

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on April 28, 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

UNIVERSITY OF TORONTO

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REASONS FOR DECISION

Hearing Date: October 13, 2021, via Zoom

Members of the Panel:

Mr. Douglas F. Harrison, Chair

Dr. Wendy Rotenberg, Faculty Panel Member

Ms. Alena Zelinka, Student Panel Member

Appearances:

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

Mr. William Webb, Co-counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary:

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

Not in Attendance:

Mr. J ■■■ T ■■■ L ■■

Charges and Hearing

1. The Trial Division of the Tribunal held a hearing by videoconference on October 13, 2021, to address the following charges brought by the University of Toronto (the “University”) against J ■ T ■ L ■ (the “Student”) under the *Code of Behaviour on Academic Matters, 1995* (the “Code”), which were set out in a letter to the Student dated April 28, 2021:
 1. 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 MAT137Y1 (the “Course”), contrary to section B.I.1(d) of the Code.
 2. In the alternative, on or about April 16, 2020, you knowingly obtained unauthorized assistance in connection with the final exam in the Course, contrary to section B.I.1(b) 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.

Particulars of the offences charged are as follows:

1. At all material times you were a student enrolled at the University of Toronto Faculty of Arts & Science.
2. In Fall 2019 and Winter 2020, you enrolled in MAT137Y1 (Calculus!).
3. Students in the Course were required to write a final exam, worth 20% of their final grades. Due to the covid19 pandemic, the final exam was administered as a 24-hour online exam. The only aids to which students were allowed to refer were their own notes, their own term work, course videos, all other official course materials, the textbook and WolframAlpha.
4. On or about April 16, 2020, you submitted your final exam in the Course.
5. You submitted your final exam:
 - a. to obtain academic credit;
 - b. knowing that it contained ideas, expressions of ideas or work which were not your own, but were the ideas, expressions of ideas or work of others, including the author(s) of answers that were posted on Chegg.com, which is a website that allows subscribers to post questions on the site and to view questions and answers posted on the site (the “Chegg Sources”); and
 - c. knowing that you did not properly reference the ideas, expressions of ideas or work that you drew from the Chegg Sources or from others.

6. You knew that the Chegg Sources were not an authorized source to which you were allowed to refer in completing the final exam.
7. You knowingly obtained unauthorized assistance from the Chegg Sources or from others.
8. You knowingly submitted your final exam with the intention that the University of Toronto rely on it as containing your own ideas or work in considering the appropriate academic credit to be assigned to your work.

Service

2. The Student did not attend the hearing. In order to proceed with the hearing in the Student's absence, the Tribunal therefore had to determine if reasonable notice was given to the Student, as required by s. 6 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("SPPA") and by Rule 13 of *The University Tribunal Rules of Practice and Procedure* (the "Rules").
3. Counsel for the University presented affidavit evidence from Samanthe Huang, Kimberly Blake and Andrew Wagg. This evidence, as outlined below, demonstrated that all relevant materials in this matter were delivered to the Student via email to the Student's contact email address as recorded in the University's Repository of Student Information ("ROSI").
4. Delivery by email to a student's email address as recorded in ROSI is permitted and is considered valid service for a hearing before this Tribunal by virtue of Rule 9(c) of the Rules. It is not necessary to physically deliver materials to effect valid service, although that is another option under Rule 9. Students are apprised of the fact that the University and its divisions may use email for delivering official correspondence to them in accordance with the University's Policy on Official Correspondence. This Policy also directs that students are responsible for maintaining and advising the University of their current email address through ROSI.
5. In the present case, on April 28, 2021, the Office of the Vice-Provost, Faculty and Academic Life emailed the Student a copy of a letter to him dated the same day, from Professor Heather Boon, the University's Vice-Provost, Faculty & Academic Life, which attached the charges. The email was sent to the Student's email address listed in ROSI. This email address has been listed in ROSI as the Student's contact email since October 2018.
6. On the same day, Samanthe Huang of the Appeals, Discipline and Faculty Grievances Office, also emailed the Student at the Student's email address listed in ROSI, a copy of Professor Boon's letter, a copy of the charges, the Code and the Rules, and a pamphlet for Downtown Legal Services.
7. The course coordinator for the Course, Professor Asif Zaman, and the University's Student Academic Integrity ("SAI") office had earlier sent emails to the Student, in 2020, concerning the issues addressed in the charges, using the Student's email address listed in ROSI.

