

THE UNIVERSITY TRIBUNAL

THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty filed on December 14, 2020,

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 (the “University”)

– and –

B [REDACTED] C [REDACTED] (the “Student”)

REASONS FOR DECISION

Date of Hearing: February 17, 2021, via Zoom

Members of the Panel:

Mr. Nader Hasan, Chair

Dr. Maria Rozakis-Adcock, Faculty Panel Member

Ms. Yerin Lee, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary:

Christopher Lang, Director, Appeals, Discipline & Faculty Grievances

Not in Attendance:

The Student

Introduction

1. An electronic hearing before the University Tribunal (the “Tribunal”) was convened on February 17, 2021 to consider the Charges (as defined below) against the Student. The Student did not attend.

The Charge

2. The charges against the Student (the “Charges”) are as follows:
- (a) On or about August 20, 2020, you knowingly obtained unauthorized assistance in connection with the final exam in the course LIN102H1S – Introduction to Linguistics (“Course”), contrary to section B.I.1(b) of the Code.
 - (b) In the alternative to the charge above, you knowingly did or omitted to do something to engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage in the Course, 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 registered as a student at the Faculty of Arts & Science, University of Toronto.
 - (b) In Summer 2020, you were registered in the Course, which was taught by Kazuya Bamba. You were scheduled to write the final examination in the Course, which was worth 60% of the final grade in the Course sometime on August 20 or 21, 2020.
 - (c) On or about August 20, 2020, you attempted to obtain unauthorized assistance with the final examination by offering to pay Naoki Asakawa to sit with you as you completed the on-line examination.
 - (d) You knew that you were not permitted to have a tutor or anyone else sit with you or assist you with the final exam in the Course. You knew that such assistance was not authorized.
 - (e) You committed the offence charged in charge #1 by attempting to commit that offence.
 - (f) In attempting to obtain this assistance, you did or omitted to do something to engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage in the Course.

Agreed Statement of Facts

4. The hearing proceeded on the basis of an Agreed Statement of Facts (the “ASF”). The parties also presented a Joint Book of Documents (the “JBD”) that was entered into evidence as Exhibit 1. All of the documents referred to during the hearing, including the ASF, were contained in the JBD.

5. Prior to the hearing, the Provost and the Student submitted a joint position on the finding that the Tribunal ought to make as well as penalty. The ASF, which was signed by both parties, noted that the Student does not wish to attend or participate further in these proceedings, and that he understood that in his absence, the University Tribunal may find that he committed an act or acts of academic misconduct, and may impose sanctions against him as set out in the *University of Toronto, Code of Behaviour on Academic Matters, 1995*. The ASF stated also that he understood that the University Tribunal is not bound by the terms of the joint submission on penalty.

6. A summary of the agreed facts follows.

7. The Student first registered as a student in the Faculty of Arts & Science at the University of Toronto in Fall 2017. He earned 4.5 credits. In Summer 2020, he was suspended from the University for three years because of poor academic performance. At all material times, he was a student member of the University.

8. In Summer 2020, the Student enrolled in LIN102H1S – Introduction to Linguistics: Sentence Structure and Meaning (the “Course”), which was taught by Kazuya Bamba.

9. The Course was taught via remote / on-line learning due to the pandemic. The final assessment was originally worth 40% of the final grade in the Course. However, because the Student missed several other assessments during the term, it was to be worth 60% of his final grade in the Course.

10. The final assessment was to be completed on-line, in an unsupervised setting. Students were permitted to access the assignment for two hours during a 24-hour window starting on August 20, 2020, at 3:00 p.m.

11. Beginning on August 20, 2020, the Student exchanged a series of on-line messages with Naoki Asakawa. The Student wrote:

I saw your post about English tutoring and that you have extensive background on applied linguistics. My name is Brian, I currently attend the University of Toronto via online school and could really use some help in my introduction to linguistics course. I have an exam that I can take any time from Friday tpe [sic] time 3am to sat 3am (max 2 hours). I was wondering if I could take my online exam alongside you as this exam determines whether or not I get on academic probation and it's really important to me. I can really use your help. Let me know if you are interested.

12. Ms. Asakawa declined the offer, stating the Student's suggestion might not be entirely ethical and that she "would rather not be a part of that." The Student responded saying that he understood but that "if you happen to change your mind, just name your price, and let me know!" Ms. Asakawa responded that she would be happy to help him study or prepare for exams, but not to actually sit in on them. The Student responded by setting out his precarious academic standing and concluded:

I really need to get at least a 67% of my overall grade to not be suspended for 3 years due to this series of unfortunate events. I really don't want a month of bad luck to ruin the next 3 years of my life. If you're capable of intro to linguistics then I am really begging you to help me out just this one time. I am really desperate to not get into that situation and upset....I'm not asking for straight A, all I want to achieve is not to be suspended for 3 years. I only need around a 70-80 for that. Don't think of it as cheating but instead think of it as helping a helpless kid pass this final so his depressed family doesn't get even more disappointed. If it seems more ethical to you, how about after you help me with the final, I attended weekly courses learning the content that was tested...

