

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on July 5, 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 am. S.O. 1978, c. 88*

B E T W E E N:

THE UNIVERSITY OF TORONTO

- and -

E [REDACTED] C [REDACTED] (the "Student")

Reasons for Decision

Hearing Dates, via Zoom:

August 19, 2020, October 19, 2020, October 26, 2020, and November 9, 2020

Members of the Panel:

Ms. Cheryl Woodin, Chair

Professor Ernest Lam, Faculty Panel Member

Mr. Sean McGowan, Student Panel Member

Appearances:

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

Mr. Eunwoo Lee, Downtown Legal Services, for the Student

In Attendance:

The Student

Hearing Secretary:

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

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

Introduction

1. The Trial Division of the University Tribunal was convened beginning on August 19, 2020, to consider charges brought by the University of Toronto Scarborough (the "University") against the Student under the *University of Toronto Code of Behaviour on Academic Matters, 1995* (the "Code").
2. The Student attended and was represented by Mr. Eunwoo Lee of Downtown Legal Services.
3. The Panel heard evidence and argument relating to the issue of liability in respect of the charges only by Zoom format over four days concluding on November 9, 2020. No exclusion order was sought as witnesses were admitted to the hearing only as they were called to give evidence. The Student was present throughout the hearing.
4. The Panel reserved its decision on liability. For the reasons that follow, the Panel was unable to conclude that any academic offence had been committed by the Student.

The Charges and Particulars

5. The Charges and Particulars alleged against the Student, as described by the University, are as follows:

Charges

6. On or about November 22, 2018, the Student knowingly used or possessed an unauthorized aid or obtained unauthorized assistance in connection with a mid-term test in POLB50Y3 contrary to section B.I.1(b) of the *Code*.
7. In addition or in the alternative, on or about November 22, 2018, the Student 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, contrary to section B.I.3(b) of the *Code*, in connection with a mid-term test in POLB50Y3.

Particulars:

8. At all material times, the Student was a registered student at the University of Toronto Scarborough.
9. In Fall 2018 the Student enrolled in POLB50Y3. As part of the requirements of POLB50Y3, the Student was required to and did write a mid-term test on November 22, 2018, which was worth 12.5% of the final grade.
10. Students in POLB50Y3 were expected to write the mid-term test on November 22, 2018 independently, without aids and without assistance from other students.
11. During the mid-term test the Student attempted to look at the paper of another student in the course, Mr. K*, and the Student copied or attempted to copy answers from Mr. K's test paper onto the Student's own, without authorization.
12. In doing so the Student used or possessed an unauthorized aid or obtained unauthorized assistance, or attempted to do so.

The Evidence Related to the Charges

13. The University called a number of witnesses including:
 - a. Professor Christopher Cochrane, who taught the Canadian government and politics class in which the incident occurred;
 - b. Mr. Chris Greenaway, who invigilated the mid-term test;
 - c. Mr. K, who was friends with the Student and from whom it is alleged that the Student obtained assistance without authorization; and
 - d. Professor Trevor Campbell, a statistics professor who was retained to provide independent expert evidence regarding the test results.
14. The Student testified on his own behalf.

*The full name of this Student can be found in the Charges, however, within these reasons, he is referred to as Mr. K.

The Students:

15. The Student was enrolled in POLB50Y3 at the time of the incident giving rise to these charges. He was a high performing student. Professor Cochrane was familiar with both the Student and Mr. K. He described both of them as excellent students. He judged this by their questions and level of engagement. The Student received 96% on the test preceding this one. He went on to continue to perform well in the remaining four tests.
16. The Student and Mr. K were acquaintances who were in a number of classes together and who had studied at least to some degree together before this test. They had a habit of sitting beside each other in this class.

The Test:

17. The Student and Mr. K wrote an in-class mid-term test on November 22, 2018 in a large theater-style room which was their usual classroom. It had fixed seating in long somewhat curved rows. The test was worth 12.5% of their grade in the course and was comprised of 50 multiple-choice questions. The students had two hours to complete the test though, according to Professor Cochrane, most of them completed it within an hour. Professor Cochrane was present throughout the test along with one invigilator. A second was scheduled to attend but did not. Both Professor Cochrane and the Invigilator Mr. Greenaway were responsible for monitoring the class for cheating.
18. The test could be written either on ExamSoft (electronically) or on paper using a scantron card. If the test was written using a scantron card, then the student would also have a test booklet. Both the Student and Mr. K wrote the test with a test booklet and using a scantron card (though Mr. K had intended to write the test electronically he had forgotten to download the software). Approximately 70 out of 180 students chose to write a paper test instead of an electronic one.
19. The Student and Mr. K sat beside each other in what Professor Cochrane thought was their "usual" seating area. It is unclear exactly how far apart they were from each other. The Student testified that there was a meter or five feet between

them. There may have been a chair between them. Mr. K says there was not and that they were a half meter apart, but the Student, the Invigilator and the Professor say there was a chair between them.