8. Professor Zaman emailed the Student on April 30, 2020, to advise that he had assessed the Student's submitted final exam in the Course and determined that there had been academic misconduct as the submitted final exam was unacceptably similar to material found on the website, Chegg.com. Professor Zaman proposed that he would forward the Student's case directly to the Dean's Office so that the case could be assessed by a Dean's Designate as soon as possible. This would allow the process to be concluded more quickly and the Student would have the opportunity to discuss the circumstances with a Dean's Designate. Professor Zaman also advised that the Student was entitled to a meeting with an instructor. Professor Zaman asked the Student to respond by 5:00 pm on May 4, 2020.
9. Professor Zaman wrote a second email to the Student at 1:05 p.m. on May 4, 2020, reminding the Student to reply to his April 30, 2020, email, and stating that if he did not receive a reply or a clear decision from the Student by 5:00 p.m. that day, then Professor Zaman had the option of forwarding the matter to the Dean of the Faculty of Arts & Science.
10. On May 5, 2020, having not heard from the Student, Professor Zaman wrote another email to the Student, advising that he was forwarding the matter to the Dean's Office and that the SAI office handles all cases for the Dean's Office.
11. The SAI Office first contacted the Student on July 8, 2020, when Professor Francois Pitt, Dean's Designate for Academic Integrity, emailed the Student at the Student's ROSI email address, about an allegation of academic misconduct in the Course, offering to meet with the Student and also making an offer to resolve the matter with an admission to having committed an academic offence. As no reply was received to that email, a follow up email was sent to the Student by the SAI office on July 22, 2020, requesting a response by July 31, 2020.
12. On October 15, 2020, an email was sent to the Student, at his ROSI contact email address, by the SAI office on behalf of Professor Pitt, noting that no response had been received from the Student and advising the Student that the matter would be forwarded to the Vice-Provost for review with the recommendation that charges be laid.
13. Following the above-mentioned April 28, 2021 email enclosing the charges, Tina Lie, a lawyer with Paliare Roland Rosenberg Rothstein LLP ("Paliare Roland"), acting as Assistant Discipline Counsel for the University, emailed the Student a number of times:
 - a. May 3, 2021, introducing herself and advising the Student that she would be sending him, by email, important documents and information regarding the hearing of the charges; encouraging the Student to retain legal counsel; and inviting the Student to contact her to discuss resolution;
 - b. July 16, 2021, enclosing the University's disclosure brief of documents in the University's possession that may be relevant to this matter, as well as another copy of the charges, a copy of the University's Policy of Official Correspondence with Students and summaries of the evidence the University anticipated calling at the

hearing, and advising the Student that important documents and correspondence would continue to be sent to the Student's contact email address;

- c. August 11, 2021, requesting that the Student contact her immediately but no later than August 18, 2021, to advise of his availability on eight dates she proposed for the hearing, which she would be requesting be held by videoconference in light of the restrictions imposed by the ongoing pandemic; and
 - d. August 27, 2021, advising the Student that having not heard from him, she would proceed to schedule his hearing for October 13, 2021, by videoconference, and that if he did not attend the hearing once it was scheduled that it may take place in his absence without further notice to him.
14. On August 30, 2021, Ms. Huang, following a request from Ms. Lie, served the Student with the Notice of Electronic Hearing (the "Notice") by sending him a copy by email to his email address listed in ROSI, at 3:07 p.m., Toronto time. The Notice stated that the hearing was scheduled for October 13, 2021, at 1:45 p.m. Ms. Huang's email included the coordinates for the Student to access the Zoom videoconference for the hearing.
 15. Also, on August 30, 2021, the Student's ROSI email account was accessed by someone, at 4:35 p.m., Toronto time, a little less than an hour and a half after Ms. Huang's email was sent. Mr. Wagg, an Incident Report Architect with the University's Information Security, Information Technology Services department, advised that this was the last time the account was accessed.
 16. On September 28, 2021, Ms. Lie emailed the Student a copy of an affidavit of Professor Zaman, asking the Student to advise her by October 8, 2021, if the Student intended to cross-examine Professor Zaman at the hearing.
 17. Neither Ms. Lie nor Ms. Huang received any communication from the Student in response to any of their emails and they did not receive any bounce back messages indicating that any of their emails to him could not be delivered.
 18. In addition to the above-noted emails, Kimberly Blake, a legal assistant at Paliare Roland, assisting Ms. Lie, sent the Student a courier package on October 1, 2021, to the street address in Vancouver, B.C., that the Student had provided in ROSI as his mailing address. This package contained a letter from Ms. Lie, the Notice, a copy of Ms. Huang's August 30, 2021, email with the Zoom coordinates for the hearing, and the charges. The courier was unable to deliver the package because an entry code was required to access the building, which the courier did not have and which is not contained in the Student's contact information in ROSI.
 19. Ms. Blake also attempted to call the Student, on October 6, 2021, at the cell phone number the Student provided in ROSI. The phone rang a few times and the call went to voicemail. The voicemail greeting stated the phone number and did not indicate to whom the voicemail box belonged. Ms. Blake left a voicemail message letting the Student know that

a hearing had been scheduled and the date and time of the hearing. She also indicated that the Student should check his University of Toronto email account, as Ms. Lie had been trying to get in touch with him. Ms. Blake asked him to contact Ms. Lie and also left her cell phone number if he had any questions.

