

Case No.: 1147

**UNIVERSITY OF TORONTO  
UNIVERSITY TRIBUNAL**

**IN THE MATTER OF** charges of academic dishonesty filed on January 13, 2021,

**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 (the “University”)**

**and**

**X ■■■ Y ■■■ (“the Student”)**

**REASONS FOR DECISION**

**Hearing Date:** October 5, 2021, via Zoom

**Members of the Panel:**

Mr. Andrew Bernstein, Chair

Dr. Pascal van Lieshout, Faculty Panel Member

Ms. Julie Farmer, Student Panel Member

**Appearances:**

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

**Hearing Secretary:**

Ms. Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty Grievances

**Not In Attendance:**

The Student

**A. Charges**

1. On October 5, 2021, this panel of the University Tribunal held a hearing to consider the charges brought by the University of Toronto against the Student under the *Code of Behaviour on Academic Matters, 1995* (the “Code”).
2. Those charges were detailed in a letter to the Student dated January 13, 2021, as follows:
  1. On or about April 16, 2020, you knowingly obtained unauthorized assistance in connection with the final exam in MAT133Y1 (the “Course”), contrary to section B.I.1(b) of the Code.
  2. In the alternative, on or about April 16, 2020, you knowingly represented as your own an idea or expression of an idea or work of another in the final exam in the Course, contrary to section B.I.1(d) of the Code.
  3. In the further alternative, on or about April 16, 2020, 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 final exam in the Course, contrary to section B.I.3(b) of the Code.
3. The Student was an undergraduate at the University of Toronto St. George Campus, in the Faculty of Arts and Science.
4. The Student did not attend the hearing. She was not represented by counsel. The Tribunal called the hearing to order at the scheduled 1:45 p.m. start time, through Zoom, a video-conferencing platform that has been used for Tribunal discipline matters throughout the COVID-19 Pandemic.

**B. Notice and Hearing in the Student's Absence**

5. As the Student did not attend the hearing, counsel for the Provost asked the Tribunal to find that the Student had been provided with proper notice of the hearing, and that the hearing should proceed in the Student's absence, under rule 17 of the Tribunal's *Rules of Practice and Procedure* ("Rules"), and section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "Act").

6. Rule 17 and section 7 require that the Provost provide the Student with adequate notice of the hearing before we proceed in the Student's absence. These provisions do not require the Provost to prove that the Student actually received the notice. Rather, they require that the Provost establish that the University took reasonable steps to notify the Student of the charges against her and of the hearing. As explained below, we are satisfied that it did so.

**(i) Rules relating to Service**

7. The University's *Policy on Official Correspondence with Students* requires students enrolled at the University to maintain a current and valid postal address and an address for a University-issued email account in their ROSI records, to update their records when this information changes, and to monitor and retrieve their mail and email on a frequent and consistent basis. There is a good reason for this: the University has thousands of students, and cannot be burdened with the need to find them when the need arises. It is therefore entitled to rely on the email and physical address provided in ROSI.

8. Rule 9 of the Tribunal's Rules states that charges, notices of hearing, disclosure and other materials may be served on students by a variety of means, including sending a copy of the document by courier to the student's mailing address contained in ROSI, sending a copy of the

document to the student's e-mail address contained in ROSI, or by any other means authorized under the University's *Policy on Official Correspondence with Students*.

**(i) Steps taken to effect service by the University and Discipline Counsel**

9. The hearing was originally scheduled for September 22, 2021, at 1:45 p.m.

Unfortunately, the Chair of the Tribunal that was scheduled to sit on that date got into a car accident and the hearing could not proceed as scheduled. While we are advised that, thankfully, no one was seriously injured, the attendant delays meant that Tribunal could not proceed. The hearing was therefore adjourned *sine die* (to no specified date) and was later set down to be heard before a new panel of the Tribunal, on October 5, 2021, at 1:45 p.m.

10. The Student was provided adequate notice of both the original hearing date and the re-scheduled hearing date. The details of that notice are below.

11. The University sent a notice of hearing dated August 20, 2021, and charges dated January 13, 2021 to the Student's email account registered in ROSI. The hearing date in the August 20, 2021 notice specified September 22, 2021, at 1:45 p.m. and provided Zoom details for attendance. The evidence of Ms. Huang, the University's affiant, reflects that she did not receive any response from the student in response to this e-mail, nor any e-mail bounce-back.

12. Assistant Discipline Counsel also sent numerous e-mails to the Student about the original hearing to the same address, including e-mails on August 10<sup>th</sup> and 18<sup>th</sup>, as well as September 15<sup>th</sup>. Assistant Discipline Counsel did not receive any response from the Student, nor any e-mail bounce back. Assistant Discipline Counsel's office called the Student at her ROSI-provided phone number (twice) and received a recording that said the cellular number had not been

assigned. Assistant Discipline Counsel's office also couriered materials to the Student's ROSI-provided mailing address, but the courier company advised that there was no one at that address by the Student's name.

13. It appears that the Student had failed to keep her contact information up to date in ROSI, as university policy requires.