20. Professor Cochrane was present throughout the test. At approximately 30 minutes into the test, the Invigilator raised a concern with Professor Cochrane about the Student and Mr. K. Professor Cochrane then turned his attention to watching the Student and Mr. K more carefully but did not separate them. He did not see any suspicious or unusual behaviour. Professor Cochrane recalled that approximately forty minutes into the test the Invigilator reported to him that he was now convinced that the Student was "blatantly" looking.
21. Professor Cochrane reported that he would have separated the students at that point but that the Student was then passing in his test and left the room. Professor Cochrane observed Mr. K continuing to review his test for another 15 minutes or so.
22. Professor Cochrane did not observe any of this behaviour directly. As a result of the Invigilator's reports, Professor Cochrane separated the test results of the Student and Mr. K.
23. Professor Cochrane subsequently reviewed their tests and determined that their test answers were identical for 49/50 questions. In respect of the only different answer, the Student chose C while Mr. K chose D, but had originally written C on his test script. D was the correct answer. Only 4 out of 178 students answered C as the Student did and Mr. K had originally. In addition, the Student and Mr. K. answered the same incorrect answers to six questions. Most of these, according to Professor Cochrane, were not commonly chosen in the class as a whole, they were in fact chosen by each of 27%, 10%, 14%, 14%, 9%, and 49% by the rest of the class. Lastly, Professor Cochrane noted that Mr. K's test script showed that he changed his answers to two questions and that the Student's scantron sheet showed that he also changed his answers in the same way. Professor Cochrane plotted the results of the test to illustrate the degree of similarity between all

possible students taking the test as a function of the average test grade between those pairs, and concluded that the Student and Mr. K were outliers to the rest of the class. He combined this observation with his knowledge that the Student and Mr. K had been sitting together and the Invigilator's observations to conclude an academic offence might have occurred.

The Observations of the Test Invigilator:

24. The only evidence about whether the Student looked at Mr. K's test materials comes from the Invigilator.
25. The Invigilator gave evidence that he first became suspicious when he was standing at the back of the room and saw both the Student and Mr. K making active, animated and mutual head movements back and forth towards each other. The animation of the students would increase when other students raised their hands to have questions answered and Professor Cochrane was walking over to help those students.
26. The Invigilator's suspicion was increased further when he saw large block letters on Mr. K's test booklet (which Mr. K explained as a method he used to make it easier to review his answers before finalizing them). He first reported his concern to Professor Cochrane at this point and was told to continue to observe the pair. As he was doing so, he describes noticing that their eyes continued to be "very active" and that he then saw the Student look at Mr. K's paper (which he determined from the fact that the Student's eyes were towards the direction of where the two students shared space), at which point he believes that the Student noticed him observing his behaviour and then put up his hand to ask a "nonsensical" or "commonsensical" question. He could not remember what the question was.
27. The Invigilator acknowledges that there was a chair between the two students and that their own chairs were fixed to the floor so that they could not angle them towards each other. He does not know where Mr. K's scantron paper was relative to his table.

28. When specifically pressed on what he observed in regards to the Student's behaviour in relation to Mr. K, the Invigilator stated that it was "clear that his eyes were moving in that direction" but he could not directly conclude that the Student was cheating.
29. Although the Invigilator described active head movements emanating from both students, Mr. K denies ever looking at the Student's papers and denies ever having seen the Student look at his papers.

Analysis of the Test Responses:

30. Analysis of the test results as performed by Professor Cochrane has been described above.
31. The University also called expert evidence from Professor Trevor Campbell, an assistant professor of statistics at the University of British Columbia. He was retained to provide an independent expert opinion and was specifically tasked with analyzing the multiple-choice responses of the students in the class to identify any patterns or anomalies in the answers that were given.
32. Professor Campbell concluded that there were two pairs of students within the class of 179 who produced anomalous results. One of these pairs was the Student and Mr. K. When Professor Campbell was not aware that these students were sitting beside each other during the test, he determined that there was a 30% probability that similarities in their test results were not attributable to misconduct. When Professor Campbell was then told that the students were in fact sitting beside each other, he testified that he determined there was a more than 90% probability that the results were due to misconduct. Dr. Campbell candidly and correctly acknowledged that his analysis could not determine which student within this pair might have been looking at whose test paper.
33. Incidentally, Professor Campbell's model identified another pair of students whose results were more anomalous than the Student and Mr. K's. There was no

report by the Invigilator regarding behaviour of this pair during the test itself. No charges were laid in respect of this pair.

34. The Student challenged the evidence of both Professor Cochrane and Professor Campbell on the basis that: (1) neither accounted for the fact of the students' prior academic abilities and that failure to do so overemphasizes the significance of the similarity of their results; and (2) both fail to appropriately acknowledge that the likelihood of an incorrect answer will always be low because of how a multiple choice test works.
35. The Student also challenged the University's reliance on the fact that the Student changed two of his answers to conform to answers recorded by Mr. K. The Student points out that there was also evidence of each of the students changing answers that the other did not. Specifically, answers to questions 5, 19 and 31 were changed by the Student but not by Mr. K. Mr. K changed answers to questions 14 and 25 but the Student did not. The Student submits that this is evidence that they made changes independently of one another.
36. The Student advanced other criticisms of the evidence regarding the likelihood of similarities between the Student and Mr. K's test results, which included whether it was appropriate to include Mr. K's results in the aggregate analysis against which the results of the Student and Mr. K were measured, failure to consider the impact of similar study habits, and the effect of incorrect but linked answers on the assessment of statistical likelihood. Ultimately, however, the Panel did not make findings on these points because neither Professor Cochrane nor Professor Campbell could provide any evidence as to whether the similarity of test results occurred because the Student was looking at Mr. K's test paper, and the only other evidence on that point was not sufficient to allow us to reach that conclusion.