20. Also, on October 6, 2021, Ms. Blake called the Student's alternate phone number that he had provided in ROSI. That phone rang a number of times, but then the call dropped. There was no opportunity for Ms. Blake to leave a voicemail message.
21. The Panel convened at 1:45 p.m. on October 13, 2021, in accordance with the Notice. The Panel then waited 15 minutes to allow the Student or a representative of the Student to appear. By 2:00 p.m., neither the Student nor a representative appeared. At that point, the Panel concluded, based upon the foregoing evidence and the aforementioned applicable provisions of the Rules and the SPPA, that the Student had received reasonable notice of the hearing and of the charges, and therefore ordered that the hearing proceed in his absence, as permitted by s. 7(3) of the SPPA and Rule 17 of the Rules.

Facts

22. In support of the charges, Counsel for the University tendered the affidavit of Professor Zaman, the contents of which are described below. Professor Zaman is an Assistant Professor, Teaching Stream, in the Department of Mathematics at the University of Toronto. As noted above, this affidavit was emailed to the Student by Ms. Lie on September 28, 2021, at which time Ms. Lie invited the Student to advise her whether he wished to cross-examine any of the affiants. The Student did not respond to her. Professor Zaman attended the hearing and addressed questions from the Panel.
23. In Fall 2019 and Winter 2020, Professor Zaman was the course coordinator for the Course, which is a first-year course designed to provide students with a foundational understanding of calculus. It is a prerequisite for upper-level calculus courses.
24. The Student was enrolled in the Course. There were approximately 1,500 students registered in the Course at the beginning of the 2019-20 school year and approximately 1,100 remaining in the Course at the end of that school year.
25. Students in the Course were to be initially evaluated on the basis of ten problem sets, four term tests and a final exam. Because of the COVID-19 pandemic, the Course was moved online in early March 2020, and the grading scheme was revised. Students would now be evaluated on the basis of seven problem sets, four tests and a final exam, the latter of which would be a 24-hour open-book online exam.
26. The instructions for the final exam were provided to the students in the Course on March 27, 2020. The instructions provided that during the final exam, students were permitted only to refer to their own notes and term work, the Course videos, all other official materials for the Course, the Course textbook and WolframAlpha.

27. Early in the Course, students were warned about using tutorial companies, online homework websites or educational centres to assist them with their course work. On September 28, 2019, Professor Zaman sent students in the Course an announcement labelled, “A Word of Caution”, about the danger of using such companies and websites, noting in particular:

One Year, a company gave out absurdly bad problem set solutions during one of their private tutorials. [Course] staff immediately noticed these strange answers so a large number of students were penalized for academic misconduct and they now have a record with OSAI (the Office for Student Academic Integrity). Sadly, this kind of thing happens on a regular basis. [emphasis in original]

28. The instructions for the final exam also warned students not to use aids or resources (online or offline) other than those specifically authorized, and not to communicate with any person about the final exam other than a teaching team member of the Course. Students were reminded and warned as follows:

Please keep your integrity. We will be carefully investigating every single paper.

The rules for academic dishonesty are strict. Every year a handful of students are reported to OSAI and receive various penalties, which may range from an F in the course to expulsion from the University. We hate having to report such incidents. Please do not make us do it, especially at a time like this.

29. The final exam was administered online as an open-book exam. It was made available to students on April 15, 2020 at 7:00 pm. Students were given 24 hours to submit their answers. The final exam was distributed through the Course website and students were to submit their answers through Crowdmark, the online grading software used in the Course for the problem sets (which had always been administered online).

30. The cover page of the final exam required students to complete an academic integrity statement, confirming that they had not communicated with any person about the final exam other than a member of the teaching team and had not used any unauthorized aids at any point during the final exam period.

31. The Student submitted his answers to the final exam on April 16, 2020, online, using Crowdmark. The Student signed the academic integrity statement by which he agreed,

I understand the consequences of violating the University’s academic integrity policies as outlined in the Code of Behaviour on Academic Matters and I have not violated them while writing this test.

