

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on May 25, 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 -

H [REDACTED] L [REDACTED]

REASONS FOR DECISION ON SANCTION

Hearing Date: June 29, 2017

Members of the Panel:

Ms. Johanna Braden, Barrister and Solicitor, Chair
Professor Faye Mishna, Faculty Panel Member
Mr. Eric Bryce, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland, Barristers
Ms. Eva Mak, Barrister and Solicitor, Counsel for the Student
Mr. Thomas MacKay, Director, Faculty Governance and Curriculum Services, Faculty of Arts and Science
Ms. H [REDACTED] L [REDACTED], the Student

In Attendance:

Ms. Tracey Gameiro, Associate Director, Office of Appeals, Discipline and Faculty Grievances
Mr. Sean Lourim, Technology Assistant, Office of the Governing Council

BACKGROUND – THE FINDING OF ACADEMIC MISCONDUCT

1. On May 1, 2017, this panel of the Trial Division of the University Tribunal (the “Panel”) released its decision and reasons for decision, finding that Ms. H [REDACTED] ([REDACTED]) L [REDACTED] (“the Student”) was guilty of one count of academic misconduct under the *University of Toronto Code of Behaviour on Academic Matters*, 1995 (“the Code”). On June 29, 2017, the Panel convened to determine the appropriate sanction.
2. The essence of the Panel's finding was that the Student smuggled a false exam with her into an examination room, and submitted that false exam as though it were the real one that had been handed out to all students during the examination itself. Her attempt at cheating was sophisticated in some senses but crude in others. The false exam was a curious document. It had clearly been concocted with some degree of difficulty and cunning, by cutting and pasting various old exams from the same course so that it resembled a real exam without actually being one. Despite these efforts, it was not hard for the exam markers to spot it as a fake.
3. The Student testified in her own defence, and claimed ignorance of how it happened that out of approximately 1,500 exams, hers was the only fake one. Her evidence was not believed. At the sanction hearing, the Student's lawyer submitted that the Panel had not actually found the Student to have been lying in her evidence. This is not true. The Panel's reasons for its finding might have been put delicately. However, to be clear, when the Panel rejected the Student's evidence as to how the fake exam ended up on the exam desk before her, the Panel was finding that the Student did not tell the Panel the truth.
4. The Panel could not find it was more likely than not that the Student herself falsified the exam, or even that she knew or ought to have known it was falsified. It was just as likely that she acquired the fake exam from someone else and believed it to be

the actual exam. Nevertheless, it was still a clear example of academic misconduct (see paras 51 and 52 in the Reasons for Decision on Finding).

FURTHER EVIDENCE ON SANCTION

5. The University submitted into evidence the Student's updated ROSI record, showing that the Student last took courses in the Winter 2017 term, which ended in April, 2017. The University led no other evidence on sanction. This was the Student's first academic offence.
6. The Student submitted two letters on her behalf. The first was a letter from Dr. Proulx who taught the Student at the International College of Manitoba. She wrote that the Student had been an excellent student in her Introduction to Psychology course. The second letter was from Mr. Chau, a physiotherapist practicing in Hong Kong where the Student had worked part-time in the summer of 2015 so that she could improve her Cantonese. Mr. Chau believes that the Student is mature, reliable and honest.

PARTIES' POSITIONS ON SANCTION

7. The parties agreed that the Student should receive a final grade of zero in the course MAT223H1F for the Fall 2015 term. In addition, the University requested a suspension of two years, and an academic misconduct notation in the Student's transcript for three years. The Student requested a suspension of one year, and a notation in the Student's transcript for two years.
8. Counsel for the University relied on numerous cases from this Tribunal, showing that a suspension of two years is generally considered to be the minimum threshold for cases of academic misconduct involving use of an unauthorized aid during an exam. Counsel for the Student recognized that the penalty she sought was significantly more lenient than that ordered in any other similar case presented to

this Panel. However, picking up on a theme of this hearing, she suggested that such an unusual case deserves an unusual penalty.

