

**UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on November 12, 2012,

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters, 1995*,

AND IN THE MATTER OF the *University of Toronto Act, 1971*, S.O. 1971, c. 56 as amended S.O. 1978, c. 88

B E T W E E N:

UNIVERSITY OF TORONTO (the "University")

- AND -

**J ■ L ■ ("JL"), H ■ ■ ■ ■ L ■ ("HL") and A ■ H ■ ■ ■ Z ■ ■ ■ ■ ("AOZ") (collectively, the
"Students")**

Hearing Date: March 24, 2014

Panel Members:

Ms. Roslyn M. Tsao, Chair
Professor Markus Bussmann, Faculty Panel Member
Mr. Adel Boulazreg, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel for University, Paliare Roland Barristers
Ms. Andy Rosenhek, Co-counsel for the University, Paliare Roland Barristers
Ms. Alyssa Novoselac and Ms. Victoria Wang, Downtown Legal Services, for the Student JL
Ms. Lucy Gaspini, Manager, Academic Integrity and Affairs, University of Toronto Mississauga
Ms. Catherine Seguin, Senior Lecturer, Management, University of Toronto Mississauga
Mr. Rishi Arora, Manager of Information and Instructional Technology Services, University of Toronto Mississauga

In Attendance:

Ms. J ■ L ■ (JL), Student
Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

Not in Attendance:

Mr. H ■ ■ ■ ■ L ■ (HL), Student
Mr. A ■ H ■ ■ ■ Z ■ ■ ■ ■ (AOZ), Student
No one appearing for HL and AOZ

PROCEDURAL BACKGROUND

Charges

1. There are three students who are charged in the within matter. However, there are two discrete incidents relating to the charges:
 - (a) one which allegedly occurred on November 16, 2011 ("November 2011 Charges") involving Students JL and HL only; and
 - (b) one which allegedly occurred on December 5, 2011 ("December 2011 Charges") involving Students JL and AOZ only.

Senior Chair's Recommendation dated March 21, 2014

2. On March 18, 2014, a case conference with Senior Chair Jackson (only counsel for the University and counsel for JL participating), was held regarding the conduct of the hearing in the within matters. The Senior Chair issued a written recommendation ("Senior Chair's March 21 2014 Recommendation") to the hearing Panel which stated in part:

"On that basis, and if indeed the two other students do not appear to contest the charges, it is my recommendation that you hear and dispose of the plea, evidence, argument and your determination with respect to liability concerning the charge relating to November 16, 2011, before hearing the plea and evidence with respect to the charge concerning the events of December 5, 2011."

3. The Tribunal will follow the Senior Chair's recommendation and, as such, we heard the plea and evidence relating only to the November 2011 Charges on March 24, 2014.
4. The Tribunal will, however, be committed to consider any evidence tendered at this Hearing for any subsequent hearing regarding the December 2011 Charges.

November 2011 Charges

5. JL and HL were charged on November 12, 2012 with the following offences:

- (a) On or about November 16, 2011, JL and HL knowingly provided and/or obtained unauthorized assistance in term test 3 in MGM 101H5F, contrary to section B.I.1(b) of the *Code*; and
- (b) In the alternative to (a), JL and HL knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code* in order to obtain academic credit or other academic advantage of any kind in connection with term test 3 in MGM 101H5F, contrary to section B.I.3(b) of the *Code*.

6. As indicated above, AOZ is not charged with the November 2011 Charges.

March 24, 2012 Hearing

- 7. Only JL attended at the Hearing on March 24, 2012 and entered a plea of "not guilty" to the November 2011 Charges. JL brought a Mandarin Interpreter who was sworn for the Hearing.
- 8. The University tendered the Affidavit of Service of Natalie Ramtahal sworn on March 24, 2014 regarding service of the Notice of Hearing and Charges on HL. The University also tendered the Affidavit of Andrew Rosenhek sworn on March 20, 2014 with exhibits to demonstrate the attempts to contact HL about the hearing. The Tribunal is satisfied that service of the Notice of Hearing (with the requisite provisions) has been made in accordance with the *Rules*, in particular Rule 9(c), and that the Hearing can proceed in HL's absence.

REVIEW OF EVIDENCE

Professor David Swanston

- 9. The University tendered Professor David Swanston who was the course instructor for MGM 101H5F (the "Course"). Professor Swanston has been teaching since 2001 and been at the University of Toronto since 2002.