32. During the 24-hour final exam period, instructors and teaching assistants in the Course found a number of the questions and answers from the final exam posted on Chegg.com. This is a subscription-based website that allows students to post problems that are then answered by so-called experts. Subscribers can also access questions and answers posted by others to the site.

33. In marking the Student's answer to Questions 15(a), (c) and (d) of the exam, the Course instructors determined there were substantial similarities between the Student's answers and the answers that had been posted on Chegg.com. Upon further review, Professor Zaman came to the same determination that there were substantial similarities between the Student's answers to these questions and the answers that had been posted on Chegg.com. In particular:
- a. For Question 15(a), both answers used the same algebraic steps despite the myriad of ways that one could perform the algebraic manipulations. In addition, both answers began with an unusual step of rewriting the summation expression with absolute values. This addition was both completely unnecessary and not what was taught in class.
 - b. For Question 15(c), the Student's answer was not suspicious on its own, but was similar to the answer on Chegg.com. Given the high degree of similarity between the Student's answers and the Chegg.com answers for Questions 15(a) and 15(d), Professor Zaman concluded it was likely that the Student also copied the answer for Question 15(c) from Chegg.com.
 - c. For Question 15(d), both answers used the same algebraic steps despite the myriad of ways that one could perform the algebraic manipulations. In addition, the Student did not provide a justification for using the steps, and the solution did not follow from those steps. The Student also used an unusual notation in his solution that would never be included. He also made a copying error, using a "+" when the solution called for a "-" but presenting a final value that would be derived from a subtraction.
34. In Professor Zaman's view, while there are countless ways to approach the problems, the fact that the Student's answers took the same approach, with the same or very similar steps to the Chegg.com answers, was suspicious and, given the number and degree of the similarities, unlikely to have been coincidental.

Finding on Charges

35. The Student was charged under s. B.I.1(d) of the Code, by which it is an offence to knowingly represent as one's own any idea or expression of an idea or work of another in any academic examination or term test or in connection with any other form of academic work, i.e., to commit plagiarism.
36. In addition, the Student was charged, in the alternative, under s. B.I.1(b) of the Code, by which it is an offence to use or possess an unauthorized aid or aids or obtain unauthorized assistance in any academic examination or term test or in connection with any other form of academic work.
37. In this instance, it is evident that the Student submitted answers that had originated from Chegg.com, given the similarities in his answers and those found on the website, which

included unnecessary steps not taught in the Course and wrong notations. The Student had been warned not to use websites like Chegg.com during the Course and was told their use was not permitted during the final exam. He was also told not to communicate with anyone other than a teaching team member during the final exam. He knew or ought to have known he was not permitted to use answers other than his own on the final exam.

38. Based on the foregoing, this Panel is satisfied that the Student, on a balance of probabilities, made use of answers from Chegg.com to complete the final exam – answers that he may have obtained directly from the website or from someone else. In reviewing the charges, the Panel decided that the alternative charge, of use of an unauthorized aid or obtaining unauthorized assistance, fit the circumstances presented by the Provost in this matter.
39. Therefore, the Panel finds that the Student did commit the offence of using an unauthorized aid or obtaining unauthorized assistance in a final exam, contrary to s. B.I.1(b) of the Code.

Withdrawal of Alternative Charges

40. Upon these findings, Counsel for the University advised that the University was withdrawing the other alternative charge, as set out in paragraph 3 of the charges (see para. 1, above).

Sanction

41. Section C.ii.(b) of the Code sets out that the Tribunal may impose a range of sanctions on a student who has been convicted under the Code, ranging from an oral reprimand to a five-year suspension or, more severely, a recommendation to the President of expulsion or to Governing Council of cancellation of a degree. The Tribunal may also order that any sanction it imposes be recorded on the student's academic record and transcript for a period of time and may also report any case to the Provost, who may publish a notice of the decision and sanction in the University newspapers (without identifying the student by name).
42. The Code also contains the "Provost's Guidance on Sanctions" in Appendix "C". Section B.8(b) provides "absent exception circumstances, the Provost will request that the Tribunal...suspend a student for two years for any offence involving academic dishonesty, where a student has not committed any prior offences".
43. In this instance, the University sought an Order that the Student receive a final grade of zero in the Course and a two-year suspension, along with a notation on the Student's record and transcript for three years and a report to the Provost for publication with the Student's name withheld.
44. This request was in part based on sanctions handed down by the Tribunal in previous cases, the Provost's Guidance on Sanctions (but which are not binding on this tribunal), and also on the factors laid down by this Tribunal in *University of Toronto and Mr. C* (Case No. 1976/77-3, November 5, 1976) ("Mr. C").

