

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on February 8, 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

BETWEEN:

UNIVERSITY OF TORONTO

- and -

H [REDACTED] W [REDACTED]

REASONS FOR DECISION

Hearing Date: December 16, 2021, via Zoom

Members of the Panel:

Ms. Harriet Lewis, Chair

Dr. Pascal van Lieshout, Faculty Panel Member

Ms. Amal Shah, 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:

Mr. H [REDACTED] W [REDACTED]

1. This panel of the University Tribunal held a hearing on December 16, 2021, to consider the charges brought by the University of Toronto (the “University”) against Mr. H■■■■ W■■■ (the “Student”) under the *Code of Behaviour on Academic Matters, 1995* (the “Code”).

A. Preliminary Issue: Proceeding in the Absence of the Student

2. The hearing was scheduled to begin at 9:45 a.m. on Thursday, December 16, 2021, by videoconference. At that time, Assistant Discipline Counsel advised that neither the Student nor a representative of the Student had responded to the Notice of Electronic Hearing.

3. The onus of proof is on the University to demonstrate that it provided a student with reasonable notice of the hearing.

4. The Tribunal had before it affidavit materials prepared by Assistant Discipline Counsel setting out the following attempts, which had been made to provide notice of the charges and hearing to the Student:

- i. On February 8, 2021, the Office of the Vice-Provost, Faculty and Academic Life served the charges on the Student by email to the utoronto email address that the Student had provided in the University of Toronto Repository of Student Information (“ROSI”).
- ii. On February 9, 2021, the Office of Appeals, Discipline and Faculty Grievances, University of Toronto served the Student with a letter regarding the charges filed against him, together with copies of the charges, the *Code of Behaviour on Academic Matters*, the *Rules of Practice and Procedure* (the “Rules”), and a pamphlet for Downtown Legal Services. These were sent by email to his utoronto email account. The Office did not receive a “bounce back” message from

the Student's email account indicating that the email could not be delivered.

- iii. On December 16, 2021, the Office of Appeals, Discipline and Faculty Grievances, University of Toronto, sent additional correspondence by email (including another copy of the charges, the other noted material and a Notice of videoconference via the Zoom platform) and advised the Student that if he wished to proceed in person he could still request an oral hearing under the Rules by notifying the Office of Appeals Discipline and Faculty Grievances at least one week before the hearing date.
- iv. Assistant Discipline Counsel and others in her office also made efforts to contact the Student by email through his ROSI account on October 12 and 20, and on December 7, 2021. Attached to the email sent on December 7, 2021, were copies of the affidavit materials on which the University intended to rely at the hearing.
- v. In addition, a legal assistant to Assistant Discipline Counsel made 2 attempts to contact the Student by telephone. The first of those attempts, made on December 9, 2021, was to a number which had been provided to the University by the Student but which, when called, was found to be "not assigned". The second attempt, made on December 14, 2021 to an "international phone number" provided by the Student but believed to have expired, reached a voicemail box containing information which identified it as belonging to the Student. The legal assistant left a detailed message advising of the date and time of the upcoming hearing, and asking for the Student to "check his U of T email account for some important emails" and to make a return call to Assistant Discipline Counsel at a number provided, before the hearing date.

5. As of the date of the December hearing date, the Student had not responded to any of the above-noted correspondence or telephoned the Assistant Discipline Counsel at the provided number.

6. Pursuant to section 17 of the Rules, where “notice of an oral hearing, electronic hearing or written hearing has been given to a person in accordance with this rule, and the person does not attend at or does not participate in the hearing, the panel may proceed in the absence of the person or without the person’s participation and the person is not entitled to any further notice in the proceeding.”

7. The University requested that the Tribunal proceed with this hearing in the absence of the Student.

8. Pursuant to rule 9, a notice of hearing may be served on a student by various means, including by sending a copy of the document by courier to the student’s mailing address in ROSI or by emailing a copy of the document to the student’s email address in ROSI.

9. The University’s *Policy on Official Correspondence with Students* expressly states that students are responsible for maintaining a current and valid postal address and email account on ROSI. Students are expected to monitor and retrieve all mail, including emails, on a frequent and consistent basis.

10. Based on totality of the attempts made to provide notice to the Student, the Tribunal concluded that the Student was given reasonable notice of the hearing in compliance with the notice requirements of the Act and the Rules.

11. The Tribunal therefore determined it would proceed to hear the case on its merits in the absence of the Student, and the hearing proceeded on the basis that the Student was deemed to deny the Charge made against him.

