THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on February 14, 2013,

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] R[redacted]

REASONS FOR DECISION

Hearing Date: Monday March 31, 2014

Members of the Panel:

Ms. Sarah Kraicer, Barrister and Solicitor, Chair
Professor Ernest Lam, Faculty Panel Member
Mr. Afshin Ameri, Student Panel Member

Appearance:
Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland Barristers
Ms. Lucy Gaspini, Manager, Office of Academic Integrity and Affairs, University of Toronto Mississauga Campus
Ms. Marija Stankovic, Instructor, AST 201: Stars and Galaxies (Winter 2012)

In Attendance:
Ms. Sinéad Cutt, Office of Appeals, Discipline and Faculty Grievances

Not In Attendance:
Mr. S[redacted] R[redacted], the Student

1. The Trial Division of the University Tribunal was convened on March 31, 2014, to consider charges brought by the University of Toronto (the "University") against Mr. S[redacted] R[redacted] (the "Student") under the *University of Toronto Code of Behaviour on Academic Matters, 1995* (the "*Code*").

Preliminary Issue: Proceeding in Absence of the Student

2. Neither the student nor a representative of the Student attended the hearing at the scheduled time and place. The Tribunal waited 10 minutes after the scheduled time for the Student to appear and he did not do so.

3. The University proposed to proceed in the Student's absence. The onus of proof is on the University under the *Statutory Powers Procedure Act* and the University Tribunal Rules of Practice and Procedure (the "Rules") to establish that it provided the Student with reasonable notice of the hearing.

4. The University filed evidence from Janice Patterson, legal assistant at Paliare Roland, counsel for the University, and from Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances, with the Office of the Governing Council of the University. This evidence was directed to the communications between these offices and the Student regarding the charges against him and the scheduling of the Hearing in this matter.

5. Under the Policy on Official Correspondence with Students, students are responsible for providing a current postal address and University-issued electronic mail account in the Repository of Student Information (ROSI). They are also expected to monitor and retrieve their mail on a frequent and consistent basis.

6. The Rules of Practice and Procedure provide that a notice of hearing may be sent to a student "by sending a copy of the document by courier to the student's mailing address contained in ROSI" or "by emailing a copy of the document to the student's e-mail address contained in ROSI" (Rules 9(b) and 9(c)).

7. The Student's mailing address in ROSI is indicated as [redacted] until February 28, 2013 (the "Toronto mailing address"). His permanent address is indicated as [redacted] (the "Lahore address"). The Student's email address is listed as s[redacted].r[redacted]@mail.utoronto.ca (the "email address") His international telephone number is listed as [redacted] (the "international telephone number").

8. On February 14, 2013, the University emailed the Student at the email address advising him that he was charged with offences under the Code and enclosing the charges. On February 15, 2013, the University sent further documents relating to the charges to the Student to his email address and by courier to the Toronto mailing address.

9. On July 22, 2013, a law clerk for counsel to the University sent a package of documents relevant to the charges by courier to the Student's Toronto mailing address. The courier was unable to deliver the package, and advised the law clerk that the Student did not live at that address. The law clerk then emailed the same documents on August 16, 2013 to the Student's email address, and sent them also via courier to the Lahore address. The courier advised that the package was delivered in Lahore and signed for by "R[redacted] A[redacted]" on August 19, 2013.

10. The University and its counsel then sought to schedule the hearing in this matter. After sending the Student a number of emails to the email address in August and September of 2013 regarding possible dates and receiving no response, on September 24, 2013 the University sent the Student a Notice of Hearing for a hearing scheduled on Monday, November 18, 2013 at 5:45 p.m. by email to the email address and by courier to the Toronto mailing address.

11. On Monday November 11, 2013 counsel to the University attempted to contact the Student by telephone at the international phone number. Immediately after she hung up the phone, the Student called back. The Student advised that he was currently

in a village in Pakistan. He confirmed that he had received the package of disclosure documents sent to the Lahore address. He stated that he had not received the Notice of Hearing for November 18, 2013. While it is not apparent why he would not have received the emailed Notice of Hearing, he would not have received the couriered Notice of Hearing because he was no longer at the Toronto mailing address.

12. The Student advised that he would like to participate in the hearing, but could not do so on November 18, as he could not return to Toronto and did not have ready access to the internet. The Student confirmed that the best number to reach him at was on his cell phone at the international phone number and that the best way to send him correspondence was by email to the email address and to call him at the international phone number to let him know that an email had been sent.