14. After the September 22, 2021 date was adjourned, and the October 5, 2021 hearing date set down, the University sent a further notice of the re-scheduled hearing to the e-mail address in ROSI. That notice was sent on September 27, 2021, and it provided the date and time of the hearing, as well as Zoom details for attendance. The University did not receive any response from the Student, nor any e-mail bounce back.

15. The Provost led evidence that the Student last accessed the ROSI account on July 19, 2021.

16. The Student has not responded to any of these efforts to contact her, nor contacted counsel for the Provost. This is not because she is unaware that there was an issue. The evidence reflects that, after being contacted by the Student Academic Integrity Office in July of 2020, she responded. The Student attended a meeting with the Dean's designate on August 24, 2020, and even provided some material that reflected her response to the concerns raised. It is clear she last accessed her ROSI e-mail account after the Charges were provided against her. However, at some point she stopped accessing it, moved from her last known address and changed or abandon her cellphone. It is unlikely that she was actually aware of the time or date of the hearing.

17. Whether or not the Student actually received the notice provided is not the question we need to answer. The Student has an obligation to keep her information up to date in ROSI, and check her e-mail. Her failure to do so does not affect the validity of the notice, which was properly provided in accordance with the Tribunal's Rules. The Tribunal therefore ordered that the hearing should proceed in the Student's absence.

**C. Liability**

18. The following summarizes our reasons for concluding that the Student violated the Code and therefore committed an offence.

**(a) Background**

19. The Student was enrolled in MAT133Y1 (the "Course") for the 2019-2020 academic year. The grading scheme for MAT133Y1 provided two options for grading: one that involved a final exam and one that did not. The Student opted to write the final exam.

20. Because of the COVID-19 pandemic, the final exam was administered online, on April 16, 2020, from 7:00 p.m. to 10:00 p.m. (EST). Students were allowed to use a calculator, the textbook, their notes, books, WileyPLUS, Wolfram Alpha and Desmos (all electronic tools). However, they were not permitted to discuss the questions with anyone, or collaborate with anyone during the exam. Students were explicitly warned that the exam was to be completed individually, without the help of any other person, and that students were not permitted to communicate with any other person about the content of the exam or the content of the MAT133Y1 course in general during the final exam window. Students were required to submit a handwritten and signed statement that they would abide by this policy, and that the work they submitted was their own. The Student did this. Her statements included the phrases "I didn't

cheat. This is my work. I didn't receive help. I didn't provide help. I pledge upon my honour that I have not violated the Code during this assessment." Unfortunately, it appears on a balance of probabilities that this statement was incorrect. The Student cheated by receiving unauthorized assistance in her exam, and violated the Code.

**(b) Irregularities appear during marking**

21. The instructors and teaching assistants who were marking the exam noticed that some of the Student's answers had substantial similarities to the answers submitted by five other students in the Course. Professor Blois, the lead instructor for the Course, testified that she considered several aspects of the Student's answers to be suspicious. The answers were the same or very similar, using the same notation (different than what was taught in the Course), and in one case made the same transcription error. In one question, the Student drew the same (incorrect) graph as three other students, and all students received a 0/5 on that question.

**(c) SAI corresponds with the Student and the other students**

22. The instructors of MAT133Y1 referred their concerns to the Student Academic Integrity Office ("SAI"). SAI sent an e-mail to the Student on July 14, 2020 about the allegations. The Student responded indicating that she wished to meet with the Dean's Designate to discuss the allegations.

23. This meeting occurred via Zoom on August 24, 2020. The Dean's Designate explained the allegations to the Student. The Student denied communicating with other students during the exam and said she had learned the techniques reflected on her exam at certain off-campus tutorials. She offered to, and did, provide a copy of the notes she had taken from a set of

tutorials, which she indicated taught her the methods and notations reflected in her exam. She claimed that the transcription error is a coincidence.

24. Professor Cowper is the Dean's Designate in this case. She testified that the five other students involved subsequently admitted to the offence of receiving unauthorized assistance. None of them specifically indicate that they worked with the Student whose conduct is at issue in this case. However, the Provost submitted that five students admitting to receiving unauthorized assistance makes it less likely that the Student's similar answers are a coincidence and more likely that they are the result of giving or receiving unauthorized assistance.

25. We have some doubt about whether the admissions made by the other students can stand for the proposition advanced by the Provost. However, it is not necessary to resolve that question to decide this case, as we are persuaded by the rest of the evidence that the Student received unauthorized assistance on her exam.

**(d) The evidence of unauthorized assistance**

26. The Student did not respond to any subsequent correspondence from the University. That is regrettable, as students who admitted to their conduct in their meeting with the Dean's Designate received a much lighter penalty than the Provost is now seeking (in particular, a zero in the final exam for MAT133Y1 and no further sanctions). The practice of imposing lighter penalties on students who admit to their offences is not surprising. Many systems of sanction and penalty work on the basis that an early plea of guilt reflects contrition and saves the system substantial resources. However, the discrepancy between the sanctions depending on timing and the plea can signal the potential for abuse. In particular, it is important that the increased penalty for contesting a case as opposed to pleading guilty on an early occasion are not overly draconian.



