

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic misconduct filed on March 16, 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

- and -

M■■■■ D■■■ M■■■ B■■■■

REASONS FOR DECISION

Hearing Dates: February 16, August 24 and September 21, 2021, via Zoom

Members of the Panel:

Mr. F. Paul Morrison, Chair
Professor Georges Farhat, Faculty Panel Member
Ms. Lauren Membreno, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
Mr. Domenic Saverino, Counsel for the Student, Weston Law Chambers

Hearing Secretary:

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

In Attendance:

Ms. M■■■■ D■■■ M■■■ B■■■■

A. CHARGES

1. On February 16, August 24 and September 21, 2021 this Panel of the University Tribunal held a hearing to consider the Charges brought by the University of Toronto (the “University”) against M■■■ D■■■ M■■■ B■■■■ (the “Student”) under the *Code of Behaviour on Academic Matters, 1995* (the “Code”).

2. The Charges were as follows:

1. On or about October 31, 2019, the Student knowingly used or possessed an unauthorized aid, or obtained unauthorized assistance, in a Mid-term exam in SPA235H5F, contrary to section B.I.1(b) of the *Code*.

2. On or about October 31, 2019, the Student knowingly had an intent to attempt to use or possess an unauthorized aid, or to obtain unauthorized assistance, in a Mid-term exam in SPA235H5F, contrary to section B.I.1(b) and section B.II.2 of the *Code*.

3. In the alternative, on or about October 31, 2019, 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 an academic advantage in connection with the final examination in SPA235H5F, contrary to section B.I.3(b) of the *Code*.

3. Particulars of the offences charged are as follows:

(a) At all material times, the Student was a registered student at the University of Toronto Mississauga.

(b) In Fall 2019 the Student enrolled in SPA235H5F – Music and Dance in the Hispanic World (the “Course”).

(c) On or about October 31, 2019, the Student attended and wrote a Mid-term exam in the Course (the “Mid-term”), which was worth 15% of the Student’s final grade.

(d) No aids were permitted in the Mid-term.

- (e) At the Mid-term, the Student knowingly used and/or possessed an unauthorized aid, namely, a cell phone.
 - (f) At the Mid-term, the Student knowingly attempted to obtain unauthorized assistance from a student sitting nearby by asking for help in answering questions on the Mid-term.
 - (g) By using and/or possessing the cell phone during the Mid-term, and/or by attempting to obtain unauthorized assistance from a fellow student, the Student knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain an academic advantage.
4. The Student was in attendance at the hearing, throughout, and was represented by counsel.
 5. Counsel for the University undertook that, if there were a finding of guilt and conviction on Charges 1 and 2 the University would withdraw Charge 3.

B. THE EVIDENCE

6. A total of 5 witnesses (including 1 witness by Affidavit only) were called by the University in its presentation of the case. A total of 3 witnesses, including the Student herself, were called in defence.
7. There follows a synopsis of the evidence of each of the witnesses.
 - (a) ***Professor Aga Bijos***
8. Professor Bijos was the Instructor of the Course, i.e. SPA235H5F - Music and Dance in the Hispanic World (the "Course"). She has been a Professor at the University of Toronto Mississauga for approximately 10 years. She testified that the purpose of the course is to provide students with a background in the main genres of music.
9. Professor Bijos gave evidence that she gave the students in the Course direct instruction with respect to the tenets of "Academic Honesty and Plagiarism" as

contained in the Course syllabus. She did so in order to alert the students as to what was expected of them during the Course and in the exams. She discussed with the students what was allowed and what was not, and emphasized that no aids were allowed during a test or examination.