13. Following the November 11 phone call, the University agreed to adjourn the hearing and the hearing was adjourned without a new date on consent by Tribunal Chair Lax on November 14, 2013.

14. On November 14, 2013, University counsel made several attempts to call the Student at the international phone number, but was unsuccessful. Counsel sent an email to the student at the email address confirming its agreement to the adjournment, and reminding the Student that he was responsible for monitoring his phone and emails, that if he could not be reached by phone or email, the University would take steps to schedule the hearing and if he did not attend the hearing, could take the position that the hearing should proceed in his absence.

15. Counsel for the University made numerous further attempts to contact the Student by telephone and email during the week of November 18, 2013 to reschedule the hearing. She reached him by phone on November 25, 2013. The Student stated that he was aware of the University counsel's attempts to phone him, and confirmed that the only way to reach him was by the international phone number, and that he was no longer in Lahore. Despite her request, the Student did not provide an updated

mailing address. He advised that the best way to communicate with him by writing was to email him and send a text message to the international cell phone number telling him to check his email, and that this would be effective.

16. Counsel to the University emailed, texted and called the Student on multiple occasions from November 25, 2013 to February 26, 2014 to schedule a new date for the hearing. The Student did not respond to these communications. Indeed there has been no communication from the Student since the November 25, 2013 phone call.

17. On February 26, 2014, the University sent a Notice of Hearing for the scheduled date of Monday, March 31, 2014 at 5:45 p.m. to the Student by email. On the same day, counsel for the University sent two text messages to the Student's international phone number stating that "a notice of hearing for March 31, 2014 has been sent to you at s[redacted].r[redacted]@mail.utoronto.ca." In addition, the University sent the Notice of Hearing by courier to the Lahore address on March 3, 2014. The courier slip indicates that it was received on Saturday March 8, 2014 by "S[redacted]".

18. The content of the Notice of Hearing for March 31, 2014 complies with the requirements of the *Statutory Powers Procedure Act* and the Rules, including the required notice that the proceeding could proceed in the Student's absence if he failed to appear. Many of the emails sent by counsel to the University to the Student during the period of February 2013 to February 2014 also included a similar warning to the Student about the potential consequences of not appearing at the scheduled hearing.

19. As the Student had in the November 11, 2013 conversation indicated that he might wish to participate in the hearing via Skype rather than in person, and despite not receiving any responses from the Student from its communications since November 25, 2013, the University sought and obtained a Direction from the Chair of this panel on March 17, 2014 permitting the hearing to be held as an electronic hearing, on certain conditions, including that the Student advise that he consents in advance of the March 31 hearing date to the hearing being held as an electronic hearing. University Counsel

emailed, texted and attempted to call the Student in advance of the motion for Direction, and emailed and texted the Direction to the Student after it had been issued. No response from the Student was received.

20. Evidence from the Rogers Communications website was filed demonstrating that the University followed the requisite procedures for sending text messages to an international number for a cell phone in Pakistan in all of its communications to the Student subsequent to the November 25 phone call, when he indicated that he would be monitoring his texts for messages.

21. The Tribunal has considered the evidence before it and the submissions of counsel and has concluded that the Student has been given reasonable notice of the hearing in compliance with the notice requirements in the *Statutory Powers Procedure Act* and under the Rules. The Notice of Hearing dated February 26, 2014 scheduling this hearing for March 31, 2014 at 5:45 p.m. was sent to the Student via email to the email address listed in ROSI, as authorized by Rule 9(c). The Student confirmed in November 2013 that was an effective current email address and the best way to reach him through written communication. In addition, consistent with the Student's own request, University counsel sent texts to the Student's international cell phone number alerting him that the Notice of Hearing for March 31, 2014 had been emailed to him. Further, the Notice of Hearing was sent via courier to the Student's permanent Lahore address and received by "S[redacted]". While the Student had advised University counsel in November that he no longer was in Lahore, he also confirmed that he had received a package at that address previously.

22. In addition to the Notice of Hearing itself, the University counsel sent multiple texts and emails to the Student in November 2013 and March 2014 referring to the hearing date of March 31, 2014, and alerting him to the fact that if he did not appear, the hearing could proceed in his absence

23. The Tribunal determined it would proceed to hear the case on its merits.

The Charges

24. The Charges and Particulars are as follows:

1. On March 9, 2012, you knowingly obtained unauthorized assistance in Midterm 2 in AST201H5 (the "Course"), contrary to section B.I.1(b) of the Code.

