

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on May 6, 2016

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

BETWEEN:

UNIVERSITY OF TORONTO

- and -

S [REDACTED] M [REDACTED]

REASONS FOR DECISION

Hearing Date: November 17, 2016

Members of the Panel:

Ms. Johanna Braden, Barrister and Solicitor, Chair
Professor Richard Day, Faculty Panel Member
Ms. Alexis Giannelia, Student Panel Member

Appearances:

Ms. Lilly Harmer, Assistant Discipline Counsel, Paliare Roland, Barristers

In Attendance:

Mr. Christopher Lang, Director, Office of the Appeals, Discipline and Faculty Grievances
Ms. Lucy Gaspini, Manager, Academic Integrity and Affairs, Office of the Dean,
University of Toronto, Mississauga
Mr. Sean Lourim, Technology Assistant, Office of the Governing Council

Not In Attendance:

Ms. S [REDACTED] M [REDACTED], Student

1. The Trial Division of the University Tribunal was convened on November 17, 2016, to consider charges brought by the University of Toronto ("the University") against Ms. S [REDACTED] M [REDACTED] ("the Student") under the *University of Toronto Code of Behaviour on Academic Matters*, 1995 ("the Code").

Preliminary Issue: Proceeding in the Absence of the Student

2. The hearing was scheduled to begin at 5:45 p.m. The Tribunal waited until 6:00 p.m. to commence the hearing. Neither the Student, nor a representative of the Student, appeared.
3. Pursuant to sections 6 and 7 of the *Statutory Powers Procedure Act* ("the Act"), and Rule 17 of the *University Tribunal Rules of Practice and Procedure* ("the Rules"), where reasonable notice of an oral hearing has been given to a party in accordance with the Act and the party does not attend at the hearing, the Tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding. The University requested that the Tribunal proceed with this hearing
4. Pursuant to Rule 9, a notice of hearing may be served on a student by various means, including by:
 - (a) sending a copy of the document by courier to the student's mailing address contained in ROSI (the Repository of Student Information); or
 - (b) emailing a copy of the document to the student's email address contained in ROSI.
5. The University's Policy on Official Correspondence with Students expressly states that students are responsible for maintaining on ROSI a current and valid postal address and a University-issued email account. Students are expected to monitor and retrieve their mail, including electronic messaging accounts issued to them by the University, on a frequent and consistent basis.

6. The onus of proof is on the University under the Act and the Rules to establish that it provided the Student with reasonable notice of the hearing in accordance with these provisions.
7. The University filed affidavit evidence showing that the Student had been sent the Notice of Hearing dated September 2, 2016 by way of email to the Student at the email address she had provided on ROSI, and by courier to the mailing address the Student had provided on ROSI.
8. The University also filed affidavit evidence showing that the Student had been served with the charges by way of email to the Student at the email address she had provided on ROSI. The affidavit evidence showed that the Student responded to the University and initially indicated an intention to participate in this proceeding. However, she stopped responding to the University after September 30, 2016. The University has continued to serve the Student with disclosure materials and pre-hearing updates, and received no response.
9. The Tribunal reviewed the evidence and the submissions of counsel for the University and concluded that the Student was given reasonable notice of the hearing in compliance with the notice requirements of the Act and the Rules.
10. The University has proven that it provided reasonable notice of the time, date, place and nature of the hearing to the Student. The Student was made aware of the consequences of not attending this hearing. The Tribunal therefore determined that it would proceed to hear the case on its merits in the absence of the Student.

The Charges and Particulars

11. The Charges and Particulars alleged against the Student are as follows:
 1. On or about December 16, 2014, you knowingly used or possessed an unauthorized aid or aids or obtained unauthorized assistance in

connection with the final examination in GGR246H1F ("Exam" and "Course" respectively), contrary to sections B.I.1(b) of the *Code*.

2. On or about December 16, 2014, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code* to obtain academic credit or other academic advantage of any kind, in connection with the Exam, contrary to section B.I.3(b) of the *Code*.