10. Professor Bijos was present in the classroom at the time the Mid-term was given. She was responsible for setting up the classroom and utilizing the computer screens at the front of the classroom in order to present what was required for purposes of the exam. She was mostly at the front of the classroom. There were approximately 30 desks in the room, to accommodate approximately 15-20 students. She testified that for much of the time she was not looking at the class, because she was putting videos on the computer screens at the front of the class for purposes of the exam.
11. The Student was sitting directly behind one of the computer screens, such that Professor Bijos could not see her unless she looked around the computer screen to do so. Occasionally, she would walk around the classroom while the students were taking the exam, and answer questions if posed. There were no other invigilators in the room during the exam.
12. At the beginning of the Mid-term, Professor Bijos instructed the students with respect to permitted and non-permitted conduct. She specifically told the students that aids were not permitted during the exam and that they were to put any phones and books away under their desks. In particular, students were not allowed to have a cellphone in their lap, because answers pertinent to the Mid-term could be accessed via the use of a cellphone.
13. Professor Bijos acknowledged that she did not observe the Student using her cellphone during the exam. At the next class following the Mid-term, a week later, two students approached Professor Bijos together and told her that they had observed the Student using her cellphone during the exam.

14. Having received that information, Professor Bijos contacted a third student, S████ Z████, who had been sitting at the desk next to the Student during the Mid-term. She asked Ms. Z████ if she had noticed anything out of the ordinary during the Mid-term. Ms. Z████ said that she had, and that she had seen the Student using her cellphone during the Mid-term.
15. Professor Bijos acknowledged that she herself did not see the Student using her cellphone at any time during the Mid-term. Nor did she see her speak to another student during the Mid-term.
16. Professor Bijos subsequently met with the Student as part of the required process concerning an academic offence. Professor Bijos acknowledged that she had “lied” to the Student, in that she told the Student that she had seen the Student using her cellphone during the Mid-term. In her evidence, Professor Bijos acknowledged that this was the wrong thing to do. She explained that she was concerned about preserving the identity of the students who had alerted her to the Student’s improper use of her cellphone.

(b) █████ █████

17. Ms. D████ was in her second year at the University in the Fall, 2019. She was enrolled in the Course. She related events with respect to the Mid-term held on October 31, 2019.
18. Ms. D████ was in the washroom just prior to the Mid-term. She testified that the Student entered the washroom and asked her and her friend if they had studied for the Mid-term, saying it would be hard for her because she had missed a number of classes.
19. During the Mid-term, Ms. D████ observed the Student looking down at her legs, rather than at her exam paper. She observed that the Student had a cellphone on her legs and was looking below her exam paper at the cellphone. She seemed to have positioned her hair so as to prevent the Instructor from

observing her behaviour. the Student's finger was scrolling on the cellphone. Her right leg was crossed over her left leg, with the cellphone sitting on her left leg.

(c) █████ █████

20. Ms. Z████ was in her fourth year at the University in the Fall, 2019. She was enrolled in the Course and usually sat at the desk immediately next to the Student's. As a result, she came to know the Student somewhat.
21. Just prior to the Mid-term on October 31, 2019, Ms. Z████ was reviewing her notes. the Student asked her if she could look at the notes, saying she had not studied very much.
22. During the Mid-term, the Student was sitting beside Ms. Z████, to her right. Early in the exam, she asked Ms. Z████ if she had the answer to a certain number of the questions. She did so in a whispering voice. Ms. Z████ attempted to turn away from the Student and did not answer her question.
23. In the course of the exam, Ms. Z████ saw the Student's cellphone on her lap. She was looking down at the cellphone and the cellphone screen was lit up. She seemed to be using the cellphone. It was on and she was looking at it.
24. Ms. Z████ did not report this to anyone following the Mid-term. At some point thereafter, she was contacted by Professor Bijos, who told her that there were witnesses who had observed the Student cheating during the exam. Ms. Z████ told Professor Bijos what she had seen, as outlined above.

(d) M████ N████

25. Ms. N████ was a student in her second year at the University in the Fall, 2019. She was enrolled in the Course. She did not know the Student, although she had spoken to her once or twice.
26. Just prior to the Mid-term on October 31, 2019, she was in the washroom when the Student entered the washroom. The Student asked her and her friend some

questions about the Mid-term and what might be on it. She was worried because she had not attended all of the classes.

