

**THE UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL**

IN THE MATTER OF charges of academic dishonesty filed on July 28, 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:

THE UNIVERSITY OF TORONTO

– AND –

A [REDACTED] K [REDACTED]

REASONS FOR DECISION

Hearing Date: March 21, 2017

Members of the Panel:

Mr. Michael Hines, Barrister and Solicitor, Chair

Dr. Joel Kirsh, Faculty Panel Member, Faculty of Medicine

Ms. Yusra Qazi, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland Barristers

Ms. Tina Saban, Law Student for the Student, Downtown Legal Services

In Attendance:

Mr. A [REDACTED] K [REDACTED], Student

Ms. Lucy Gaspini, Manager Academic Integrity, Office of the Dean, University of Toronto – Mississauga

Mr. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances

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

The Facts

1. This hearing arose out of charges of academic misconduct dated July 28, 2016 ("Charges") filed by the Provost of the University of Toronto (the "Provost") under the *Code of Behaviour on Academic Matters* ("Code"). For the purposes of this hearing the Provost, and A█████ K█████ ("Mr. K█████") prepared an Agreed Statement of Facts ("ASF") and a joint book of documents ("JBD").

2. Mr. K█████ confirmed that he signed the ASF freely and voluntarily, knowing of the potential consequences he faced.

3. Mr. K█████ also acknowledged that he had received reasonable notice of this hearing. The Notice of Hearing for March 21, 2017 set out the Charges. They read as follows:

1. On or about March 31, 2015, you knowingly submitted, without the knowledge and approval of the instructor to whom it was submitted, an assignment in CSC108H5 for which credit had previously been obtained, contrary to section B.I.1(e) of the Code.

2. In the alternative, on or about March 31, 2015, you knowingly obtained unauthorized assistance in connection with an assignment that you submitted in CSC108H5, contrary to section B.I.1(b) of the Code.

3. In the further alternative, on or about March 31, 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 an academic advantage in connection with an assignment that you submitted in CSC108H5, contrary to section B.I.3(b) of the Code.

4. On or about December 12, 2015, you knowingly used or possessed an unauthorized aid, or obtained unauthorized assistance, in the final examination in CSC108H5, contrary to section B.I.1(b) of the Code.

5. In the alternative, on or about December 12, 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 an

academic advantage in connection with the final examination in CSC108H5, contrary to section B.I.3(b) of the Code.

4. As stated above, the parties provided the Panel with an Agreed Statement of Facts ("ASF") concerning the charges. Significantly, the ASF included a plea of guilty. The ASF reads as follows:

Guilty plea

1. Mr. K■■■ admits that he received a copy of the charges filed by the Provost. A copy of the charges is included in the JBD at **Tab 1**.
2. Mr. K■■■ admits that he received a copy of the notice of hearing in this matter and that he has received reasonable notice of this hearing. A copy of the notice of hearing is included in the JBD at **Tab 2**.
3. Mr. K■■■ waives the reading of the charges filed against him, and pleads guilty to charges #2 and #4.
4. The Provost agrees that if the Tribunal convicts Mr. K■■■ of charges #2 and #4, the Provost will withdraw charges #1, #3 and #5.
5. At all material times, Mr. K■■■ was a registered student at the University of Toronto Mississauga. A copy of Mr. K■■■'s academic record, as of March 14, 2017, is included in the JBD at **Tab 3**.

CSC108H5 in Fall 2014: Assignment 3 (Previously Resolved)

6. In Fall 2014, Mr. K■■■ enrolled in CSC108H5 (Introduction to Computer Programming), which was taught by Professor Daniel Zingaro, Andrew Petersen and Tiffany Tong. A copy of the course syllabus for the course in Fall 2014 is included in the JBD at **Tab 4**.
7. Students in the course were required to submit Assignment 3, which was worth 9% of their final grade, by November 25, 2014. A copy of the instructions for Assignment 3 in Fall 2014 is included in the JBD at **Tab 5**.
8. Mr. K■■■ submitted four files in the course in Fall 2014 as part of Assignment 3: `poetry_functions`, `poetry_reader`, `test_check_syllables`, and `test_count_lines`. A copy of the code that he submitted for Assignment 3 in Fall 2014 is included in the JBD at **Tab 6**.
9. Mr. K■■■ subsequently admitted that he had committed the offence of unauthorized assistance in connection with his Assignment 3 in Fall 2014, and was sanctioned in respect of the offence.