B. The Charges and Particulars

12. The Charges and Particulars were detailed in a letter to the Student dated February 8, 2021, and are set out verbatim below:

- i. On approximately March 26, 2020, you knowingly used or possessed an unauthorized aid or aids, or obtained unauthorized assistance in Test Four in PHL245H1: Modern Symbolic Logic (the “Course”), contrary to section B.I.1(b) of the Code.
- ii. On approximately March 26, 2020, you knowingly engaged in a form of cheating, academic honesty 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 your Test Four in the Course.

Particulars

- (a) At all material times you were a registered student at the University of Toronto in the Faculty of Arts & Science.
- (b) In the Winter 2020 academic term you were enrolled in the Course.
- (c) Students in the course were required to write a test that was worth 20% of the final mark in the Course (“Test Four”).
- (d) You wrote Test Four remotely, using Canvas software, due to restrictions imposed by the COVID-19 pandemic.
- (e) You were required to write Test Four independently without the use of any aids or assistance.
- (f) You did not write Test Four independently. Instead, you knowingly obtained unauthorized assistance, and/or used an unauthorized aid, in the course of providing your answers to Test Four.

- (g) In particular, you did not answer the questions asked of you at questions 6, 7, and 9 of Test Four. Instead, you provided answers to questions asked in an alternate version of Test Four, which you did not write.
- (h) You knowingly obtained and/or provided unauthorized assistance in connection with Test Four in the Course.
- (i) You knowingly committed a form of cheating, academic dishonestly, or misconduct for the purposes of obtaining academic credit and/or other academic advantage.

C. The Evidence

13. Evidence on behalf of the University was given by Elizabeth Cowper, Professor Emeritus in the Department of Linguistics at the University who appeared as the Dean's Designate for Academic Integrity with Student Academic Integrity ("SAI"), Faculty of Arts and Science at the University. In addition to her December 7, 2021 affidavit attesting to her contact with the Student and other facts, Professor Cowper referred to an affidavit of Professor Alex Koo, dated December 6, 2021, and filed as Exhibit 3 in this proceeding, and to her further affidavit of December 7, 2021 addressing sanction.

14. Professor Cowper confirmed that in May 2020, SAI received allegations from Professor Koo that a number of students, including the Student, had committed academic misconduct on the fourth test ("Test 4") in his course PHL245H1S, Modern Symbolic Logic, (the "Course"). Test 4 was held online through Quercus, an online testing platform, on March 26, 2020.

15. SAI notified the Student of the allegations against him in August 2020. Following that notification, the Student indicated to SAI that he would like to meet with SAI to discuss the allegations. He met with Professor Cowper for that purpose on December 9, 2020 by Zoom videoconference. Also present on that occasion was Uji Umenyi, an Academic Integrity Specialist with SAI who took notes.

16. As noted in the Charges, the basis for the allegation against the Student arose from his answers to Questions 6, 7 and 9 of Test 4 in the Course. As explained in his affidavit, Professor Koo had created two versions of each numbered question on Test 4. Students had not been informed that there were two versions of Test 4. They were required to complete Test 4 independently and were advised in writing that they were not permitted to collaborate with one another on tests. The students were given 60 minutes to complete Test 4 within a 90-minute window. The Student completed Test 4 in 29 minutes.

17. When marking the Student's test, Professor Koo discovered that the Student's answers to questions 6, 7 and 9 did not correspond with the version of the questions he had been given. Rather, his answers to those three questions responded to questions 6, 7 and 9 on the alternate version of Test 4.

18. Attached to Professor Koo's affidavit was the answer key to both versions of Test 4 and a copy of the Student's test. Question 1 of the test was an affirmation by the Student that in submitting the test, he did not act in such a way that "would constitute cheating, misrepresentation, or unfairness, including but not limited to, using unauthorized aids and assistance ..." Professor Koo's affidavit noted that the syllabus for the course contained a section on academic integrity which advised students of potential academic offences including "on tests and exams: Using or possessing any unauthorized aid, including a cell phone. Looking at someone else's answers."

19. The Student's answers to the three noted questions showed the following:

- i. Question 6 on the Student's test used the characters "A" and "F". However, the Student used a "C" where there should have been an "A", and an "A" where there should have been an "F". The characters he used were those appropriate for question 6 on the alternate version of the question.

- ii. Question 7 on the Student's test used characters "D" and "J", but the Student's answer used a "C" where there should have been a "D" and a "K" where there should have been a "J". Again, the Student used the letters that were assigned on the alternate version of Test 4, not those appropriate to his version.
- iii. Question 9 on the Student's version of Test 4 used the words "Dennis" and "leg". The alternate version of Test 4 used "wrist" and "Dario", which were the terms the Student included in his answer to the question.