Particulars

The particulars of the offences charged are as follows:

- a) At all material times you were a student registered at the University of Toronto Mississauga.
- b) In the 2014 Fall term you enrolled in the Course, which was taught by Dr. Jeff May.
- c) The Exam was worth 25% of the Course mark. No aids were allowed in the Exam.
- d) You wrote the Exam on December 16, 2014 in the AccessAbility Resource Centre ("ARC").
- e) At the beginning of the Exam you signed a copy of the ARC Exam Policy, which included a warning that notes and cheat sheets were not permitted during the Exam. The front cover of the Exam also indicated that aids were not allowed.
- f) You were not permitted to have a memory aid during the Exam as an accommodation.
- g) Before you handed in your Exam you were found to be in possession of three pages of handwritten notes and one page of typed notes which related to the Course material.

12. Although the Charges were not pleaded in the alternative, counsel for the University advised that the University was seeking a finding with respect to only one of them. She further advised that if the Tribunal were to find the Student guilty of Charge 1, the University would withdraw Charge 2.

The Evidence

13. On the substance of the Charges, the Tribunal heard oral evidence from five witnesses and received affidavit evidence from two additional witnesses. A summary of the evidence is as follows.

(a) The Course

14. In Summer 2014, the Student enrolled in the course GGR246H1F – Geography of Canada (the “Course”). The Course was taught by Matthew Siemiatycki who swore an affidavit that the Tribunal accepted into evidence. The Course syllabus warned students that any cases of cheating on exams would be handled in accordance with the University’s policies.
15. The Course evaluations included a requirement that students write a midterm exam worth 20% and a final exam worth 25% of the Course mark. The Student asked Professor Siemiatycki for accommodation, first to miss the midterm exam, and second to write the deferred final exam. Both requests were granted for medical reasons. As a result, the Student wrote the final Course exam on December 16, 2014 (the “Exam”). The Exam was worth 45% of her Course mark.
16. The front page of the Exam stated “No Aids Allowed.” Professor Siemiatycki did not receive any requests from the Student for accommodations to use a memory aid sheet in the Exam.

(b) Accommodation for Exams

17. The University has an AccessAbility Resource Centre (the "Centre") for students who require accommodations based on medical documentation due to disability. The Centre administers exams for students who are registered with the Centre, and takes steps to ensure that required accommodations are made.
18. Michal Serwin testified that he has worked at the Centre for over seven years. He coordinates the administration of tests and exams for students who are registered with the Centre. The Centre keeps a database where Mr. Serwin can see the list of approved accommodations for registered students. One possible accommodation is a permitted memory aid. A memory aid would only be permitted if the course professor provided the aid to the Centre and indicated in writing that a student could use the aid. The aid would then be placed into an envelope, attached to the exam, and given to the student at the commencement of the exam. A student cannot bring their own aid to the exam.
19. The Student was registered with the Centre, and was permitted to write the Exam through the Centre. Mr. Serwin prepared the AccessAbility Resource Centre Student Information Sheet for the Student, which lists among other things the accommodations the Student is entitled to. The Student Information Sheet indicated that the Student was entitled to extra time. There is a space on the Student Information Sheet for listing approved aids. None were listed.
20. Mr. Serwin testified to the general processes used by the Centre to ensure that students are accommodated during exams, and to the steps taken for this particular Student writing this particular Exam. Nothing in the Student's file with the Centre indicated that the Student was entitled to have any aids during the Exam, which is consistent with the evidence of Professor Siemiatycki.

(c) Writing the Exam

21. On the day of the Exam, there were three invigilators present at the Centre who testified before the Tribunal: Ihor Wankiewicz, Aneela Munir and RunXing Zhu.
22. By the day of the Exam, Mr. Wankiewicz had been working as an invigilator at the Centre for about two years. He was working the morning shift on December 16, 2014.
23. Mr. Wankiewicz signed the Student in to the Exam. Although the Exam was scheduled to begin at 9:00 a.m., the Student arrived at 9:28 a.m. Mr. Wankiewicz had the Student sign a Forfeit Adjusted Time Sheet acknowledging that due to her lateness she had forfeited the missed time. Mr. Wankiewicz testified that he then went through his usual procedures with the Student, which would have included:
 - (a) verbally reviewing with the Student the Student Information Sheet, setting out the nature of the permitted accommodations and whether there were any authorized aids;
 - (b) verbally reviewing with the Student a standard printed sheet on the first page of each exam administered at the Centre, explaining, among other things, that no unauthorized aids would be permitted;
 - (c) verbally reviewing with the Student the Centre's printed unauthorized aid policy; and
 - (d) having the Student sign all three sheets.