13. Ms. Asakawa declined the Student's request.

14. On August 25, 2020, Ms. Asakawa wrote to the Linguistics Department and the academic.integrity@utoronto.ca email address and informed the Department about her

exchanges with the Student. Ms. Asakawa provided screenshots of the conversation with the Student.

15. The Student admits that:

- (a) He knew that he was not permitted to have any one sit with him during the final assessment;
- (b) He knew that he was asking Ms. Asakawa to provide him with unauthorized assistance during the final assessment;
- (c) He offered to pay her to assist him with the final assessment;
- (d) He tried to convince Ms. Asakawa to provide him with unauthorized assistance even after she declined and told him that he was trying to do something that was unethical; and
- (e) he is guilty of attempting knowingly to obtain unauthorized assistance for the final assessment in the Course.

Findings on Charges

16. Following deliberations and based on the ASF and the JBD, the Panel concluded that the first charge (as outlined in paragraph 2 above) had been proven with clear and convincing evidence on a balance of probabilities, and accepted the guilty plea of the Student in respect of that charge. The Panel was advised that if the Tribunal convicts the Student on the first charge, the University would withdraw the alternative charge. Accordingly, the second charge was withdrawn.

Penalty

17. The University and the Student submitted a Joint Submission on Penalty (the "JSP"). In the JSP, the parties submitted that the Tribunal should impose the following sanctions on the Student:

- a) a final grade of zero in the Course;
- b) a four-year suspension from the University of Toronto, to start from the date the Tribunal makes its order; and

- c) a notation of the sanction on the Student's academic record and transcript for five years from the date of the order.

18. The Parties also submitted that this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed in the University newspapers, with the name of the Student withheld.

19. Counsel for the University provided submissions on the high threshold required for a Tribunal to deviate from a joint submission on penalty. As set out in the Discipline Appeals Board decision in *University of Toronto and M. A.* (Case No. 837, December 22, 2016), a joint submission on penalty "may be rejected by a panel only in circumstances where to give effect to it would be contrary to the public interest or would bring the administration of justice into disrepute" (para 25).

20. In the Panel's view, the joint submission in this case is reasonable.

21. In particular, the Panel took into consideration the seriousness of the offence and that the Student offered another student money in exchange to obtain unauthorized assistance on the exam. The offer of money in exchange for participating in an act of academic dishonesty is an aggravating factor.

22. However, there were also mitigating factors to consider. Provost's counsel candidly acknowledged that the offence charged is an attempt, rather than a completed offence. Further, the Student's cooperation and entering into the ASF and JSP shows insight and remorse.

23. In Provost's counsel's submission, however, the sanction sought takes into account these mitigating factors.

24. In light of the cases provide by Provost's counsel, and especially given the direction of the Discipline Appeals Board in *M.A.* that the panel should only refuse to implement a joint submission on sanction if the panel concludes that the parties'

agreement on sanction is unreasonable or unconscionable (see *University of Toronto and M. A.* (Case No. 837, Dec. 22, 2016), citing *R. v. Anthony-Cook*, 2016 SCC 43), the Panel decides to give effect to the joint submission. There is no evidence to suggest that the sanction would be unreasonable or unconscionable. The authorities cited by Provost's counsel suggest that although there may be room for some disagreement as to the appropriate sanction in this case, the JSP on penalty is within that range of reasonableness based on analogous cases.

25. Having regard to the above, and based on its review of similar cases presented by counsel, the Panel agreed that the recommended sanctions are appropriate in the circumstances, and made the following order:

THAT the hearing may proceed in the absence of the Student;

THAT the Student is guilty of the academic offence of attempting to obtain unauthorized assistance, contrary to section B.I.1(b) of the *Code of Behaviour on Academic Matters*;

THAT the following sanctions shall be imposed on the Student:

- (a) a final grade of zero in LIN102H1S;
- (b) a suspension from the University for four years from the date of this order;
and
- (c) a notation of the sanction on his academic record and transcript for five years from the date of this order;

THAT 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 name of the student withheld.

Dated at Toronto, this 18th of May, 2021,

A handwritten signature in blue ink, appearing to read 'N. Hasan', is written over a light yellow rectangular background.

Nader Hasan, Chair
On behalf of the Panel