If the differential is too large, it encourages people who have not committed any offence to plead guilty to avoid draconian consequences. This is not an issue in this case, as the Student has not appeared or contested her guilt.

27. On the basis of our review of the Student's exam, as well as extracts from other students' exams, and the evidence of Professor Blois, we have concluded that on a balance of probabilities, the Student provided or received unauthorized assistance. In particular:

- (a) The Student's answers on the exam have obvious similarities with at least some of the five other students' answers.
- (b) Professor Blois testified that there is a myriad of ways that students could approach each question and perform the algebraic manipulations to arrive at an answer, strongly suggesting that the similarities are not simply a matter of coincidence.
- (c) The Student made the exact same random mistakes as other students, including a transcription error and the use of an unusual (and arguably incorrect) graph.

28. The evidence in this case is more than sufficient to meet the necessary "balance of probabilities" threshold, but would not have met a stricter "proof beyond a reasonable doubt" standard. If the Student had attended and explained to the Tribunal why her answers were the same as other students, she may have been able to persuade us that the Provost had not made out its case on a balance of probabilities. But the only evidence was the Provost's and it is sufficiently strong to persuade us that an offence was committed on a balance of probabilities. Specifically, we conclude that on or about April 16, 2020, the Student knowingly obtained unauthorized assistance in connection with the final exam in MAT133Y1, contrary to section B.I.1(b) of the Code.

**D. Sanction**

29. The Provost sought an order imposing the following sanctions on the Student:
- (a) a zero in MAT133Y1;
  - (b) a suspension from the University for two years, ending October 4, 2023; and
  - (c) a notation on her transcript for the two-year suspension period, and an additional year after the suspension is completed.
30. In determining the sanction, the Tribunal has considered the factors set out in the decision *University of Toronto and Mr. C. factors* (Case No. 1976/77-3, November 5, 1976). This is the leading decision on sentencing principles. We have discussed some of the important factors we think are important in this case.
31. Counsel for the Provost submitted a book of authorities, and referred to several cases in argument in addition to *Mr. C.* We were taken to the cases of *The University of Toronto and J.H.* (Case No. 1077, November 2, 2020), *The University of Toronto and O.E.R.* (Case No. 981, March 4, 2019), *The University of Toronto and J.Y.* (Case No. 834, February 25, 2016), *The University of Toronto and F.A.* (Case No. 766, June 11, 2015) and *The University of Toronto and Y.G.* (Case No. 802 September 28, 2015), in which the students were found to have committed a similar academic offence, and given the same penalty.
32. After deliberation, the Tribunal ordered the penalty that the Provost requested. However, we adjusted it so that the suspension began on September 1, 2021, and will end August 30, 2023, with the notation lasting until August 30, 2024. The Student has not been enrolled in any courses in the Fall 2021 semester, and so it seemed fair that, if she elects to return in the Fall of 2023, she will be permitted to do so.

33. The penalty is consistent with the authorities from this Tribunal listed above, which ordered similar penalties for a first offence of knowingly representing an idea or expression of an idea or work of another as her own, contrary to section B.I.1(d) of the Code. Although these authorities are not binding on us, it is important that this Tribunal renders decisions that are consistent, so that the treatment a student receives is not dependent on the panel the student draws. In the absence of that principle, and those authorities, we might have been inclined to impose a lesser penalty, as it is the Student's first offence, albeit a serious one. However, the Tribunal agrees that consistency is an important value in assessing penalties, and recognizes the importance of academic integrity and honesty, as the authorities cited above provide (see, e.g., *The University of Toronto and Y.G.* at paras. 26-37, speaking about the seriousness of plagiarism and academic integrity). We therefore agree that the penalty requested by the Provost is appropriate, subject to the modest change relating to the beginning of the suspension period.

34. The Provost argued that the Student's failure to attend reflected a lack of contrition and is therefore an aggravating factor. While we agree that the Student's non-attendance meant that we had no evidence of mitigating factors, we do not agree that non-attendance is, itself, an aggravating factor. There are many reasons why the Student might not attend the hearing: she may be embarrassed by her conduct or may not intend to re-enroll in the University. In this case, there is reason to believe she was not aware of the hearing date since it was provided to her via an e-mail account that has not been checked in many months. Moreover, as a matter of principle, we do not believe it is appropriate to draw the inference that non-attendance reflects a lack of contrition. There is no evidence one way or the other about whether she is contrite. However, we concluded that the penalty requested is appropriate even in the absence of further aggravating factors.

35. For these reasons, the Tribunal accepted the Provost's submissions on sanction, and signed an order at the hearing imposing the following sanctions on the Student:

- (a) she receives a grade of zero in MAT133Y1
- (b) she be suspended from the University for two years, commencing September 1, 2021;
- (c) a notation be placed on the Student's academic record and transcript for a period of one year after her suspension is over (i.e., until August 31, 2024);
- (d) the decision 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 11th day of November, 2021.

Original signed by: \_\_\_\_\_  
Andrew Bernstein, Chair  
On behalf of the Panel