeal. Each of the three judges wrote a separate opinion.

56. Lyon JA held that the use of DecideAI was consistent with the principles of procedural fairness and a valid exercise of the College's discretion. In her reasons, she assigned substantial deference to the College's statutory power over its own procedures:

The College's empowering statute gives it significant discretion over the procedures chosen to resolve academic disputes. A reviewing court should give weight to the manner in which an institution chooses to balance maximum participation with efficient and effective decision making.<sup>12</sup> Section 23 of the *Code of Conduct* is consistent with both the guiding purpose and procedural discretion of the College, allowing for consistent decision making without compromising the procedural rights of students. Mr. Park received the full benefit of every procedural safeguard to which he was entitled under the College's policies and was treated fairly throughout the disciplinary process.

57. She then went on to hold that the expulsion of Mr. Park was reasonable, and that the use of DecideAI was not inherently fatal to the Dean's decision:

Ultimately, it is the Dean who makes the final decision regarding a student's culpability and the appropriate sanction. Whether a decision is reasonable or unreasonable will determine if it is upheld or set aside, regardless of whether or not AI is used. To declare otherwise would elevate process over substance.<sup>13</sup> DecideAI is but one factor considered by the Dean in making their decision.

In Mr. Park's case, the Dean did not blindly accept DecideAI's reports. The reasons for the decision demonstrate meaningful engagement with both DecideAI's outputs and the student's submissions.

58. Jin JA concurred with Lyon JA that the Dean was clearly the ultimate decision maker and that the Dean's decision to expel Mr. Park was procedurally fair. However, she differed in her reasons from Lyon JA:

Procedural fairness is flexible to the context of a particular statute, but to have it yield entirely to the whims of the College would be to bend the principle so far as to break it. The disciplinary procedure must be fair, open, and allow students the opportunity to put forward their views and evidence fully.<sup>14</sup> While this is not accomplished by the opportunity to provide

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<sup>11</sup> [Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd, 2013 SCC 34 \(CanLII\).](#)

<sup>12</sup> [Re:Sound v Fitness Industry Council of Canada, 2014 FCA 48 \(CanLII\) at para 42.](#)

<sup>13</sup> [Haghshenas v Canada \(Citizenship and Immigration\), 2023 FC 464 \(CanLII\) at para 24.](#)

<sup>14</sup> [Baker v Canada \(Minister of Citizenship and Immigration\), 1999 CanLII 699 \(SCC\) at para 22.](#)

limited explanations to DecideAI, I do find that the standard is met by the subsequent human oversight of the Dean. The oral hearing provided Mr. Park with a fulsome opportunity to be heard, curing the procedural defects incurred during his initial submissions to DecideAI and allowing for natural justice to be accorded.<sup>15</sup>

59. Jin JA also concurred with Lyon JA that the Dean's particular decision to expel Mr. Park was reasonable.

60. In dissent, Beltran JA endorsed the lower court's holdings on procedural fairness and unreasonableness. Additionally, she held that the procedural defects caused by DecideAI's limitation of Mr. Park's explanations could not be cured by the Dean's subsequent involvement:

The principle that procedural defects can be cured by a subsequent hearing is applicable only if that hearing undertakes a *de novo* review.<sup>16</sup> The Dean, while the ultimate decision maker, is not considering the evidence anew. Instead of revisiting the recommendations of DecideAI, he is using them as an aid to make his final decisions. As such, the Dean is not only incapable of remedying any procedural defects but is also biased by preconceptions of the guilt and sanction contained in DecideAI's reports.<sup>17</sup> The reluctance to overturn decisions or recommendations reached by automated programs severely hampers the Dean's impartiality and independence to the prejudice of students such as Mr. Park.

61. As a result of the majority decision, sections 21 and 23 of the *Code of Conduct* were returned to force, and the expulsion of Mr. Park was reinstated.

### **Issues on Appeal**

62. Mr. Park appeals this decision to the Supreme Court of Flavelle. The Court is being asked to decide the following issues:

1. Does section 21 of the College's *Code of Conduct* infringe upon section 8 of the *Charter*?
2. If the answer is yes, is this infringement justified under section 1 of the *Charter*?
3. Was the Dean's decision to expel Ben Park from the College procedurally unfair and/or unreasonable?
4. Was the College's decision to implement section 23 of the College's *Code of Conduct* unreasonable?

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<sup>15</sup> [McNamara v Ontario \(Racing Commission\)](#), 1998 CanLII 7144 (ON CA) at para 26.

<sup>16</sup> [Ford v University of Ottawa](#), 2022 ONSC 6828 at para 90.

<sup>17</sup> [Jesse Beatson, "AI-Supported Adjudicators: Should Artificial Intelligence Have a Role in Tribunal Adjudication?"](#) (2018) 31 CJALP 307.

