

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on February 25, 2019,

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 -

G [REDACTED] Z [REDACTED] (the “Student”)

REASONS FOR DECISION

Hearing Date: December 3, 2019

Members of the Panel:

Ms. Ira Parghi, Lawyer, Chair

Professor Michael Evans, Faculty Panel Member

Mr. Bradley Au, Student Panel Member

Appearances:

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

Hearing Secretary:

Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances,
University of Toronto

Not in Attendance:

The Student

I. Introduction

1. The Trial Division of the University Tribunal was convened on December 3, 2019 to consider charges brought against G [REDACTED] Z [REDACTED] (“the Student”) by the University of Toronto (“the University”) pursuant to the *University of Toronto Code of Behavior on Academic Matters, 1995* (“the Code”). The charges involved the alleged use or possession of unauthorized aids during an exam on or about April 12, 2017, during a final exam in a calculus course called MAT136H1S.
2. The charges were as follows:
 - i. On or about April 12, 2017, you knowingly used or possessed an unauthorized aid in the final exam in MAT136H1S (“Course”) that you wrote in partial completion of the requirements for the Course contrary to section B.I.1(b) of the *Code*.
 - ii. In the alternative to paragraph 1, on or about April 12, 2017, you engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code* in connection with the final exam in MAT136H1S in order to obtain academic credit or other academic advantage of any kind in the Course, contrary to section B.I.3(b) of the *Code*.
3. The particulars of the offenses charged were as follows:
 - i. At all material times, you were a registered student at the University of Toronto.
 - ii. In Winter 2017, you registered in the Course.
 - iii. Students in the Course were required to write a final exam worth 65% of the final grade in the Course (“Final Exam”).
 - iv. No aids were allowed in the Final Exam.
 - v. On or about April 12, 2017 you wrote the Final Exam for credit in the Course.
 - vi. During the Final Exam you were found in possession of notes and formulae relevant to the subject matter of the Final Exam.
 - vii. You knowingly wrote notes and/or formulae on your hand and brought those notes and formulae into the exam with you.
 - viii. For the purposes of obtaining academic credit and/or other academic advantage, you knowingly possessed an unauthorized aid in the Final Exam in the Course.

II. Conduct of hearing in absence of Student

4. The Student did not appear at the time scheduled for the commencement of the hearing. Nor did any representative of the Student. The Tribunal waited 15 minutes after the hearing was scheduled to commence to allow for the Student to appear. The Student still did not appear.
5. Counsel for the University then sought an order that the hearing be permitted to proceed in the Student's absence. To proceed in the absence of the Student, the University was required to demonstrate that the Student had been given "reasonable notice" of the hearing.
6. The University's *Policy on Official Correspondence with Students* provides that students enrolled at the University must maintain current contact information in their record in the University's record of academic history and student information ("ROSI"), and must update that information if it changes. Pursuant to Rule 9 of the Tribunal's *Rules of Practice and Procedures* ("the Rules"), one of the ways in which a Notice of Hearing may be served on a student is via email to the student's email address in ROSI.
7. Under Rule 17 of the *Rules* and sections 6 and 7 of the *Statutory Powers Procedure Act* ("SPPA"), the Tribunal may proceed with an oral hearing in the absence of a student when reasonable notice of the hearing has been given to the student in accordance with the *Rules* or *SPPA* (as the case may be) and the student does not attend.
8. The University's evidence in respect of service and attempts to communicate with the Student was as follows:
 - a) On February 25, 2019, the Student was served, at his ROSI email address, with a letter from the University's Vice-Provost, Faculty & Academic Life, and a copy of the charges against him. The letter indicated that the Student would be contacted regarding the University Tribunal's proceedings.
 - b) On April 22, 2019, the Student was served, at his ROSI email address, with a letter from University counsel and the University's Disclosure Brief, and was provided a copy of the *Policy on Official Correspondence with Students*. He was invited to contact a representative of the University or its legal counsel to discuss the allegations in this matter.
 - c) On May 23, 2019, the Student was contacted via private messaging on Facebook, with a request that he contact the office of University counsel or respond via his ROSI email account.
 - d) That same day, he was also contacted via telephone, using the telephone number he had provided on ROSI. A message was left for him asking that he contact the office of University counsel or respond via his University email account.

