

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on August 8, 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

B E T W E E N:

UNIVERSITY OF TORONTO

- and -

H [REDACTED] L [REDACTED] ([REDACTED] [REDACTED])

REASONS FOR DECISION

Date of Hearing: December 16, 2016

Members of the Panel:

Ms. Amanda Heale, Chair

Professor Pascal Riendeau, Faculty Panel Member

Ms. Grace Lee, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

In Attendance:

Ms. Lucy Gaspini, Manager, Academic Integrity & Affairs, Office of the Dean, University of Toronto, Mississauga (via Skype)

Dr. Jaimal Thind, Assistant Professor, Mathematical & Computational Sciences, University of Toronto, Mississauga

Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Office of Appeals, Discipline and Faculty Grievances

Mr. Sean Lourim, Technology Assistant, Office of the Governing Council

Not in Attendance:

Mr. H [REDACTED] L [REDACTED], the Student

Introduction

1. A hearing before the University Tribunal (the "Tribunal") was convened on December 16, 2016 to consider the Charges (as defined below) against the Student, H [REDACTED] L (the "Student").

The Charges

2. The charges against the Student (the "Charges"), including Particulars thereof are as follows:

- (a) On or about December 8, 2015, you knowingly used or possessed an unauthorized aid or aids in an academic examination, namely the final exam ("Exam") in MAT223H5F – Linear Algebra I ("Course"), in the form of a cell phone, contrary to section B.I.1(b) of the Code.
- (b) In the alternative, on or about December 8, 2015, 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 the Exam, contrary to section B.I.3(b) of the Code.

Particulars

3. The particulars of the offences charged are as follows:

- (a) At all material times, you were a registered student at the University of Toronto Mississauga.

- (b) In Fall 2015, you were a student in the Course.
- (c) On or about December 8, 2015 you wrote the Exam in the Course.
- (d) During the Exam you were found in possession of a cell phone which had not been placed in the sealed plastic bag provided to you in which you were required to place all electronic devices including cell phones for the duration of the Exam.
- (e) You knowingly used or possessed the cell phone as an unauthorized aid in the Exam.

Process

- 4. The Student did not appear at the hearing. Counsel for the University applied for an order that the hearing proceed in the absence of the Student.
- 5. Counsel for the University submitted the affidavit of Virginia Fletcher, a law clerk at Paliare Roland Rosenberg Rothstein LLP ("Paliare Roland"), which provided evidence of the service and attempted service of the Charges and Notice of Hearing upon the Student. Counsel for the University relied upon sections 9 and 17 of *The University Tribunal Rules of Practice and Procedure* (the "Rules") and upon sections 6 and 7 of the *Statutory Powers Procedure Act* (Ontario) as authority for the Tribunal to proceed in the absence of the Student, in light of the service and attempted service upon the Student as reflected in the evidence.

6. The Panel was satisfied that it was entitled to proceed in the absence of the Student and issued an order to that effect.

The Evidence

7. Counsel for the University focused on the first charge, that the Student knowingly used or possessed an unauthorized aid or aids in an academic examination.

8. The Panel heard evidence from Dr. Jaimal Thind, a professor at the University of Toronto. Dr. Thind taught the Course and held the Exam on December 8, 2015. Dr. Thind testified that the Student wrote the Exam. About 20 minutes before the end of the Exam, a teaching assistant heard the Student's cell phone ring and alerted Dr. Thind. Dr. Thind approached the Student to investigate and heard the phone ringing in the Student's pocket. Dr. Thind confiscated the phone and gave it to the Chief Presiding Officer of the Exam. Dr. Thind explained that the Chief Presiding Officer is "in charge of running the exam".

9. Dr. Thind also gave evidence that numerous warnings and reminders had been made available to students in the Course, (including in the University's rules and policies for writing exams and on the exam sheet itself), that cell phones and similar devices were considered unauthorized aids and were required to be turned off and placed in clear sealable plastic bags under their desks during the Exam. Dr. Thind indicated that this rule is expected to be followed in all exams at the University and that plastic bags are provided to students during exams for this purpose. Dr. Thind explained that there are various ways in which a cell phone can be used as an unauthorized aid during an exam, including the availability of online tools that could solve the types of problems included on the Exam.