24. These sign-in procedures usually take about one minute. The Student put her belongings in a designated area at the front of the room. She began writing the Exam at 9:29 a.m. Mr. Wankiewicz's understanding was that she was not permitted any aids, and was not permitted any scrap paper. She was only permitted to have writing utensils. Mr. Wankiewicz recalled that the Student seemed nervous during the sign-in procedure.
25. At 10:00 a.m., the Student asked Mr. Wankiewicz if she could move to a quieter spot. She asked for one of the seats at the side of the room, facing the wall, but those were taken. Mr. Wankiewicz moved the Student to Seat 11, which was at the back of the room. At Seat 11, the Student faced the back wall, with her back to the invigilators.
26. Shortly after switching seats, Mr. Wankiewicz saw the Student in the front of the room, very close to the area where the students' backpacks and other belongings were kept. At the time Mr. Wankiewicz had been assisting another student at the Centre who seemed unwell, and he didn't know how long the Student had been at the front of the room. He asked the Student what she was doing. She said she needed an eraser. Mr. Wankiewicz gave her one, as students were not permitted to access their belongings during the exam.
27. Mr. Wankiewicz' shift ended and he left as the Student was still writing her exam. When he left, two invigilators were working in the Exam room: Aneela Munir, who was working at the Centre that day as a floating invigilator, and Run Xing Zhu. Both invigilators were experienced in their job.
28. Ms. Munir testified that the Student came to her attention when the Student finished her Exam, at around 11:45 a.m. The Student began walking toward the front of the room where Ms. Munir and Ms. Zhu were sitting. Ms. Munir assumed the Student was coming to hand in her Exam. Ms. Munir could see that the Student was holding the brown examination envelope, her writing utensils, the

examination booklet, and script and what Ms. Munir described as “extra papers” with the Student’s handwriting.

29. Instead of bringing her examination to the invigilators, the Student went to the area where students’ backpacks and belongings were kept. This struck Ms. Munir as odd and unusual, as students were supposed to hand in their examinations before retrieving their belongings. There was a partition between the invigilators’ desk and the backpack area, so Ms. Munir could not see what the Student was doing.
30. The Student then came out of the backpack area and approached the invigilators to hand in her exam. By this time, she only had the brown examination envelope and the examination booklet. She did not have the extra papers or her writing utensils.
31. Ms. Munir told the other invigilator, Ms. Zhu, that the Student had been holding the extra papers when she walked back from her desk to the backpack area. Ms. Zhu approached the Student and asked her where the extra papers were. The Student gave them to Ms. Zhu.
32. Ms. Munir identified the “extra papers” she had seen in the Student’s hand. They consist of one page of typewritten notes (double-sided) and three pages of handwritten notes (also double-sided). The handwriting is the same as the handwriting in the Student’s Exam booklet.
33. Ms. Zhu testified that she observed nothing out of the ordinary until Ms. Munir brought the Student to her attention, telling her that the Student had extra papers with her when she walked to the backpack area. Ms. Zhu approached the Student and asked her why she had gone to her backpack before handing in her Exam. The Student gave no answer. Ms. Zhu noticed that the Student had notes in her hand. Ms. Zhu confiscated the notes and placed them in the envelope with the Student’s Exam. Like Ms. Munir, she identified the notes she

took from the Student as one page of typewritten notes (double-sided) and three pages of handwritten notes (also double-sided).

34. Ms. Zhu testified the Student told her that she had been permitted to use the notes by her AccessAbility advisor named "Sue". Ms. Zhu said there was no indication on the Exam that aids were permitted. Ms. Zhu called Mr. Serwin on the phone and asked whether the Student was permitted a memory aid. Mr. Serwin checked the records, including the cabinet where any permitted aids would have been stored. He spoke to both Ms. Zhu and the Student, and told both of them that no memory aids were permitted for the Exam.