**APPENDIX A: EXCERPTS FROM FLAVELLE'S COLLEGES ACT**

**Colleges**

**2(1)** Colleges of applied arts and technology may be established by regulation.

**Corporate entity**

**(1.1)** Each college established under subsection (1) is a corporation without share capital and shall consist of the members of its board of governors.

**Same corporate entity**

**(1.2)** For greater certainty, for each college, the corporation referred to in subsection (1.1) is the same corporation as the non-share corporation for the college referred to in subsection 3(2) of this Act.

**Objects**

**(2)** The objects of the colleges are to offer a comprehensive program of career-oriented, post-secondary education and training to assist individuals in finding and keeping employment, to meet the needs of employers and the changing work environment, and to support the economic and social development of their local and diverse communities.

**Carrying out its objects**

**(3)** In carrying out its objects, a college may undertake a range of education-related and training-related activities, including but not limited to,

- (a) entering into partnerships with business, industry and other educational institutions;
- (b) offering its courses in the French language where the college is authorized to do so by regulation;
- (c) adult vocational education and training;
- (d) basic skills and literacy training;
- (e) apprenticeship in-school training; and
- (f) applied research.

**Crown agent**

**(4)** A college established under subsection (1) is an agency of the Crown.

**Boards of governors**

**3(1)** There shall be a board of governors for each college established under this Act consisting of such members as may be prescribed by regulation.

**Policy directives**

**4(1)** The Minister of Training, Colleges, and Universities may issue policy directives in relation to the manner in which colleges carry out their objects or conduct their affairs.

**Binding**

**(2)** The policy directives are binding upon the colleges and the colleges to which they apply shall carry out their objects and conduct their affairs in accordance with the policy directives.

**Internal dispute resolution processes**

**97** The College may establish fair procedures for resolving any and all disputes between the College, faculty, students, staff, or any combination thereof.



**APPENDIX B: EXCERPTS FROM THE COLLEGE'S CODE OF CONDUCT**

***Section 21***

**Exam Proctoring**

All examinations and written submissions for credit must be completed either through the use of the ExamTech software or with the supervision of the ExamTech software. Data collected by the ExamTech software will only be used to:

- 1) detect unauthorized assistance; and
- 2) to improve the efficiency of any artificial intelligence systems in use by the College.

***Section 22***

**Academic Offences**

It is an academic offence to access unauthorized study aids during an examination or assignment for credit.

***Section 23***

**DecideAI Reports**

The Dean of Academic Integrity shall consider the reports generated by DecideAI when determining whether a student is guilty of an academic offence and when determining the nature and contents of an order.

***Section 23(1)***

**Procedure for Academic Discipline**

1. Notice of Violation
  - a) If a student is accused of an academic offence, the College shall provide notice in the form and manner prescribed by the Dean of Academic Integrity.
    - a. The notice shall:
      - i. Be provided to the student no later than 30 days from the day the College discovered the commission of the academic offence; and
      - ii. State the allegation against the student and the basis for the allegations.
2. Written submissions
  - a) A student accused of an academic offence is entitled to submit written submissions in the form and manner prescribed by the Dean of Academic Integrity to the Dean of Academic Integrity.

- a. Students must submit written submissions no later than 7 days prior to an oral hearing.

### 3. Oral Hearing

- a) A student accused of an academic offence is entitled to an oral hearing before the Dean of Academic Integrity. Oral hearings shall be for a period not more than 1 hour and shall take place not more than 30 days from the day on which the student is provided notice.

### 4. Review and Orders

- a) When considering whether a student is guilty of an academic offence, and subject to section 23, the Dean of Academic Integrity may consider any factor deemed appropriate.
- b) Where the Dean of Academic Integrity is satisfied on a balance of probabilities that the academic offence of which the student is accused was committed by the student, the Dean of Academic Integrity may make any of the following orders:
  - i. An order that the student be placed on academic probation;
  - ii. An order that the student be suspended from any program provided by the College for a period not less than 6 months and no more than 1 year;
  - iii. An order that the student be expelled from the College and not considered for re-entry for a period not less than 10 years; or
  - iv. Any other order as necessary for the purposes of maintaining the academic integrity of the College and deterring future instances of academic misconduct.
- c) When considering whether to make an order and determining the contents of that order, and subject to section 23, the Dean of Academic Integrity shall consider any factor deemed appropriate.
- d) The Dean of Academic Integrity may attach any condition to their orders which they consider to be appropriate in the circumstances.
- e) The Office of the Dean of Academic Integrity shall provide written notice of the decision made by the Dean of Academic Integrity no later than 60 days from the date of the oral hearing, and such notice shall contain the reasons for the decision and any orders made by the Dean of Academic Integrity.