CSC108H5 in Winter 2015: Assignment 3

10. In Winter 2015, Mr. K■■■ enrolled in CSC108H5 (Introduction to Computer Programming) again. The course was taught by Professor Zingaro in Winter 2015. A copy of the course syllabus for the course in Winter 2015 is included in the JBD at **Tab 7**.
11. Students in the course were required to submit Assignment 3, which was worth 9% of their final grade, by March 31, 2015. A copy of the instructions for Assignment 3 in Winter 2015 is included in the JBD at **Tab 8**. The instructions for Assignment 3 in Winter 2015 were similar in certain respects to Assignment 3 in Fall 2014.
12. On or about March 31, 2015, Mr. K■■■ submitted four files in the course in Winter 2015 as part of Assignment 3: poetry_functions, poetry_reader, test_check_vowel_phoneme_counts, and test_count_vowel_phonemes. A copy of the code that he submitted for Assignment 3 in Winter 2015 is included in the JBD at **Tab 9**.
13. On review, Professor Zingaro determined that the code that Mr. K■■■ had submitted for Assignment 3 in Winter 2015 (at Tab 9) contained code that was the same or substantially similar to code that Mr. K■■■ had previously submitted for Assignment 3 in Fall 2014 (at Tab 6). Copies of the code that Mr. K■■■ submitted in Fall 2014 and Winter 2015, which have been highlighted to show the similarities between the two, are included in the JBD at **Tabs 10 and 11**, respectively.
14. Professor Zingaro observed that the differences between the code that Mr. K■■■ submitted in Fall 2014 and Winter 2015 were minor in nature (e.g., changes in the variables used) or arose from the differences in the assignments. Professor Zingaro had previously advised students in the Winter 2015 course that if they wished to use code that they had written in the past, they were required to include citations to their previous code in their assignment. Mr. K■■■'s Assignment 3 in Winter 2015 did not contain any citations.
15. On April 30, 2016, Mr. K■■■ met with Professor Zingaro to discuss the allegation of academic misconduct.

CSC108H5 in Fall 2015: Final Examination

16. In Fall 2015, Mr. K■■■ enrolled in CSC108H5 (Introduction to Computer Programming) again. The course was taught by Tiffany Tong. A copy of the course syllabus for the course in Fall 2015 is included in the JBD at **Tab 12**.

17. On December 12, 2015, starting at 1:00 pm, Mr. K■■ wrote the final examination in the Course. The final examination was worth 45% of Mr. K■■'s final grade in the Course.
18. Students were not permitted to have any aids in the final examination. Students were specifically advised by the exam invigilators that their cell phones should be kept either in their backpacks or in clear plastic bags that were provided to them.
19. A copy of Mr. K■■'s examination paper is included in the JBD at **Tab 13**. The front of the examination paper included the following warning to students:

The University of Toronto Mississauga and you, as a student, share a commitment to academic integrity. You are reminded that you may be charged with an academic offence for possessing any unauthorized aids during the writing of an exam. Clear, sealable, plastic bags have been provided for all electronic devices with storage, including but not limited to: cell phones, SMART devices, tablets, laptops, calculators, and MP3 players. Please turn off all devices, seal them in the bag provided and place the bag under your desk for the duration of the examination. You will not be able to touch the bag or its contents until the exam is over.

If, during an exam, any of these items are found on your person or in the area of your desk other than in the clear, sealable, plastic bag, you may be charged with an academic offence. A typical penalty for an academic offence may cause you to fail the course.