2. On March 9, 2012, you knowingly represented as your own an idea or expression of an idea or work of another in Midterm 2 in the Course, contrary to section B.I.1(d) of the Code.

3. On March 9, 2012, you knowingly did or omitted to do something for the purpose of aiding or assisting [M.I.] to commit the section B.I.1(b) offence of obtaining unauthorized assistance in Midterm 2 in the Course, contrary to section B.II.1(a)(ii) of the Code.

4. On March 9, 2012, you knowingly abetted, counselled, procured or conspired with Mr. [I] to commit or be a party to the section B.I.1(b) offence of obtaining unauthorized assistance in Midterm 2 in the Course , contrary to section B.II.1(a)(iv) of the Code.

5. On March 9, 2012, having an intent to commit an offence under the Code, you did or omitted to do something for the purpose of carrying out your intention to obtain unauthorized assistance and/or to represent as your own an idea or expression of an idea or work of another in connection with Midterm 2 in the Course, contrary to section B.II.2 of the Code.

6. In the alternative, on March 9, 2012, you 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 Midterm 2 in the Course, contrary to section B.I.3(b) of the Code.

Particulars of the offences charged are as follows:

1. At all material times you were a student at the University of Toronto Mississauga. In Winter 2012, you enrolled in the Course, which was taught by Marija Stankovic.

2. On March 9, 2012, you wrote Midterm 2 in the Course (the "Midterm"), which was worth 15% of your final grade in the Course.

3. You were aware that collaborating and communicating with other students during the Midterm was not permitted.

4. During the Midterm, you:

   a. obtained unauthorized assistance from Mr. [I] by communicating with Mr. I[redacted]and/or copying from Mr. [I]'s test paper;

   b. copied some or all of Mr. [I]'s answers on your test paper;

   c. communicated with Mr. [I] and/or permitted Mr. [I] to copy some or all of your answers, for the purpose of aiding or assisting Mr. Ibrahim to obtain unauthorized assistance in the Midterm;

   d. communicated with Mr. [I] and/or permitted Mr. [I] to copy some or all of your answers, thereby abetting, counseling, procuring or conspiring with Mr. [I] to obtain unauthorized assistance in the Midterm; and

   e. communicated or attempted to communicate with [N.S], in an attempt to copy one of Ms. [S]'s answers on your test paper.

5. The Midterm was comprised of a Scantron sheet for the answers to the multiple choice portion of the test, and a test paper that included the answers to the short answer portion of the test. Your answers on the Scantron sheet were identical to those of Mr. [redacted]. Your answers to the short answer portion of the Midterm were virtually identical those of Mr. [I].

6. You engaged in the foregoing conduct for the purpose of obtaining academic credit or academic advantage.

25. At the outset of the Hearing, Counsel for the University indicated that it was withdrawing charges 4 and 5, and that if the Tribunal were to find the Student guilty of charge 1, it would withdraw charges 2, 3 and 6.

Evidence

26. The Tribunal heard the evidence of Ms. Marija Stankovic, the Instructor of AST201H5 (Stars and Galaxies) in the Winter 2012 Term at the Mississauga campus. The Student was enrolled in this course.

27. Course requirements included two midterm tests, each worth 15%. The second midterm was held on March 7, 2012. Ms. Stankovic was present at the midterm that day, which was held in an amphitheatre-style lecture room. Ms. Stankovic stated that test booklets and Scantron answer sheets were placed at every other seat, and that different versions of the test were distributed to alternating seats, to minimize the risk of students copying from one another during the test. Students were instructed and were aware that they are not permitted to speak to one another or to collaborate during the midterm.

28. Toward the end of the test period, a student, N.S., called Ms. Stankovic over and indicated that the two male students sitting beside one another in the row behind her were talking to each other throughout the test in a language she did not understand, and that one of the students had asked her to flip over her test booklet to show them her answer to one of the questions. N.S. documented her observations both on her own

test paper during the midterm, and in subsequent email messages to Ms. Stankovic and the Dean's Office. Ms. Stankovic did not witness this behaviour herself during the midterm, but noted their names in order to check their midterm answers later. The students were S[redacted] R[redacted] and M.I.

29. The midterm test answers of the Student and M.I. show marked similarities. Despite the fact that they sat in adjoining seats, they submitted the same version of the test. The Scantron portions of their test results are identical, with the same 4 incorrect answers. The short answer portions are not only identical, but 3 of the 4 answers are incorrect in an identical manner, consisting of the same diagrams and written answers that do not answer the test questions at all.