- f) The College shall disclose to the public the decision, reasons for decision, and written submissions of the student for all decisions made by the Dean of Academic Integrity. This information will be anonymized, but where circumstances warrant, the Dean of Academic Integrity may order the publication of the name of the person found to have committed the offence.
  
- g) The Dean of Academic Integrity shall disclose any reliance on artificial intelligence in coming to their decision.

### **APPENDIX C: STUDENT INPUTS CONSIDERED BY DECIDEAI**

The following are the standard form inputs used by DecideAI to reach a percent likelihood of cheating and a recommended sanction, respectively.

#### a) Explanations for Suspicious Behaviour

Students are permitted to provide explanations for each instance of suspicious conduct captured by ExamTech. These explanations are limited to the following exhaustive categories which will be displayed in a dropdown menu adjacent to each instance of suspicious conduct. These categories are:

1. Student had a medical emergency
2. Student required a bathroom break
3. Student experienced an unexpected intrusion upon the space in which the exam was being taken
4. Distraction or discomfort
5. Technical difficulties
6. Misunderstanding of instructions
7. No explanation

#### b) Student Information and Academic History

Students must also provide the following information when notified that they have been flagged for over five instances of academic misconduct. These factors are considered in light of their historical significance to sanctioning as identified by DecideAI in previous academic disciplinary decisions:

1. Full name
2. Student number
3. Personal address
4. Academic program
5. Year of study
6. GPA
7. History of academic misconduct (a “yes” or “no” response)
8. Course code of the course in which the alleged misconduct occurred
9. Score achieved on the exam or assignment in question
10. Weight of the assignment as it relates to their overall score in the class
11. Relevant personal challenges
  - a. Physical health issues
  - b. Mental health issues

c. Family issues

12. Admission of fault (a “yes” or “no” response)

These factors are assigned weight based on their historical significance to sanctions as identified in prior academic discipline decisions.

**APPENDIX D: EXCERPTS FROM THE *FLAVELLIAN CHARTER OF RIGHTS AND FREEDOMS***

**Rights and freedoms in Flavelle**

**1** The *Flavellian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

**Search or seizure**

**8** Everyone has the right to be secure against unreasonable search or seizure.

## **APPENDIX E: THE DEAN'S REASONS FOR EXPELLING BEN PARK**

The following are the reasons of the decision of the Dean with regard to the case of Ben Park:

Having considered the reports of ExamTech and DecideAI, and the oral and written submissions of Ben Park (the "Student"), I am convinced on a balance of probabilities that Ben Park violated the *Code of Conduct* by accessing an unauthorized study aid during the take-home exam EXAM:2026CompSci (the "Exam").

The Student left the frame of the video recording for a period of roughly 10 minutes. During this time, audio recording of a conversation was captured. Although the contents and subject of the conversation were indiscernible, multiple voices were apparent. Following the Student's return to frame, the Student repeatedly and for prolonged periods looked off frame. After each instance of off-frame eye movement, the Student's keystrokes increased relative to other times during the Exam.

The Student denies that these incidents are indicative of academic misconduct. At their hearing, the student has submitted that no one else was present during the Exam. In their written submissions to the DecideAI portal, the Student selected the "No Explanation" option for each instance of suspicious conduct. Now, the Student submits that their absence from the frame was a result of a panic attack stemming from their anxiety, and that they left the room in an attempt to calm themselves. However, the Student has provided no medical records indicating they suffer from a diagnosed form of anxiety and admits this is the first time such an episode has occurred. I also find the Student's assertion that they were alone during the exam to be inconsistent with the data gathered by ExamTech, which clearly captured the voices of more than one speaker during the Student's absence from the frame. The Student also admits that they live alone. In light of this information, I do not find the Student to be credible in the explanations they have provided at this hearing.

Per section 23 of the College's *Code of Conduct*, I am required to consider the reports of DecideAI as it relates to the percent likelihood of academic misconduct. DecideAI has indicated on the data captured and lack of explanation provided that there is a 90% likelihood that academic misconduct occurred on this Exam. I find this to be highly persuasive, and I see no compelling reason to depart from DecideAI's suggestion that cheating occurred in this case.

For the above reasons, I find on a balance of probabilities that the Student accessed an unauthorized study aid by communicating with a third party during the Exam in violation of section 22 of the *Code of Conduct*.

In light of these findings, I order the immediate expulsion of the Student from Flavelle College. I base my order on the following reasons:

- i. The student has a history of academic misconduct: The Student was found guilty of accessing an unauthorized study aid during the exam 2024:MechEng, for which they received a warning.
- ii. The Student did not appear apologetic or contrite, nor did they admit to any wrongdoing or misconduct.
- iii. Per the report of DecideAI, the recommended sanction in these circumstances is expulsion.