REASONS FOR DECISION ON SANCTION

9. As a general point, the Panel considered the Student's argument that an unusual case deserves an unusual penalty. This submission ignores that the only reason this case remains so unusual is because the Student has not explained why and how she cheated. The mystery of this case could be solved easily if the Student were to be truthful and explain herself. We don't know exactly what happened, but that is because the Student has not been truthful. The Panel understands the Student has no obligation to explain herself to the Panel, bears no burden of proof, and has the right to defend herself against charges of academic misconduct. However, now that the Panel has made its finding of misconduct, the Student cannot benefit from the uncertainty generated by her own actions.
10. More specifically, the Panel 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).
11. The first factor to be considered is the character of the Student. In the Student's favour, the character evidence submitted by the Student show she has the capacity to do well in school and that she has shown tenacity and resilience in the past. The Student participated in this hearing at both stages, demonstrating a willingness to respect the University's processes. Although she does not get the mitigating credit that is typically awarded to students who admit misconduct before the Tribunal, the fact that the Student defended the charges is not to be held against her. This is her first academic offence. However, the circumstances of the offence show that the Student engaged in a deliberate and premeditated effort to obtain unauthorized assistance during a final exam by sneaking in a fake examination paper.

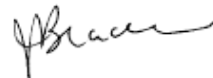
12. The second factor to consider is likelihood of a repetition of the offence. Counsel for the Student submitted that the chance of reoffending was so low that we shouldn't even consider it. However, the essential basis for this premise is that the Student is not the sort of person to cheat. There has been no expression of remorse. The Student has indicated through her counsel that she still denies having committed an offence. While the Tribunal sincerely hopes the Student will not err in this fashion again, a significant period of suspension is required to bring the message home to her. A transcript notation that lasts for a year beyond the suspension will ensure that the Student is monitored should she return to the University. A transcript notation for an additional year will also ensure the Student knows that she may be watched more closely upon her return to the University, thereby encouraging her to abide by the rules.
13. The third factor to consider is 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.
14. The fourth factor to consider is whether there are any extenuating circumstances surrounding the commission of the offence. Counsel for the Student argued that there were unique and highly exceptional circumstances in this case, as follows: this was the Student's first offence; the Student had shown honesty and integrity throughout this process; the Student had not made any admissions of liability; and the Student had not been caught red-handed. Other than this being the Student's first offence, none of these circumstances weigh in the Student's favour. The Student had a right to defend herself, but the Panel has found that the Student was not truthful in doing so. This cannot be twisted into a mitigating factor.
15. The fifth factor to consider is the detriment to the University occasioned by the offence. Fortunately, the Student's misconduct was detected relatively quickly, thanks to the work of the exam markers. However, the evidence in this case showed that the University undertakes significant and expensive measures to protect the integrity of examinations, including through comprehensive processes

to ensure that the exams are not leaked ahead of time. This kind of misconduct is a sad reminder of why the University must go to these lengths.

16. Finally, the Panel considered 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 very seriously. In this case, counsel for the Student submitted that general deterrence should not be a great concern because the Student was caught quickly. She said the fact the Student was caught is proof that the system works. The Panel disagrees. The system will be shown to be working when students stop cheating. That is when we can have some degree of faith that all students, no matter how desperate or cornered they may feel, realize that cheating has consequences that are worse than not cheating. That this Student was caught does not show that the system works. Instead, it shows why a significant sanction is required for general deterrence.
17. The Panel considered these factors in light of what has been ordered in similar cases. While the determination of an appropriate penalty in every case 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.
18. At this Tribunal, cheating during exams, whether through the giving or receiving of unauthorized aid, generally results in what is sometimes called a "threshold" suspension of at least two years if it is a first offence. The exact length of suspension will depend on such factors as the student's cooperation, evidence as to mitigating factors, and the precise nature of the misconduct. While there is no mandatory minimum, and it is entirely possible for a student who cheats on an exam to receive a suspension of less than two years, there would probably have to be clear evidence of very significant mitigating factors for that to be appropriate. No such mitigating factors were present in the current case.

19. The Panel accepted that a two-year suspension (and a corresponding notation for three years) was the appropriate sanction for this misconduct. In terms of the timing of the suspension, the Panel recognized that there was a delay between the first hearing date and the sanction hearing date that was not attributable to the Student. Accordingly, the Panel thought it appropriate to deem the suspension to have commenced May 1, 2017 (when the reasons for decision on finding were released).
20. Accordingly, the Panel made an order as follows:
- A. THAT the Student is guilty of one count of unauthorized assistance, contrary to section B.I.1(b) of the *Code of Behaviour on Academic Matters*;
 - B. THAT the Student receive a final grade of zero in MAT223H1F in Fall 2015;
 - C. THAT the Student be suspended from the University for a period of two years, commencing on May 1, 2017 and ending on April 30, 2019;
 - D. THAT the sanction be recorded for a period of three years on the Student's academic record and transcript to the effect that she was sanctioned for academic misconduct, commencing on May 1, 2017 and ending on April 30, 2020; and
 - E. 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 2nd day of August , 2017



Johanna Braden, Chair