30. It is evident from a review of the test answers submitted by the Student and M.I. that either they collaborated extensively, or one or both of these students copied answers from the other.

31. The Tribunal heard evidence from Ms. Lucy Gaspini, Manager of the Office of Academic Affairs, that the office of the Dean of the University of Toronto Mississauga emailed the Student in May and June of 2012 to arrange a meeting to discuss the allegation that he had obtained or provided unauthorized assistance in relation to this midterm test. No meeting took place. The Student responded by email on June 8, 2012 that he was in Pakistan, and would be returning to Toronto the first week of September. The Dean's office emailed the Student in August and September to advise the Dean's meeting was rescheduled for Tuesday October 2, 2012. The Student did not respond further and did not appear at the scheduled meeting.

32. The University served M.I. with a summons to witness prior to this hearing, but M.I. did not appear. The Tribunal received the affidavit of Elizabeth Kobluk, an Undergraduate Assistant with the Department of Chemical and Physical Sciences at the University of Toronto Mississauga, regarding a disciplinary meeting and subsequent sanction taken with respect to M.I. related to this incident. Ms. Kobluk attended a meeting between the Dean's Designate (the late Professor Scott Graham) and M.I. on

May 28, 2012. Meeting notes made by Ms. Kobluk and Professor Graham contemporaneously to the meeting indicate that M.I. admitted at the meeting that he and the Student had decided to collaborate and share answers during the midterm. At the conclusion of the meeting, M.I. formally admitted that he was guilty of providing and obtaining unauthorized assistance in order to complete the midterm. The University imposed the following sanction on M.I.:

- An assigned final grade of 40 in the course
- An annotation on transcript of "Mark reduced in the course AST201H5S, 2012(1) due to academic misconduct" for 12 months

Decision of the Tribunal

33. Charge 1 under subsection B.I.1(b) of the Code covers both obtaining unauthorized assistance from another person, or, through the operation of subsection B.II.1.(a), being a party to the offence of aiding or assisting another student to obtain unauthorized assistance. The clear similarities between the test papers, the evidence from Ms. Stankovic, and the notes of N.S. of the discussions between the Student and M.I. during the test establish that the Student both obtained unauthorized assistance from M.I., and provided M.I. with unauthorized assistance during the midterm. This evidence alone is sufficiently cogent and compelling to meet the University's burden of proof in this matter. The evidence of the discipline actions against M.I. and M.I.'s admissions about the collaboration that took place during the test is reliable and, in the absence of any explanation from the Student, is additional evidence supporting our finding that the Student obtained and provided unauthorized assistance during the midterm test.

34. The Tribunal finds that the Student is guilty of knowingly obtaining unauthorized assistance in a term test, contrary to section B.I.1.(b) of the Code.

35. The balance of the Charges were withdrawn by the University.

Decision of the Tribunal on Penalty

36. The Student committed a previous academic offence in the Spring Term 2011 when he was found to have his cell phone at his desk at the commencement of the final examination in MGM102H5S. The Student admitted the offence of possessing an unauthorized aid during the MGM102H5S final examination contrary to Section B.I.1.(b) of the Code, and accepted the sanction of a written reprimand and an annotation on his academic transcript of the misconduct for 6 months ending on November 1, 2011. He was advised that his name would be entered into the Dean's database and "should it come to my attention again, the allegation will be treated as a second offence and sanctioned accordingly".

37. At this hearing, the University sought the following penalty:

- A mark of 0 in the course,
- 2½ years suspension from the University from the date of the hearing,
- Notation of the sanction on the Student's transcript for 4 years, and
- Reporting of the decision to the Provost, with the Student's name withheld, for publication of a notice of the decision and the sanction

38. The University made the following submissions on penalty. This case should be treated as a second offence, even though the transcript annotation from the first offence had expired. No evidence of mitigating circumstances, good character, remorse or insight has been presented. The Student sought to avoid or delay this hearing, by failing to respond to communications generally about this proceeding, and by requesting an adjournment of this hearing to allow him to participate, and then failing to acknowledge or participate in the rescheduled date. The nature of the misconduct is serious as it was deliberate and intentional (although not premeditated) and attacks the integrity of the University evaluation process. A strong penalty is necessary for general deterrence in the University community as the use of unauthorized aids is often difficult to detect through monitoring. The University submitted that the proposed penalty was appropriate despite the significantly lesser penalty issued to M.I. for essentially the same

misconduct, because M.I. participated in the Dean's meeting and admitted guilt at the decanal level. The University presented several cases to the Tribunal and submitted that they are consistent with the proposed penalty in the circumstances of this case.