- e) On October 7, 2019, the Student was served, at his ROSI email address, with the Notice of Hearing. By serving the Student at this email address, the University complied with Rule 9 of the *Rules*.
 - f) Later on October 7, 2019, the University emailed the Student at his ROSI email address, asking that the Student provide his current mailing address if he wished to receive the Notice of Hearing in hard copy.
 - g) As of October 17, 2019, the Student had last accessed his ROSI email address on June 27, 2019, which was over four months after the University had first communicated with him in respect of this hearing through his ROSI email address.
 - h) On November 1, 2019, the Student was served, at his ROSI email address, with three affidavits that the University intended to use during the hearing and was asked to notify University counsel if he intended to cross-examine any of the affiants. This correspondence reiterated the date of the hearing and indicated, “Our office has not heard from you despite our many requests and efforts to communicate with you.”
 - i) On November 18, 2019, the Student was served, at his ROSI email address, with a revised Notice of Hearing. By serving the Student at this email address, the University complied with Rule 9 of the *Rules*.
 - j) On November 28, 2019, the Student was served, at his ROSI email address, with two additional affidavits. He was again asked to notify University counsel if he intended to cross-examine either of the affiants. This correspondence also reiterated the date of the hearing.
9. In light of the totality of the evidence regarding the efforts made to provide notice to and otherwise communicate with the Student, the Tribunal concluded that reasonable notice of the hearing had been provided to the Student in compliance with the *Rules* and the *SPPA*. An order permitting the hearing to proceed in the Student’s absence was therefore granted.

III. Use of affidavit evidence

10. During the hearing, counsel for the University sought to tender evidence by way of affidavit, relying on Rule 61 of the *Rules*. The various affiants (Jacqueline Cummins, Elizabeth Cowper, Jillian Bieser, Spyros Alexakis) were not in attendance at the hearing. Rule 62 of the *Rules* requires that an affiant must attend a hearing if an adverse party wishes to cross-examine on their affidavit.
11. The Tribunal accepted the evidence, outlined above, that on November 1 and November 28, 2019, the Student was provided with the five affidavits of the four named affiants that

the University intended to use at the hearing. The Student was also informed that the University intended to rely on the affidavits and was instructed to advise University counsel if he wished to cross-examine on the affidavits. The Student did not indicate any wish to cross-examine any of the affiants, either by way of response to the November 2019 correspondence or in person at the hearing, which he did not attend.

12. In these circumstances, the Tribunal consented to University counsel's request to introduce the affidavits as evidence in the hearing.

IV. Charges

13. Because the Student was not present, the hearing proceeding on the basis that he denied the charges against him. This placed the onus on the University to establish on the balance of probabilities that the Student had committed the offense charged.

14. The Tribunal received evidence from Jillian Bieser, a Teaching Assistant at the University who was the Chief Presiding Officer for the Student's final exam in MAT138HIS Calculus I(B) on April 12, 2017, during which the alleged academic dishonesty took place. Ms. Bieser's evidence was that the Student arrived at the exam seven minutes after its start time. She walked over to him to explain the exam instructions to him and noticed writing on his left palm. She asked him to show her his hand; he did, and she saw a large amount of Chinese writing and formula on his palm. He consented to her taking a photo of her palm and signed her handwritten report about what she had seen.

15. The Tribunal also received the evidence of Spyros Alexakis, a Professor at the University and one of the instructors for MAT136H1S. He provided evidence as to the course syllabus for MAT136H1S, which states, "NOTE: You are not allowed to use any books, notes, calculators or scrap paper while writing the Quizzes, the Term-test or the Final Exam."

16. Professor Alexakis also gave evidence that he attended the Student's final exam, during which Ms. Beiser informed him about the handwriting that she had seen on the Student's palm. When Professor Alexakis looked at the writing on the Student's palm, he recognized the writing as containing formulae that students were required to know for the exam. He described the information on the Student's hand as "very helpful information" for the purposes of the exam and the kind of information that students "were not permitted" to bring into the exam with them. The Student told Professor Alexakis that he had forgotten to erase the writing before the exam. Professor Alexakis took the Student to the washroom, where he erased the writing. Professor Alexakis provided a report of his observations in the Alleged Academic Misconduct Report Form dated April 12, 2017.

17. Elizabeth Cowper, a Professor Emeritus of linguistics at the University who was, at the time, the Dean's Designate at the University Faculty of Arts & Science Office of Student

Academic Integrity (“OSAI”), provided evidence that OSAI received Ms. Bieser’s report about the Student’s alleged academic misconduct on April 13, 2017. OSAI prepared a Discipline Case Report regarding the matter on June 8, 2017. That same day, Professor Cowper emailed the Student at his ROSI email address asking that he attend a Dean’s Meeting on June 15, 2017 to discuss the alleged misconduct. The Student did not attend the Dean’s Meeting, although he did subsequently email OSAI on July 4, 2017, asking to meet in order to discuss the alleged academic offense.