10. Counsel for the University submitted the affidavit of Sasha Weiditch, an invigilator at the University of Toronto Mississauga Campus. Ms. Weiditch gave evidence that she was an invigilator and the Chief Presiding Officer during the Exam, during which the Student's cell phone was handed to her by one of the Course instructors, who told her it had been confiscated from the Student. Ms. Weiditch prepared an anomaly report describing the discovery and confiscation of the phone, which description is consistent with the account given by Dr. Thind. Ms. Weiditch prepared a "Possession of an Unauthorized Aid During a Final Exam" form and reviewed the form with the Student after he finished writing the Exam. The Student signed the form and had his cell phone returned to him. The form states that the Student acknowledges that his unauthorized aid was confiscated from him during the Exam and is being returned to him on his signing the form.

11. Ms. Lucy Gaspini, Manager, Academic Integrity & Affairs for the University of Toronto - Mississauga, gave evidence via Skype. Ms. Gaspini gave evidence that the Student has, as of May 1, 2016, been placed on three years' academic suspension. The Student had also previously been placed on a one-year academic suspension in 2014. These academic suspensions relate to the Student's failure to maintain a minimum grade point average during his time at the University.

Decision

12. The evidence leads the Panel to the conclusion that the Student knowingly used or possessed an unauthorized aid in the Exam, and in doing so contravened section B.I.1(b) of the *Code of Behaviour on Academic Matters*.

13. While there is no evidence that the Student actually used his phone to assist him with writing the Exam, section B.I.1(b) makes it an offence to possess an unauthorized aid, whether or not the aid is used. The Student's phone was capable of use as an aid, and no aids were permitted in the Exam. The Panel is satisfied on the evidence that the Student was made aware that his cell phone was considered to be an unauthorized aid and was required to be turned off and kept in a sealed plastic bag under his desk.

Penalty

14. Counsel for the University made submissions as to the appropriate sanction. Counsel sought a penalty of a grade of 0 in the Course for the Student; a suspension of the Student from the University for two years, beginning May 1, 2018 and ending April 30, 2020; a notation on the Student's transcript until April 30, 2021; and a publication of the outcome of this case with the name of the Student withheld.

15. In the University's view, a two-year suspension has evolved in the Tribunal's jurisprudence as the ordinary suspension in similar circumstances and was the most appropriate sanction in these circumstances. Counsel referred the Panel to a number of other cases in which such sanctions had been imposed. Given that the Student has already been placed on a three year academic suspension as of May 1, 2016, however, Counsel requested that the suspension not begin to run until May 1, 2018 – that is, that it overlap with, rather than running concurrently with, the Student's academic suspension.

16. The conduct in this case was serious. The use of unauthorized aids such as personal devices is difficult to detect and accordingly, and particularly in light of evolving

technology, poses a significant threat to the integrity of the evaluation processes of the University. The Student also failed to participate in the process or offer any response to mitigate or explain his conduct.

17. The suspension sought by the University would bar the Student from returning to studies at the University until May, 2020. Counsel submitted that this was warranted because a sentence running concurrently with the Student's academic suspension would not have any deterrent effect on the Student.

18. The Panel considers that the University's requested suspension would have an unduly harsh impact on the Student. This was the Student's first offence. Although his conduct was serious, there was no evidence that the Student had in fact used or intended to use his phone during the Exam. Although it is clear that the mere possession of an aid is an academic offence, and that in some (but not all) cases of such possession the Tribunal has imposed two-year suspensions, the exam paper written by the Student, which was presented as an exhibit in the hearing, states that a "typical penalty" for an academic offence involving an unauthorized aid found on your person "may cause you to fail the course".

19. The Panel accordingly determined that the requested suspension would begin January 1, 2017 and end December 31, 2018, while the sanction would be recorded on the Student's transcript until May 1, 2020, being one year after the Student would be permitted to return to studies at the end of his academic suspension. The Panel therefore made the following order.

Order

20. **THAT** the hearing may proceed in the absence of Mr. **L**;
21. **THAT** the Student is guilty of one count of possessing an unauthorized aid, contrary to sections B.I.1(b) of the *Code of Behaviour on Academic Matters*;
22. **THAT** the Student receive a final grade of zero in MAT223H51 in Fall 2015;
23. **THAT** the Student be suspended from the University for a period of two years, commencing on January 1, 2017 and ending on December 31, 2018;
24. **THAT** the sanction be recorded on the Student's academic record and transcript to the effect that he was sanctioned for academic misconduct, commencing on December 16, 2016 and ending on May 1, 2020; and
25. **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 16th day of March, 2017,



Ms. Amanda Heale, Chair