10. The Course is a first year course that is a prerequisite for the second year commerce program. The November 16th term test in question was worth 25%. The course outline for the Course sets out the standard warning against Academic Misconduct.
11. Professor Swanston stated that, by the time of the term test, there were just under 800 students remaining from the approximately 1,000 students at the beginning of the term. Professor Swanston did not otherwise know JL or HL prior to the events in question.
12. There were two separate lecture sections for the course and JL and HL were in the same one, L0101.
13. The term test was written in the CCT building in an auditorium-style lecture hall in Room CC1080. It was a 45 minute term test and Professor Swanston did attend in the room during the course of the term test.
14. Invigilation was performed by Teaching Assistants. Professor Swanston advised that they try to have one TA for every 40 students but he could not confirm how many were there that day.
15. CC1080 is a large auditorium with raised seating. The chairs are fold-down style with attached tablet arms. The room holds 500 students and there were about 400 students writing.
16. On cross-examination, Professor Swanston confirmed that the students were seated closely together. Professor Swanston also confirmed that he did not see where JL and HL were seated during the term test.
17. The Teaching Assistants who marked the term tests flagged the answer booklets from JL and HL because it appeared that portions of the answers were very similar, word for word.
18. JL's grade for the 6 short answer questions (multiple choice questions were marked separately offsite) was 12.5 (less a 1 point deduction for form). HL's grade for the 6 short answer questions was 4 (less a 1 point deduction for form).

19. An examination of the two test booklets unequivocally suggests a finding of copying by HL. Though HL answered fewer questions, the written answers that HL did provide are notably identical to JL's answers for the same question, right down to the paragraphing, number of words per line, use of numbering in the same answer, and even mis-spelling of "loyalty".

Professor Catherine Seguin

20. The University tendered Professor Seguin who is the Dean's Designate at UT – Mississauga. When there is an allegation of an academic offence, her role is to review the claim and set up a meeting between the student and the Dean's Designate. Professor Seguin reviews procedure, sanctions, right to consult counsel and the relevant provisions of the *Code* with the student and answers questions.
21. It is noted that JL was enrolled in a course of Professor Seguin's for the Winter 2012 term, MGT 120. There were approximately 750 students in that course.
22. At the Dean's Meeting on February 17, 2012, Professor Seguin confirmed that JL was asked whether JL provided any unauthorized assistance to another student in the term test, whether she allowed another student, HL, to copy from her answer booklet and whether she knew HL. JL responded, several times, that she did not provide such assistance and that she did not know HL.
23. Professor Seguin also asked JL if she had covered up her paper and to demonstrate how she would have written her test. JL did cover up her paper when she demonstrated how she wrote the test. However, JL indicated that she did not cover up her paper during the test and when asked "why not", she replied that she did not know. Professor Seguin fairly acknowledged, however, that students do not expect others to copy so they may not think about covering up their papers while writing.
24. At the conclusion of the meeting, JL signed the Admission of Guilt form with the "not guilty" selection.

25. Professor Seguin confirmed that there was no meeting between HL and the Dean's Designate scheduled as HL did not respond to calls. Professor Seguin attempted to hand deliver a letter to HL as HL was also in MGT 120 (the same course that JL was enrolled in that term) but HL did not attend class nor a scheduled test.
26. Professor Seguin introduced copies of the transcripts for HL and JL (and AOZ) in her evidence.

Ms. Lucy Gaspini

27. The University tendered Ms. Gaspini who is with the Office of Academic Integrity at the University. Her responsibility is to prepare the file for the Dean's office. She meets with the student before and after the Dean's Designate meeting to give advice and answer questions.
28. Ms. Gaspini introduced into evidence several email communications between the University and JL regarding the scheduling of the Dean's Designate meeting and a colour photocopy of JL's "T Card" (student card) of which she made a photocopy on February 17, 2012.
29. Ms. Gaspini noted that the photograph on JL's T Card seemed to be "a bit off" and she asked JL about the photo since it showed JL with bangs when she no longer had bangs by February, 2012. To Ms. Gaspini, JL looked different from the photograph on the T Card.
30. Ms. Gaspini confirmed that efforts were made by email and telephone to contact HL but without response. However, on March 20, 2012, HL emailed Ms. Gapini as follows:

Hello Lucy or whom it concerns:

*This is [HL] who enrolled in the MGM 101 course in the fall 2011. I already did the LWD for this course but u moved this LWD course back on my rosi. I thought the reason maybe that I copied from one girl sitting beside me during the term test 3. I **don't know who that person is**. I only copied a few questions of the short answer part. I sent emails to the professor Swanston but there is no reply. I read the code of behaviour of the U of T's policy online and the consequence you gave me is that I failed in this course anyways because I didn't attend the final exam of this*

MGM101 course. So could show me a F of this course on rosi instead of a GWR ? Thanks. [Emphasis added]