20. In her December 2020 meeting with the Student, Professor Cowper referred him to the specific differences between the two sets of questions, described the differences and referred to his answers. Professor Cowper testified that the Student attempted to offer explanations for each of these answers including that he had misread question 7 and that he had based his answer to question 9 on a practice exam. She did not find his explanations convincing or satisfactory in light of the evidence provided in Professor Koo's affidavit. Neither do we.

D. Decision of the Tribunal

21. The onus is on the University to establish on the balance of probabilities, using clear and convincing evidence, that the academic offences charged have been committed by the Student.

22. Assistant Discipline Counsel advised the Tribunal that were we to find the Student guilty of Charge 1, they would withdraw Charge 2.

23. Charge 1 refers to an offence under section B.I.1(b) of the Code, which reads:

"It shall be an offence for a student knowingly:

(b) 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”

After retiring to consider the evidence before us, the Tribunal determined that the University had established that it was more likely than not that the Student received unauthorized assistance during Test 4 from an individual or individuals who were writing the alternate version of Test 4. While the method of obtaining the assistance remains unknown, it is probable that he was in contact with one or more students by telephone or by computer during the exam window. His explanations as noted above were not credible.

24. The Tribunal therefore found that the Student is guilty of using an unauthorized aid or aids during the test and/or obtaining unauthorized assistance to complete the test, contrary to section B.I.1(b) of the Code.

E. Penalty / Sanction

25. After advising Assistant Discipline Counsel of our finding on the merits, the matter continued with a hearing on the appropriate sanction.

26. The University requested that the Tribunal order that the Student be awarded a grade of zero in the course, that he be suspended for three years, and that there be a notation on his transcript for four years. The University also requested that this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with the Student's name withheld.

27. The Student's academic record in the form of a transcript provided to the Panel by Assistant Discipline Counsel indicated that at the time of the hearing of this matter, the Student was under a one-year academic suspension, beginning in December 2021.

28. Attached to a second affidavit of Professor Cowper dated December 7, 2021, was a Discipline Case Report for the Student noting that in April 2019 he had admitted to an

offence of using unauthorized assistance on “clicker quizzes” in course AST201H1, worth 8% of the marks in the course. In that instance the department chair imposed a sanction on the Student of a grade of zero on the clicker quizzes.

29. Assistant Discipline Counsel for the University referred the Tribunal to a Summary of Cases in the Book of Authorities, included in her materials on sanction. This summary showed a listing of penalties imposed by the University Tribunal in other cases where students were found to have used unauthorized aids in an exam and where they had previous offences.

30. We were asked to consider the factors for determining an appropriate sanction as set out in what is considered the leading case: *University of Toronto v. Mr. C.* (Case #1976/77-3, November 1976). These are: the character of the person charged, the likelihood of a repetition of an offence, the nature of the offence, any extenuating circumstances surrounding the commission of the offence, the detriment to the University occasioned by the offence and the need to deter others from committing a similar offence.

31. We noted that the Student had previously pleaded guilty to the same offence, indicating he had not learned from that experience. He chose not to plead guilty in this case, and provided unbelievable explanations for his behaviour which we found to be dishonest. He did not appear at his hearing despite evidence that he was notified of it taking place and had been notified of his right to seek assistance in putting forward any case on the merits, or arguments on penalty to address any extenuating circumstances which might affect our decision. In his absence and on the facts as we know them, we had no basis on which to consider a lesser penalty than that requested by the University and previously imposed in similar circumstances.

32. The *Mr. C* case and those which follow it each note the importance of the University as an educational institution and a degree-granting body, and emphasize that members of the public must be able to rely on the academic integrity of the University's evaluation processes. Using unauthorized aids is cheating and allowing cheating to go

unsanctioned is unfair to the other students who abide by and follow the rules and regulations. If not sanctioned, cheating undermines the value of all of the University's degrees.

33. The Tribunal deliberated and concluded that, under the circumstances, we concur with and accept the University's recommendation on sanctions.

F. Conclusion

34. The Tribunal has found that the Student is guilty of the academic offence of using an unauthorized aid or aids or obtaining unauthorized assistance in Test 4 in PHL245H1 contrary to section B.I.1(b) of the Code;

35. The Tribunal ordered that the following sanctions be imposed on the Student:

- i. The Student be given a grade of zero in Course PHL245H1 in Winter 2020; and
- ii. The Student be suspended from the University of Toronto for a period of 3 years from the date of the Tribunal's order; and
- iii. A notation of the penalty be placed on the Student's transcript for a period of 4 years from the date of the Tribunal's order.

36. The Tribunal also ordered that this case be reported to the Provost for publication of a notice of this decision and the sanctions imposed, with the name of the Student withheld.

Dated at Toronto this 7th day of March 2022

Original signed by:

Ms. Harriet Lewis, Chair
On behalf of the Panel