27. Ms. N [REDACTED] testified that she was aware of the rules governing students' conduct during the Mid-term. In particular, aids or devices were not allowed and students were instructed to put any devices in their bags under their desks.
28. Ms. N [REDACTED] testified that during the Mid-term, she observed the Student moving in a way that caught her attention. She seemed to be looking around to ascertain if anyone was watching her. She seemed to be hiding her movements with respect to the use of her cellphone. The Student was at the front of the classroom and Ms. N [REDACTED] was seated at the back. The Student was directly in Ms. N [REDACTED]'s line of eyesight and she noticed her unusual movements 3 or 4 times. The Student was putting her head down toward her lap.
29. Following the Mid-term, Ms. N [REDACTED]'s friend, A [REDACTED] D [REDACTED], mentioned to her the unusual movements of the Student during the Mid-term. Ms. N [REDACTED] told Ms. D [REDACTED] that she, too, had observed it. The following week, after class Ms. N [REDACTED] and Ms. D [REDACTED] together reported the Student's behaviour to Professor Bijos.

(e) Professor Seguin

30. On consent, the evidence of Professor Seguin was given by Affidavit. The Affidavit was marked as Exhibit 2 at the hearing.

(f) L [REDACTED] [REDACTED]

31. In the Fall, 2019 Mr. E [REDACTED] was a student in his third year at the University. He was enrolled in the Course.
32. For the Mid-term, Mr. E [REDACTED] was seated near the back of the classroom. The Student was seated toward the front of the classroom. He was facing the computer screen and could see the Student during the Mid-term. His evidence was that he did not see anything unusual in her behaviour. He did not see her

with her cellphone in her hand. Nor did he see her talk to anybody during the Mid-term.

33. On cross-examination, Mr. E [REDACTED] agreed that the Student was seated somewhat to his right. He would have had to twist around in order to see her. She was not in his direct line of sight.

(g) M [REDACTED] [REDACTED]

34. Mr. M [REDACTED] B [REDACTED] is the brother of the Student. In the Fall, 2019 he was enrolled at the University in his third year and was taking a full course load. He would often drive to the Mississauga campus for classes together with his sister.

35. He was aware that his sister was enrolled in the Course. He would often walk with her to that class, because they had classes at the same time. He recalled that on the date of the Mid-term, he walked with her to the class. He said she was a bit late in arriving for the exam.

(h) *The Student*

36. The Student gave evidence on her own behalf.
37. She was enrolled at the University in the Fall, 2019. In particular, she was enrolled in the Course and took the Mid-term on October 31, 2019.
38. The Student testified that she was late getting to class for the Mid-term and that, when she arrived, all the other students were already seated. She was the last one to enter the room. She sat in her usual seat, at the front of the class, such that she had to turn to her right to see the computer screen. S [REDACTED] Z [REDACTED] was seated next to her, as usual. She said she had no time to speak to Ms. Z [REDACTED] before the exam, because Professor Bijos was about to begin the examination.
39. The Student testified that she put her papers and her phone in her bag underneath the desk.

40. For the most part, Professor Bijos was seated at the computer control panel, administering the Mid-term. The Student could see the Professor at all times. At times, the Professor would walk around the class and, on one occasion, the Student asked the Professor if one of her answers was correct and the Professor told her it was wrong. They had a brief discussion about that.
41. The Student denied that she ever accessed her cellphone during the Mid-term. It was in her bag throughout. She also denied that she talked to any other student during the Mid-term.
42. The Student first became aware of these allegations when she received an email from Professor Bijos asking her to come to the Professor's office. When she went to the office, Professor Bijos told her that she had seen her using her cellphone during the Mid-term. The Student denied it. At some point thereafter in the meeting, Professor Bijos told the Student that she had lied about seeing her with her cellphone and, instead, it was 3 of her fellow students who had seen her accessing her cellphone during the Mid-term. The Student believed she knew who the 3 students were. At some point, thereafter, she asked those students if they had said anything about her to the Professor. She said they denied it.
43. On cross-examination, the Student acknowledged that she had missed 2 of the 6 classes that had been held to date in the Course.
44. On cross-examination, the Student also said that she did not borrow S■■■■ Z■■■■'s notes, nor did she have any conversation with Ms. Z■■■■ prior to or during the Mid-term. She denied having her cellphone on at any point during the Mid-term.