31. Upon receiving this email from HL, Ms. Gaspini had, what can be described as, a hunch that the email from HL and the emails from JL were "connected" somehow. Ms. Gaspini engaged Rishi Arora from the Information Technology (IT) department and asked him to assist her to help identify the sources of the emails to determine whether there was any link between the two. Ms. Gaspini forwarded a number of emails that were from JL to Mr. Arora for him to compare with the March 20 email from HL and later, a subsequent email from HL in November, 2012.
32. Ms. Gaspini confirmed that there was no interpreter at the Dean's Designate meeting and that she did not feel that JL did not understand her nor did she have trouble understanding JL in their discussions.
33. Ms. Gaspini was later recalled, on consent, to confirm that she obtained information that HL and JL were both enrolled in Linguistics 205 in January 2012 in the same tutorial section. Ms. Gaspini could not advise how many students were in that tutorial section.

Mr. Arora Rishi

34. The University tendered Mr. Rishi who is the Manager of Client Services at UT – Mississauga. He studied Computer Science at the University of Toronto from 1994-1998, has had forensics training from the Toronto Area Security Klatch and has assisted the Dean's Office with plagiarism cases in the past. He has taken some of the required training for CISSP (Certified Information Security Systems Professional) certification.
35. Mr. Rishi explained that there are internet headers or "mail headers" which can be viewed on emails which identify the path of emails vis-à-vis IP addresses (internet protocol addresses). The IP address is akin to a phone number in a directory listing and is matched to a name.
36. Mr. Rishi stated that the mail headers for emails give information as to the source IP connection and a host name and IP address. The internet service provider ("ISP") can also generally be discerned from information in the mail headers. It is also possible to

perform a "name look up" (akin to a reverse look up for telephone numbers) to see who owns an IP address to confirm that it matches to the stated host name.

37. Each device connected to the internet has an IP address to route its connections. A smartphone or a computer would have an IP address associated with it. IP addresses are unique at a given time in that there is only one such IP address in operation. However, Mr. Rishi did advise that an IP address might later be "recycled" by the provider and could then be associated with another device/location at that later time. Finally, a single IP address might be shared through the use of a shared router or modem.
38. The emails from JL and HL that were reviewed by Mr. Rishi provided him with this type of information relating to the IP connection and IP address for host connection. It is noted that the earliest email from HL that was reviewed by Mr. Rishi was HL's email of March 20, 2012. JL's earliest email reviewed by Mr. Rishi was from February 25, 2012.
39. After reviewing the mail headers for HL's and JL's emails, Mr. Rishi concluded that the emails were sent from the same IP address with the same internet connection.
40. Mr. Rishi also reviewed the "SWS Activity Log" from the University of Toronto server for each of HL and JL with respect to their ROSI email accounts. The SWS Activity Log shows timestamped successful logins by the students for the period from January 1, 2012 to December 31, 2012. It is noted that there are only entries starting from March 17 for each student even though the search filter is for the January 1st start date.
41. The SWS Activity Logs also show the IP addresses being used to log in for each instance. By comparing the dates/times of JL and HL's logins and the IP addresses, it is evident that the logins from as early as March 17, 2012 were through the same IP address on multiple proximate occasions through and until November, 2012.
42. This matching of IP addresses at various dates and times (even in the very early hours of the morning) cannot be explained away by coincidence given the uniqueness of IP addresses, without any other explanation. Mr. Rishi concluded that JL and HL were using the same IP connection, likely in the same dwelling. It is an easy extrapolation for this Panel to make that JL and HL must have known each other during this period.

43. On cross-examination, Mr. Rishi confirmed that he was not asked to review emails or the SWS Activity Log from before January 1, 2012.

Evidence Called by the Student JL

44. JL tendered no evidence and did not testify.

DECISION OF THE TRIBUNAL

45. It is not controverted and, in fact, admitted by HL in his email of March 20, 2012 that HL copied from JL's term test answer booklet. A comparison of the written answers in HL's answer booklet and that JL had superior answers to the questions, support this finding as well.
46. As such, the Panel finds HL guilty of the November 2011 Charges.
47. With respect to JL, we first note that JL is being charged as a party to the alleged offence pursuant to section B.ii.1 of the *Code*, by aiding or assisting HL to copy from JL's answer booklet.
48. The University has the onus to establish that JL assisted HL on a balance of probabilities. We agree with the Decision in K [REDACTED] (Case No. 595; October 12, 2010) that the Panel need not determine exactly how it occurred but rather be satisfied that the student assisted HL on a balance of probabilities.
49. JL's defence can be summarized as follows:
- (a) There is no objective evidence or witnesses to JL assisting HL to copy from her answer booklet during the test;
 - (b) HL has admitted by email dated November 25, 2012 to the University that he did not know JL and was coincidentally seated beside her during the term test. HL stresses that he was copying the answers from JL but that JL did not know that HL was copying her. JL is, therefore, "innocent" of any misconduct. It is noted that this email was copied to JL's email address;

- (c) The copied answers were only similar and not conclusively copied to such a degree that JL would have had to be complicit;
- (d) The email header information and ROSI SWS Activity Logs are not determinative or directly relevant to the issue of whether JL provided unauthorized aid to HL; and
- (e) There is no evidence of any motivation or motive for JL to have assisted HL.