18. Thereafter there was a protracted series of communications between OSAI and the Student, in which OSAI proposed various dates for the Dean’s Meeting, working around the Student’s stated availability, but the Student either did not respond, or agreed to a proposed date but then did not appear for the agreed-upon meeting. These communications took place from July 10, 2017 to late November 2018. On November 28, 2018, OSAI emailed the Student, at his ROSI email address, and stated that, due to his unresponsiveness, the matter would now be forwarded to the Vice-Provost for review.
19. No evidence was tendered on behalf of the Student, either by way of affidavit or in person at the hearing, which the Student did not attend.
20. The Tribunal considered all of the evidence in the hearing, and concluded that, on the balance of probabilities, the Student was in possession of an unauthorized aid during the April 12, 2017 final exam — namely, course content handwritten on the palm of his hand — and thus was in contravention of s. B.I.1(b) of the *Code*.
21. The Tribunal acknowledged that there was no evidence that the Student actually used the notes to help him during the exam; in fact, according to Professor Alexakis’ evidence, the notes were discovered before the Student began actually writing the exam. Nonetheless, the offense under s. B.I.1(b) is the possession of an unauthorized aid, whether or not the aid is used. No aids were permitted in the test. The notes on the Student’s hand were capable of being used as an aid. As such the offense was made out on the facts.
22. In light of the Tribunal’s finding on this charge, the second charge, relating to “cheating, academic dishonesty or misconduct, fraud or misrepresentation not others described in the Code” under s. B.I.3(b) of the *Code*, was withdrawn.

V. Penalty

23. On the issue of sanction, counsel for the University sought the following: a course mark of “zero” for the Student in the course at issue; a two-year suspension of the Student from the University, from December 3, 2019 to December 2, 2021; a notation on the Student’s transcript for three years, until December 2, 2022; and the publication of the Tribunal’s decision in this matter with the Student’s name withheld.

24. The Tribunal considered previous decisions rendered by the Tribunal in cases involving unauthorized aids. In most such cases in which the student had no prior offenses, as was the case here, the sanction was squarely in line with what University counsel sought here (H.L., Case No. 886, March 16, 2017; Y.Y., Case No. 851, March 1, 2017; S.S.M., Case No. 865, February 22, 2017; R.F.A., Case No. 738, January 15, 2015; Y.W., Case No. 746, January 14, 2015). Indeed, in some of these cases this sanction was handed down notwithstanding that the student participated in the Tribunal's processes, unlike the Student in this matter. The Tribunal agrees that, based on the cases, cheating generally results in a suspension of at least two years, and the accompanying transcript notation generally lasts longer than the suspension, so that if a student returns to the University following the suspension, administrators and others may be aware of the student's history.
25. The Tribunal therefore concluded that the sanction sought by the University was consistent with the case law and would further some sense of uniformity or proportionality so that similar penalties are imposed on offenses committed in similar circumstances.
26. The Tribunal also considered the principles and factors relevant to sanction as articulated in *University of Toronto and Mr. C* (November 5, 1976, Case No. 1976/77-3). The Tribunal determined that these factors supported the University's position on sanction as well.
27. The Tribunal observed that there were several factors in respect of which the Tribunal could draw no conclusion, because the Student did not participate in the process, either before the hearing, as evidenced in Professor Cowper's affidavit, or in connection with the hearing itself, as discussed above. As a consequence of this non-participation, the Tribunal had no evidence before it as to any extenuating circumstances that might have weighed in the Student's favour by mitigating or explaining his conduct.
28. The Tribunal further noted that certain factors outlined in the *Mr. C* case weighed against the Student, to the extent that they could be evaluated. For instance, having regard to the character of the Student, the Tribunal noted that the Student did not participate in the hearing or pre-hearing University procedures. Had he done so, this might have signalled a willingness to respect the University's processes.
29. The Tribunal also observed that the offense was serious in nature, the detriment caused to the University by the offense was significant, and the need to deter others from committing a similar offense was considerable. The use of unauthorized aids is a threat to the integrity of the University's processes for evaluating students, is profoundly unfair to other students, and jeopardizes the University's reputation. These considerations urged against imposing a milder sanction than those typically applied in similar cases.
30. In all of the circumstances, the Tribunal was satisfied that the appropriate sanction was the one sought by the University.

VI. Order

31. It was accordingly ordered that:

- a) The hearing could proceed in the absence of Mr. Z■■■;
- b) The Student was guilty of one count of possessing an unauthorized aid, contrary to s. B.I.1(b) of the *Code*;
- c) The Student shall receive a final grade of zero in MAT136H1S in Winter 2017;
- d) The Student shall be suspended from the University for a period of two years, commencing on December 3, 2019 and ending on December 2, 2021;
- e) The sanction shall be recorded on the Student's transcript and academic record, commencing on December 3, 2019 and ending on December 2, 2022; and
- f) 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 Student's name withheld.

Dated at Toronto, this 26th day of February 2020.



Ira Parghi, Co-Chair