20. During the examination, Mr. K■■ signed out to use the washroom at 1:54 pm. He signed back into the examination room at 2:01 pm. A copy of the form that Mr. K■■ signed, which recorded his washroom break, is included in the JBD at **Tab14**.
21. When Mr. K■■ signed out to use the washroom, he was accompanied by one of the Chief Presiding Officers of the examination, Edward Ho. While Mr. K■■ was in the washroom, Mr. Ho noticed that Mr. K■■ was taking a longer than usual amount of time, and asked if he was alright. Mr. K■■ responded that he was.
22. When Mr. K■■ returned to the examination room, Mr. Ho asked Mr. K■■ to empty his pockets. Mr. K■■ produced a wallet from his left jean pocket but did not immediately produce his cell phone, which was in his right jean pocket. Mr. Ho saw the cell phone and asked Mr. K■■ to produce it, which he did. The cell phone was off at the time.

23. Mr. Ho completed an examination anomaly report setting out what had happened. Mr. Ho asked Mr. K■■■ to review the report and let him know if Mr. K■■■ disagreed with what was stated in the report. Mr. K■■■ did not disagree with the contents and signed the report. A copy of the examination anomaly report completed by Mr. Ho and signed by Mr. K■■■ is included in the JBD at **Tab 15**.
24. Following the examination, Mr. K■■■ signed a Possession of an Unauthorized Aid During a Final Exam form before the cell phone was returned to him. A copy of the signed form is included in the JBD at **Tab 16**.

Dean's Designate Meeting

25. On March 29, 2016, Mr. K■■■ met with Professor Michael Georges, Dean's Designate for Academic Offences. Mr. K■■■ acknowledges that Professor Georges gave him the warning that was required to be given under the *Code*.
26. Mr. K■■■ was represented by a law student from Downtown Legal Services at the meeting. During the meeting:
 - (a) Mr. K■■■ denied that he had committed an academic offence in connection with Assignment 3 in the course in Winter 2015.
 - (b) Mr. K■■■'s representative advised Professor Georges that Mr. K■■■ was not prepared to accept responsibility for the offence of using or possessing an unauthorized aid under section B.I.1(b) of the *Code* and that Mr. K■■■ was not prepared to enter any plea in respect of the alleged offence.
27. A copy of the Admission of Guilt forms signed by Mr. K■■■, indicating that he was pleading "not guilty" to the alleged offence in Assignment 3 in the course in Winter 2015 and that he was making "no plea" in respect of the final examination in the course in Fall 2015 is included in the JBD at **Tab 17**.

Admissions and Acknowledgements

28. Mr. K■■■ admits that, by incorporating portions of his code (for which he had obtained unauthorized assistance) in Fall 2014 in the code that he submitted for Assignment 3 in the course in Winter 2015, he knowingly obtained unauthorized assistance in connection with Assignment 3 in the course in Winter 2015, contrary to section B.I.1(b) of the *Code*.
29. Mr. K■■■ admits that he knowingly possessed his cell phone during the final examination in the Course and that his cell phone was an unauthorized aid under the *Code*. Accordingly, Mr. K■■■ admits that he

knowingly used or possessed an unauthorized aid in connection with the final examination in the Course, contrary to section B.I.1(b) of the *Code*.

30. Mr. K■■■ acknowledges that:
- (a) the Provost has advised Mr. K■■■ of his right to obtain legal counsel, and he has done so; and
 - (b) he is signing this ASF freely and voluntarily, knowing of the potential consequences he faces.

Finding of Guilt

5. As noted in the ASF, Mr. K■■■ waived the reading of the Charges and pled guilty to Charges 2 and 4. The Tribunal accepted this plea and registered a finding of guilt on Charges 2 and 4. On that basis, the Provost withdrew Charges 1, 3 and 5.

Penalty

6. The parties also provided the Tribunal with an Agreed Statement of Fact on Penalty. Through this, the Tribunal learned that Mr. K■■■ had, in December, 2014, been disciplined on a prior occasion, again for the offence of obtaining unauthorized assistance. On that occasion, Mr. K■■■ had admitted his guilt and had been assessed a mark of zero in the course in question. In concluding her December 3, 2014 letter of discipline, Professor Karshon, Chair of the Department of Mathematical and Computational Sciences stated:

Finally, you should be aware that any subsequent allegations of academic misconduct are usually referred to the Office of the Dean or the Tribunal for investigation.