(d) After the Exam

35. On February 3, 2015, the Student sent an email to Professor Siemiatycki, and gave an explanation of her actions. She wrote that she had told her AccessAbility advisor in December that she would need memory aid accommodations for the Exam, and that the advisor had said it would be a one-page memory aid. The Student said she was not informed of the memory aid process at that time. She wrote that as she was leaving the Exam classroom with all her belongings, the invigilator asked her for "all my papers" and that the Student gave the invigilator the notes which the invigilator submitted in with the Exam. The Student also wrote that she spoke with Mr. Serwin the day of the Exam, who advised her that "everything would be okay since I was not aware of the entire process."
36. On November 5, 2015, the Student met with Catherine Seguin, the Dean's Designate for the University in the Faculty of Arts and Science, Mississauga Campus. The purpose of the meeting was to discuss the allegations of academic misconduct. Professor Seguin's affidavit evidence affirms that at the Dean's meeting, the Student acknowledged that she had brought the handwritten and typed notes into the Exam room with her, but claimed she had left them on top of her backpack while she wrote the Exam. She picked them up after completing

her Exam and had them in her hand when Ms. Zhu approached her. The Student denied that she had asked to be moved during the Exam and denied going to her backpack until the end of the Exam.

37. As of the fall of 2015, the Student was placed on academic suspension from the University due to her low grade-point-average. This suspension will last for three years, meaning that the Student will become eligible to return to the University for the Fall session in 2018.

Decision of the Tribunal on the Charges

38. As the Student was not present, the hearing proceeded on the basis that she denied the Charges against her. The onus was on the University to establish on the balance of probabilities, using clear, cogent and convincing evidence, that one or more of the academic offences charged has been committed by the Student.
39. Having considered all the evidence in this hearing, the Tribunal found it was more likely than not that the Student had knowingly possessed an unauthorized aid, contrary to section B.I.1(b) of the *Code of Behaviour on Academic Matters*, as alleged in Charge 1.
 - (a) The evidence of Professor Siemiatycki and the evidence of Mr. Serwin clearly established that there were no aids permitted for this Exam generally, or for this Student particularly.
 - (b) The evidence of Mr. Wankiewicz, including the exhibits he identified bearing the Student's signature, showed that the Student was made aware that no aids were permitted during the Exam. The Student did not question or challenge this during the sign-in process, and never claimed to be entitled to use an aid until the very end of the Exam, when she was questioned by Ms. Zhu about the extra papers she had been seen holding.

- (c) The evidence of Ms. Munir and Ms. Zhu established that the Student was seen at the end of the Exam with papers in her hand that amounted to unauthorized aids. The Student was seen holding those papers while walking from her desk at Seat 11 to the front of the room where her backpack was.
- (d) The papers were confiscated by Ms. Zhu, and formed part of the evidence in this case. They are clearly notes relating to the Course, designed to assist the Student in the examination.
- (e) The evidence of the three invigilators at the Exam was credible and reliable. All three were experienced invigilators with the Centre. Their recollection of events was supported by contemporaneous documentation, including the Invigilator Documentation Report and Ms. Zhu's incident report. The evidence of each was generally consistent with the evidence of the others, and there was no motivation for any of the invigilators to be less than truthful with the Tribunal.
- (f) The Student gave differing accounts of her actions. At the time she was discovered, she told Ms. Zhu and Ms. Munir that she was permitted by her advisor "Sue" to have the confiscated notes with her. Some 6 weeks later, she told Professor Siemiatycki in an email that she had discussed having a "one-page" memory aid with her advisor but had not been told of the process. The Student did not clearly explain in that email the presence of not one page, but a total of 4 double-sided pages of notes. Months later, the Student denied during the Dean's meeting that she had any memory aids with her at all during the writing of the Exam, and that the notes had simply been on top of her backpack. Without any sort of explanation by the Student at this hearing, it is impossible to reconcile these different versions of events. The best inference is that the Student was lying to avoid the consequences of her actions.

- (g) There is not clear evidence as to how the Student managed to get the unauthorized aids into the Exam. There was no evidence as to the condition of the papers, such as whether they appeared to have been folded or crumpled. Perhaps the Student had them hidden on her person from the start of the Exam, or perhaps she used the opportunity when Mr. Wankiewicz was distracted by an unwell student to obtain them from her backpack. The Tribunal can make a finding that the Student possessed the unauthorized aids during the Exam without knowing how she managed to sneak them in or how she managed to avoid detection until the end of the Exam.

- 40. In light of the Tribunal's finding on Charge 1, Charge 2 was withdrawn by the University.

Decision of the Tribunal on Penalty

- o The Student receive a final grade of zero in GGR246H1F in Summer 2014;
 - o The Student be suspended from the University for a period of two years, commencing on September 1, 2017 and ending August 31, 2019
 - o The sanction be recorded on the Student's academic record and transcript to the effect that she was sanctioned for academic misconduct until August 31, 2020; and
 - o This case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed, with the name of the student withheld.
- 41. The University did not lead any additional evidence with respect to the issue of sanction.