The Student's Interactions with the University and Others After the Test:

37. There was significant attention devoted to evidence of social media communications between the Student and Mr. K once they learned that the results of their tests were being scrutinized by the University, with the objective of

establishing that the Student "admitted" he was guilty or at least that his communications were consistent with that conclusion.

38. In the Panel's view, none of the evidence could be used to establish that the Student intended to copy Mr. K's answers. Firstly, much of it was entirely equivocal. Mr. K produced an extract from a "snapchat" communication in which the Student is alleged to have stated "Like yea we glanced at each others papers, but I probably would've scored 1 point higherrr [sic] if I didn't look at ur paper lol Plus if I have to retake a test I can still get a 90+ easy". When Mr. K then states that he did not look at the Student's test, the Student responds "that's what I mean tho...like, we didn't cheat".
39. Second, the communications between the Student and Mr. K occurred at least in part because Mr. K was attempting to prove that it was the Student and not Mr. K who had "cheated". Mr. K had been led by Professor Cochrane and the University to believe that if he did not establish the Student's guilt he might be accused instead. The circumstances of this dynamic, combined with the equivocal nature of the communications they produced, render this evidence entirely unhelpful.
40. We note that the Student gave evidence that the "snapchat" communication was fabricated. The Tribunal makes no findings regarding whether the communication occurred or not because, even if it did, it does not assist in establishing on a balance of probabilities that the Student copied answers from Mr. K's test materials.

Decision of the Tribunal on the Charges

41. The University must establish on a balance of probabilities through clear and convincing evidence that an academic offence has been committed by the Student.
42. The University fairly acknowledged that without evidence from the Invigilator establishing that the Student was looking at Mr. K's test paper for the purpose of

copying or attempting to copy answers, the charges against the Student could not be made out.

43. The Invigilator did not see the Student looking directly at Mr. K's test materials.
44. The University also fairly acknowledged that the Invigilator's evidence as to what he observed about Mr. K's behaviour was not consistent with Mr. K's own evidence.
45. The Student emphasizes that the Invigilator first observed the Student and Mr. K from behind and could not see their faces or eyes. The Invigilator described a "mutual" back and forth between the two students when he first observed them. Mr. K denies that he himself engaged in any suspicious head movements, though he states he may have looked at a clock on either side of the room.
46. The Student also emphasizes that the second observation as described by the Invigilator is limited by the fact that the Invigilator is observing from the Student's right side while Mr. K is on the student's left side, making it very difficult for the Invigilator to determine what the Student was doing with his eyes.
47. There is a conflict in the evidence between the Student and the Invigilator as to the exchange between them. The Student testified that he raised his hand to ask a question and looked up at the same time. The Invigilator says that the Student looked up, made eye contact with the Invigilator, and then raised his hand. There is also some dispute about the nature of the question asked by the Student at that time. The Invigilator cannot remember what the question was. The Student gave evidence that he asked about the difference between "cooperative" and "collaborative" in the context of a question about federalism. While the Student acknowledges that it may not have been a fair question to ask, it was not "commonsensical" but rather consistent with a good faith effort to choose between two possible answers for a student who had studied from the defined terms available in the course textbook.

48. On the evidence presented, it was not clear to the Panel that the charges were made out on clear and convincing evidence. This is not a circumstance like, for example, the one addressed in *University of Toronto and S.R.* (Case No. 708, dated June 6, 2014), in which two students' tests were also exceedingly similar but where one of the two students also admitted to providing and obtaining assistance in order to complete the test and another student gave direct evidence that she was asked by the student to provide assistance.
49. The evidence available to this Panel is also distinguishable from what was available to the Panel in *University of Toronto and R.A.* (Case No.: 738, dated January 15, 2015), in which there was simply no other credible explanation for the conduct of the student, all of which was observed directly by the Professor.
50. Lastly, the evidence available to this Panel is distinguishable from the evidence on which the student was found guilty of obtaining assistance from another student in *University of Toronto and Y.Y.* (Case No.: 851 – Finding, dated October 19, 2016), in which there was uncontroverted evidence from two invigilators who observed the student looking directly at another student's test paper.
51. In the absence of clear and convincing evidence that the Student had attempted to look at Mr. K's paper, evidence regarding the similarity of the Student and Mr. K's test results, even if it is overwhelming, is insufficient to establish an academic offence committed by the Student.

Dated at Toronto this 17th day of February, 2021



Ms. Cheryl Woodin, Chair