C. DISCUSSION

45. The Panel gave careful consideration to the evidence given by all witnesses, both those for the University and those for the defence. The Panel preferred the evidence of the witnesses for the University over that of the witnesses for the defence, where there was a conflict.

46. The 3 student-witnesses all gave evidence to the effect that they observed the Student using her cellphone in a surreptitious manner during the Mid-term. They were all in a position to make those observations. The rule against accessing devices during the Mid-term was clearly expressed by the Professor at the outset of the Course and again at the beginning of the Mid-term. The rule was understood by all students. The Student did not contest either the rule or that she was aware of it. In addition, as noted by counsel for the University, the Charge does not require that there be evidence that the Student actually utilized the device. Rather, the rule is contravened, and the Charge established if the Student had her phone on her lap or in her hand, regardless of direct evidence of use.
47. Here, the evidence establishes that the Student had her cellphone on her lap and in her hand, in use, during the Mid-term. The Panel does not accept the Student's denial of this Charge.

D. DISPOSITION

48. Accordingly, the Tribunal found that the Student was guilty of Charge 1 and Charge 2. A conviction to that effect was entered.
49. In accordance with its undertaking, the University thereupon withdrew Charge 3.

E. SANCTION

50. The Panel received and carefully considered the submissions of counsel for the University and for the Student as to the sanction to be imposed following convictions on Charge 1 and Charge 2. In particular, counsel for the Student provided written submissions on sanctions, which the Panel received and carefully reviewed.
51. Counsel for the Student emphasized that the Student had no prior offences or disciplinary issues while attending the University. He submitted that a suspension from the University of 2 years and a notation of the conviction on her record of 3 years was harsh and should be mitigated. In particular, counsel for the Student

submitted that she should be permitted to graduate prior to the effective date of any sanction imposed. This request was opposed by the University.

52. In the course of submissions, case law was referred to, being primarily case law arising from offences of the same or a very similar nature to that in this case, and penalties imposed in such cases. The Panel recognizes and accepts that the offence in question, i.e., cheating, is very serious in nature and causes detriment to the University and to its student body. There is a need to deter others from committing a similar offence. The use of unauthorized aids during an exam is a threat to the integrity of the University's processes for evaluating students, is unfair to other students, and jeopardizes the University's reputation.
53. As reflected in the case law, conviction on a cheating offence generally results in a suspension of at least 2 years if it is a first offence, with a longer suspension for subsequent offences. The Panel recognizes that this is the Student's first offence and does not hold against her that she defended the Charges as she is entitled to do. The need to deter others from committing similar offences is a key factor in any cheating case. It is important to send a clear message that such offences will be regarded as very serious and treated accordingly.
54. Accordingly, after careful deliberation, the Panel imposed the penalty requested by the University.

F. ORDER

55. The Tribunal therefore orders as follows:
 - (a) **THAT** Ms. B [REDACTED] is guilty of two counts of knowingly using or possessing an unauthorized aid or obtaining unauthorized assistance in connection with a Mid-term exam in SPA235H5F, contrary to section B.I.1.(b) of the *Code*;
 - (b) **THAT** the following sanctions shall be imposed on Ms. [REDACTED]:

- (i) a final grade of zero in the course SPA235H5F in Fall 2019;
 - (ii) a suspension from the University of Toronto for a period of two years from the first day of hearing (February 16, 2021 to February 15, 2023); and
 - (iii) a notation of the sanction on her academic record and transcript for a period of three years from the first day of hearing (February 16, 2021 to February 15, 2024); and
- (c) **THAT** this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with Ms. Becerra's name withheld.

DATED at Toronto, this 13th day of January, 2022.

Original signed by: _____
F. Paul Morrison, Chair

On behalf of the Panel