42. The University sought the following sanctions:
- (a) a final grade of zero in the Course;
 - (b) a suspension from the University for a period of two years;
 - (c) that the sanction be recorded on her academic record and transcript for a period of three years; and
 - (d) that this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the name of the Student withheld.
43. One element of the sanction that the University left to the Tribunal's discretion was the question of when the suspension and notation provisions would become effective. The Student is under academic suspension until the Fall of 2018 due to her low grade-point-average. If the Tribunal were to order a two-year suspension to commence the date of the Tribunal's order, it would as a practical matter translate into only one additional term of suspension. If the Tribunal were to order a two-year suspension to run entirely consecutively with the Student's academic suspension, the Student would not be able to attend the University until the Fall of 2020.
44. The Tribunal has considered the principles and factors relevant to sanction set out by this Tribunal in *University of Toronto and Mr. C* (November 5, 1976, Case No. 1976/77-3). While the determination of an appropriate penalty in every case by the Tribunal will depend on an individual assessment of these principles and factors, it is important to have general consistency in the Tribunal's approach to sanction so that students are treated fairly and equitably.
45. At this Tribunal, cheating during exams, whether through the giving or receiving of unauthorized aid, generally results in a suspension of at least two to three years. This is true even when it is a first-time offence, and even when there is no evidence that the student actually used the aids during the exam.

46. The Tribunal considered the University's submissions in light of its findings and the factors from *Mr. C., supra*.
- (a) The character of the Student: there was no evidence before the Tribunal regarding the Student's character other than the facts of the offence as found by the Tribunal. Those facts show, however, that the Student engaged in a course of deliberate deception, both during and after the Exam.
 - (b) The likelihood of a repetition of the offence: there was no particular evidence led that would lead the Tribunal to conclude one way or another on this factor. This was the Student's first offence.
 - (c) The nature of the offence committed: the integrity of examinations is a cornerstone of academic life. The University spends considerable resources to ensure that examinations are fair. This includes allowing aids for those who require them by virtue of their medical condition, and otherwise ensuring that no student has an unfair advantage. The Student's subterfuge shows a calculated attempt to gain a benefit for herself to which she was not entitled.
 - (d) Any extenuating circumstances surrounding the commission of the offence: the Student did not participate in this hearing, and so there is no evidence before the Tribunal of mitigating or extenuating circumstances, other than this being the Student's first offence. There was no evidence of any remorse or insight. Indeed, the Student's changing explanations for her conduct suggest that she has attempted to manipulate the truth in order to avoid the consequences of her dishonesty.
 - (e) The detriment to the University occasioned by the offence: fortunately, the Student's misconduct was detected quickly. However, any time the rules

of an examination are deliberately breached, the reputation of the University is threatened.

- (f) The need to deter others from committing a similar offence: this is a key factor in any cheating case. It is important to send a clear message that surreptitious attempts to undermine the academic integrity of examinations will be taken seriously.

47. In all of the circumstances, and with regard to the factors identified in the C. case, the Tribunal was satisfied that the sanction requested by the University was appropriate and in accordance with similar cases.

48. As to the timing of the suspension and transcript notation, the Tribunal sought to impose an order that would be meaningful to the Student and have some practical impact on her ability to attend the University. However, the Tribunal was concerned that an order which effectively kept the Student from attending the University for two years on top of her academic suspension would be overly punitive. The Tribunal decided that the suspension and transcript notation provisions of the sanction would commence September 1, 2017, such that one year of the two-year suspension would be concurrent with her academic suspension.

49. Accordingly, the Tribunal made the following Order.

1. **THAT** the Student is guilty of one count of knowingly using or possessing an unauthorized aid, contrary to section B.I.1(b) of the *Code of Behaviour on Academic Matters*;
2. **THAT** the Student receive a final grade of zero in GGR246H1F in Summer 2014;

3. **THAT** the Student be suspended from the University for a period of two years, commencing on September 1, 2017 and ending on August 31, 2019;
4. **THAT** the sanction be recorded on the Student's academic record and transcript to the effect that she was sanctioned for academic misconduct until August 31, 2020; and
5. **THAT** this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed, with the name of the Student withheld.

Dated at Toronto this ^{12th} day of ^{February}, 2017



Ms. Johanna Braden, Co-Chair