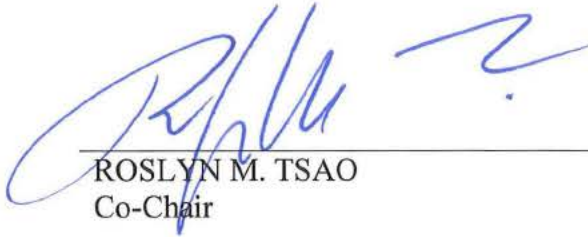
50. The University's position is that JL and HL are attempting to foist all culpability upon HL only and use HL's emails to exonerate JL. The University argues that the more likely scenario is that JL assisted HL by facilitating his copying from JL's answer booklet. The University also tenders evidence that JL and HL must have known each other given the use of the same IP address to send emails and that, even if the email tracing was for a period after the alleged offence, the denial by JL and HL that they knew each other even in February/March, 2012 at the time the charges were being investigated, is not tenable.
51. The University also submits that in cases such as these, it is more unlikely than likely that there is a witness to the alleged copying at the time of the offence. As a consequence, where students do not testify in such cases, it would seem impossible for the University to discharge its onus if there is no witness to the commission of the offence. Accordingly, it is the circumstantial evidence, when considered together, that the University relies upon.
52. For the following reasons, we find that the University has satisfied its onus and we find JL to be guilty of the November 2011 Charges.
53. Firstly, the answers in HL's answer booklet were not merely similar but were identical in many aspects. They were identical to such a degree, that it is reasonable to find that HL had a clear and significant opportunity to copy from JL's paper. The Panel, therefore, is inclined to find that JL assisted HL to copy from her answer booklet, not only by leaving her work uncovered but also by making her answer booklet as visible as possible to HL. A comparison of the spacing, line breaks, syntax and actual word use in HL's booklet demonstrate that he had an uninterrupted opportunity to copy from JL.

54. With respect to motive, we are of the view that a lack of motive does not sway our findings that JL assisted HL. There is no requirement to find any motive in a student's commission of academic dishonesty.
55. In any event, we find the evidence about the shared IP addresses for the period from late March, 2012 to November 2012 allows us to reasonably surmise that JL and HL knew each other at the time of the term test. The denial by HL in his March 20, 2012 email that he does not know who the person was that he copied from is incongruous with the SWS Activity Logs for that period which confirm that JL and HL were using the same IP address, likely in the same dwelling.
56. It is troubling for the Panel that JL did not testify in the face of the University's evidence that was clearly to be called on this issue. JL was aware that the IP address information was going to be put before this Panel and did not testify about the nature of her relationship with HL (whether it came about after the November 2011 incident or not) and did not allow for cross-examination by the University. The Panel draws an adverse inference regarding the credibility of HL and JL on this basis. There is also evidence that JL and HL were enrolled in at least two other courses together in that same academic year.
57. JL hypothetically argued that the relationship between JL and HL may well have arose after the November 2011 incident, in 2012. Again, the Panel chooses to reject this hypothetical as HL's March 20, 2012 email was not accurate about their relationship and JL did not testify at all, including about the nature of their relationship. The hypothetical suggestion that JL and HL did not know each other in November 2011 is not likely, in our view, when considered with the evidence that JL and HL shared an IP address as at March 2012 and the misleading email of March 20, 2012.
58. We wish to make it clear that JL has the full protection of the presumption of innocence and cannot be compelled to testify at her hearing. However, in the face of the University's evidence and the paucity of any evidence about any other explanation, we are satisfied that the University has discharged its onus and find JL guilty of the November 2011 Charges by assisting HL to copy her answer booklet.

RESUMPTION OF HEARING AND PENALTY

59. The resumption of the hearing in this matter on penalty and to receive the plea and evidence for the December 2011 Charges is scheduled for July 11, 2014 before this Panel.
60. Pursuant to the Senior Chair's March 21 2014 Recommendation, the Panel will determine penalty for the November 2011 Charges following the hearing for the December 2011 Charges.

Dated at Toronto, this 26th day of May, 2014.



ROSLYN M. TSAO
Co-Chair