7. The parties then made a joint submission on penalty. Specifically, the Provost and Mr. K■■■ submitted that the appropriate penalty in all the circumstances of the case was that the University Tribunal impose the following sanctions on Mr. K■■■:

- (a) a final grade of zero in the course CSC108H5 in Winter 2015;

- (b) a final grade of zero in the course CSC108H5 in Fall 2015;
- (c) a suspension from the University of Toronto for three years to commence May 1, 2017, and to end April 30, 2020;
- (d) a notation of the sanction on his academic record and transcript from the date of the Order until April 30, 2021.

8. The Parties further submitted that it would be appropriate for the Tribunal to report this case to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed in the University of Toronto newspapers, with the name of the student withheld.

9. As stated in, for example, the case of *S. M.* (Case No 819, June 8, 2016), a joint submission on penalty should only be rejected in circumstances where to give it effect would be contrary to the public interest or would bring the administration of justice into disrepute. In considering a joint submission on penalty, it is not the function of the Panel to determine whether or not it agrees with the proposed sanction in the sense of accepting that it would, itself, have imposed that sanction had the matter been left to it to decide on its own. Rather, its task is to determine whether the outcome falls within a range of reasonable outcomes, recognizing the institutional value, efficiency and importance of outcomes that are achieved through such joint submissions.

10. In this case, the Panel accepted without difficulty the reasonableness of the sanctions set out in paragraphs 5(a), 5(b), 5(c) and 6, above. It struggled, however, with the proposal set out in paragraph 5(d) – the imposition of a notation of the sanction on Mr. K■■■■'s academic record and transcript from the date of the Order only until April 30, 2021. The Panel debated the sufficiency of this sanction as compared to the imposition of a notation until his graduation from the University.

11. This concern was raised in our minds particularly in connection with the guidance provided in the Tribunal's cases regarding the need to consider the likelihood of recurrence in determining the appropriate (or, in our case, a reasonable) sanction.

Given Mr. K■■■■'s disregard of the warning he received from the Provost in the letter of December 3, 2014, we were concerned that the disappearance from his transcript of the penalties for which we are responsible would constitute something of an invitation to engage in further academic misconduct, particularly given the length of time it will take Mr. K■■■■ to complete his degree should he decide to re-enrol at the University after his suspension comes to an end.

12. Ultimately, however, we have concluded that this concern is not sufficient to overcome our obligation to respect the institutional value in accepting joint submissions. In this regard, we bear in mind that if Mr. K■■■■ chooses not to return to the University or does not graduate, a notation until graduation would effectively become a permanent academic scar. While such permanent records of misconduct are certainly not unprecedented, they are typically reserved for situations more egregious than the one that presently confronts us.

13. Accordingly, based upon the foregoing, and after hearing submissions by the parties, the Tribunal concluded that the sanction proposed by the parties fell within a reasonable range of sanctions for the offences committed. Accordingly, the Tribunal hereby orders:

1. **THAT** Mr. K■■■■ is guilty of the academic offences of:

- (a) Knowingly obtaining unauthorized assistance in connection with an assignment contrary to section B.I(1)(b) of the *Code of Behaviour on Academic Matters*; and
- (b) Knowingly using or possessing an unauthorized aid in an examination contrary to section B.I.1(b) of the *Code of Behaviour on Academic Matters*.

2. **THAT** the following sanctions shall be imposed on Mr. K■■■■:

- (a) a final grade of zero in the course CSC108H5 in Winter 2015;
- (b) a final grade of zero in the course CSC108H5 in Fall 2015;
- (c) a suspension from the University of Toronto for three years to commence May 1, 2017, and to end April 30, 2020;
- (d) a notation of the sanction on his academic record and transcript from the date of the Decision until April 30, 2021.

3. **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 in the University newspapers, with the name of the student withheld.

Dated at Toronto, this ^{30th} day of May, 2017.



Michael Hines, Chair