39. The Tribunal has considered the University's submissions, the evidence, and the cases, in light of the principles and factors relevant to penalty set out in the *University of Toronto and Mr. C* (November 5, 1976). The Tribunal has determined that the University's proposed penalty is appropriate, with the exception that the suspension should be for 2 years and 5 months, ending on August 30, 2016, rather than 2 ½ years. This shorter period would allow the Student to enrol in courses in September 2016 for the Fall 2016 Term should he wish to do so.

40. The Tribunal acknowledges that the Student's prior disciplinary offence was minor, and that in the previous offence he did not actually use the cell phone during the examination. The Tribunal is troubled, however, by the fact that the Student was not deterred by an earlier reprimand for possessing an unauthorized aid at an examination from again obtaining unauthorized assistance during a midterm test the following year. This history suggests that there is a likelihood that the Student is at risk of repeating similar misconduct in the future.

41. The Student did not respond to requests to participate in the decanal meeting, and did not participate in this hearing, and as a result there is no evidence before the Tribunal of any extenuating or mitigating factors, no expression of insight or remorse, or any positive indications as to the Student`s character. The evidence before us of the University`s difficulties in communicating with the Student about these proceedings, his request for an adjournment in order to participate in this hearing, and his subsequent failure to acknowledge or respond to correspondence about rescheduled dates, suggest that he sought to delay and avoid these proceedings.

42. The nature of the offence is a serious one, and the offence causes significant detriment to the University. The Student copied and shared answers during a test with another student in order to obtain a more favourable grade that he did not deserve. His

conduct is unfair to other students whose evaluation depends on their own hard work and attention to their studies. It undermines the integrity of the University evaluation process, and the honesty that must underly the teaching and learning relationship. As this kind of behaviour can be difficult to detect, it is important that the penalty be sufficient to deter others from similar misconduct. The seriousness of the offence is mitigated to a small degree by the fact that the conduct was likely not premeditated, but appears to have been a spontaneous misjudgment during the test itself.

43. The Tribunal has taken into account the fact that a lesser penalty was imposed on M.I. for essentially the same conduct. In our view, there are important differences in the circumstances of the two cases that warrant a more significant penalty for the Student. It was M.I.`s first disciplinary offence. He cooperated with the University, participated in a Dean`s meeting, and admitted guilt at the decanal level, demonstrating a measure of insight and remorse, and a preparedness to take responsibility for his conduct at an early stage of the discipline process. The Student shares none of these circumstances.

44. The Tribunal has reviewed a number of cases relied upon by the University in support of the penalty sought (*C.* (March 20, 2014); *Ms K* (Case 428, 2006); *Z.* (November 15, 2010); *S.J.* (January 21, 2010); *Y.W. and D. L.* (May 31, 2005); *S.* (February 8, 2012); and *K.* (October 12, 2010)). While none of these cases is exactly on point, and none is binding, consistency is an important consideration in penalty, and the penalty determined by the Tribunal is in our view generally in line with these cases. All of these cases provide for a penalty of zero in the course, a suspension ranging from 2 to 5 years, and a transcript annotation ranging from 4 years to graduation.

45. In the present circumstances, the Tribunal has determined that the fair and appropriate length of suspension is 2 year 5 months, and the length of the transcript annotation is 4 years. The suspension and annotation should run from the date of the hearing in this matter. While the Student is not currently enrolled at the University and has not enrolled in courses since the Winter 2012 term, his voluntary absence from the University is irrelevant to the penalty.

46. The Tribunal issued the following Order on March 31, 2014:

1. **THAT** Mr. R[redacted] is guilty of knowingly obtaining unauthorized assistance in an academic examination or term test, contrary to section B.I.1.(b) of the *Code*;

2. **THAT** the following sanctions shall be imposed on Mr. R[redacted]:

(a) he shall receive a final grade of zero in the course AST201H5S (Stars and Galaxies);

(b) he shall be suspended from the University of Toronto for 2 years and 5 months, from March 31, 2014 to August 30, 2016; and

(c) a notation shall be placed on his academic record and transcript for 4 years, from March 31, 2014 to March 30, 2018; and

3. **THAT** this case be reported to the Provost, with Mr. R[redacted]'s name withheld, for publication of a notice of the decision of the Tribunal and the sanction imposed.

Dated at Toronto, this 6 day of June, 2014

Ms. Sarah Kraicer, Co-Chair