45. The reasons for decision in Mr. C set out factors that a tribunal should consider when imposing a sanction:
 - a. The character of the person charged;
 - b. The likelihood of a repetition of the offence;
 - c. The nature of the offence committed;
 - d. Any extenuating circumstances surrounding the commission of the offence;
 - e. The detriment to the University occasioned by the offence; and
 - f. The need to deter others from committing a similar offence.
46. With respect to factors (a) and (d), character and extenuating circumstances, respectively, there was no evidence one way or the other before the Tribunal. The Student did not participate in the process at all. There is no evidence of remorse or insight, no evidence of a willingness to take responsibility for his actions and no evidence of a willingness to learn from his mistakes. There is no evidence of any extenuating or mitigating circumstances. The onus was on the Student to put forward mitigating evidence.
47. With respect to factor (b), likelihood of repetition, the Student was in first year at the time of the final exam and has not enrolled at the University since. There is no evidence of a pattern of misconduct but also nothing to show that he has learned from his mistake or that he appreciates its gravity. Again, there is no evidence of remorse or insight on his part.
48. With respect to factors (c), (e) and (f), the nature of the offence, the detriment to the University and the need for deterrence, respectively, the use of an unauthorized aid or obtaining unauthorized assistance, which effectively allows the student to cheat by copying answers from another, improper source onto an exam, as the Student has committed, is an extremely serious offence that harms the institution and the academic process. Like plagiarism, it is a serious breach of academic integrity and can be seen as an attempt to defraud the University. The associated penalty must act as general deterrent against this behaviour.
49. Counsel for the University directed the Panel to a number of previous decisions of the University Tribunal on the issue of sanctions in cases of plagiarism and use of unauthorized aids.
50. It is accepted that there is no benchmark or starting point that a Tribunal is meant to apply in sanctioning a student who has been found to have violated the Code. The sanction in a particular case is to be determined based on the circumstances of that case. However, previous decisions of the Discipline Appeal Board and this Tribunal have found that students must be treated fairly and equitably when being sanctioned, and that there must be a general consistency in the approach of the Tribunal generally (see *University of Toronto v. B.S.* (Case No. 697, January 17, 2014 (Sanction)), at paras. 8-11).

51. In the *University of Toronto v. K.Z.* (Case No. 1126; September 13, 2021), the student was found to have used answers from Chegg.com on the very same exam at issue in this matter. Although that Tribunal found the student to have plagiarized her answers as opposed to using an unauthorized aid or obtaining unauthorized assistance, the actual offending conduct was the same. The student there also did not participate in the discipline process. The Tribunal ordered a zero grade in the course, a two-year suspension and the three-year notation. The fact that the student did not participate was not considered to be an aggravating factor with respect to the sanction imposed.
52. The Tribunal in *University of Toronto v. J.W.* (Case No. 1082; August 23, 2019) found that purchasing an essay and submitting it as one's own was an aggravating factor when it came to sanctions. Counsel for the University in the present case did not suggest that the use of answers from Chegg.com was an aggravating factor, because there was no evidence that the Student acquired them from the website. He may have collaborated with another student who had a subscription to the website, or who had obtained the answers from someone who did. As in the *University of Toronto v. K.Z.* case, there is no evidence the Student purchased the answers he submitted on his final exam.
53. In the *University of Toronto v. J.Y.* (Case No. 834; February 25, 2016), the student was found to have improperly collaborated with another student in the completion of an assignment. It was unclear which one was the author of the work and which one copied, but such a finding was not required by the Tribunal in order to convict the student of both plagiarism and obtaining unauthorized assistance. The student had no prior record of academic misconduct. The sanction imposed was a zero in the course, a two-year suspension and a three-year notation.
54. In the present case, the Student has no prior record of academic misconduct. However, he has been found to have engaged in a serious breach of academic integrity. While the fact that he chose not to participate in this process will not be considered an aggravating circumstance, he passed up the opportunity to present evidence of mitigation or extenuating circumstances. The Tribunal also accepts that there was no evidence the Student paid for the answers he submitted on the final exam. Accordingly, in light of the foregoing, the Tribunal concludes that the sanction requested by the Provost is reasonable and appropriate in the circumstances of this case.
55. Therefore, the Panel orders that the following sanctions be imposed on the Student:
 - a. a final grade of zero in the Course, MAT137Y1 in Fall 2019 and Winter 2020;
 - b. a suspension from the University for a period of two years, from September 1, 2021 to August 31, 2023;
 - c. a notation of the sanction on the Student's academic record and transcript for a period of three years, from October 13, 2021, until October 12, 2024; and

- d. the 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 January 2022.

Original signed by: _____

Douglas F. Harrison, Chair

On behalf of the Panel