

**THE UNIVERSITY TRIBUNAL  
THE UNIVERSITY OF TORONTO**

**IN THE MATTER OF** charges of academic misconduct filed on October 7, 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 am. S.O. 1978, c. 88*

B E T W E N:

**UNIVERSITY OF TORONTO**

- and -

X Z [REDACTED]

**REASONS FOR DECISION**

**HEARING DATE:** April 19, 2022 via Zoom

**PANEL MEMBERS:**

Ms. Cynthia Kuehl, Chair  
Professor Ernest Lam, Faculty Panel Member  
Ms. Saskia Van Beers, Student Panel Member

**APPEARANCES:**

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP  
Mr. William Webb, Co-Counsel, Paliare Roland Rosenberg Rothstein LLP

**HEARING SECRETARY:**

Ms. Nadia Bruno, Special Projects Officer, Office of the Appeals, Discipline and Faculty Grievances

**NOT IN ATTENDANCE:**

Mr. X Z [REDACTED]

1. This hearing of the Trial Division of the University Tribunal convened on April 19, 2022, by Zoom, to consider charges of academic dishonesty brought by the University of Toronto (the "University") against X Z (the "Student") under the *Code of Behaviour on Academic Matters, 1995* ("Code"). The Student was informed of the charges by letter dated October 7, 2021 from Prof. Heather Boon, Vice-Provost, Faculty and Academic Life.

**Preliminary Issue: Proceeding in the Absence of the Student**

2. The Hearing was scheduled to commence at 5:45 p.m. The Panel waited until 6:00 p.m. before commencing the hearing. The Student did not appear.

3. The Provost requested that the Panel proceed in the absence of the Student. For the reasons that follow, the Panel granted this request.

4. The jurisdiction for proceeding in the absence of the Student is set out in the relevant legislation and procedural rules. Pursuant to ss. 6 and 7 of the *Statutory Powers Procedure Act* (the "Act") and Rule 17 of the University Tribunal *Rules of Practice and Procedure* (the "Rules"), a Tribunal may proceed in the absence of a party provided that reasonable notice of an oral hearing has been given to the party in accordance with the Act. Where a party does not attend the hearing and reasonable notice has been given, a party is not entitled to further notice.

5. Pursuant to Rule 9, a Notice of Hearing may be served on the Student by various means, including by: sending a copy of the document by courier to the Student's mailing address contained in the Repository of Student Information ("ROSI") or emailing a copy of the document to the Student's email address in ROSI. Students are responsible for maintaining in ROSI a current and valid mailing address and University-issued email account, and are expected to retrieve mail and email on a frequent and consistent basis.

6. In support of its request, counsel for the Provost filed four affidavits. The Affidavit of Colleen Dockstader, Assistant Professor and Dean's Designate for Student Academic Integrity at the University, confirmed that the Student had attended an instructor's meeting about allegations of academic misconduct on December 18, 2020. Thereafter, the Student was requested to meet with Prof. Dockstader to discuss the allegations. While a subsequent email sent to the Student mistakenly indicated that he had attended the Dean's meeting and the matter has been resolved, that was later corrected and the meeting rescheduled. Notwithstanding that correction and confirmation that the Dean's meeting had been booked for August 4, 2021, the Student did not attend.

7. The Affidavit of Samanthe Huang confirmed that a letter outlining the Charges was served on the Student on October 7, 2021, and that the Student was served with a Notice of Electronic Hearing on March 21, 2022. That Notice of Electronic Hearing indicated that a hearing would be scheduled for April 19, 2022 at 5:45 p.m., on the Zoom videoconference platform. The Student was provided with the necessary coordinates to access the videoconference.

8. All of the emails, as well as emails sent by others whose affidavits form part of the Provost's Book of Notice and Service, were sent to the Student's email address in ROSI, and therefore met the requirements for service pursuant to Rule 9. The Affidavit of Andrew Wagg, an Incident Report Architect at Information Security, Information Technology Services at the University, confirmed that the last time someone accessed the email account of the Student was on September 27, 2021.

9. The Affidavit of Natalia Botelho set out the numerous steps to contact the Student including by email, at two telephone numbers in ROSI, and by sending a package via courier to the last known mailing address available in ROSI. These communications indicated that counsel for the Provost wanted to review the process for the hearing and discuss dates. Importantly, the affidavit evidence also established that service of the Disclosure Brief was effected on January 27, 2022; service of the Notice of Electronic Hearing was effected on March 21, 2022; and service of the Affidavit evidence was effected on April 11 and 12, 2022. The Panel noted that, in accordance with the Rules, service was effected via email, and that additional (albeit, unsuccessful) efforts were made to contact the Student by both telephone and mail. The Student could not be contacted by these alternative means and, despite an obligation to regularly check their University email, the Student failed to respond to any of the emails sent.

10. In light of this evidence, the Panel found that notice have been given in accordance with the Rules and the Act. The Student's failure to review email correspondence sent to him at the available email address, contrary to his obligations to do so, does not create a situation where it would be inappropriate to proceed. Rather, the Panel finds that the Student received the Notice of Hearing advising him that the hearing was scheduled for April 19, 2022 as it was delivered to his email address, as required by the Rules. The Panel further noted that someone had accessed the Student's email after the scheduled date for the Dean's meeting, and yet the Student made no effort to follow up or make contact.

11. Notice of the Charges and the Hearing, and delivery of the evidence were all effected in accordance with the Rules. There is no reason not to proceed in the absence of the Student in

accordance with section 7(3) of the Act. Accordingly, the Panel proceeded to hear the case on its merits in the absence of the Student.

### **The Charges**

12. At the material times, the Student was a registered student in the Faculty of Arts & Science at the University.

13. In the charges, the Provost made the following two allegations:

- (i) On or about October 18 and 19, 2020, the Student knowingly used or possessed an unauthorized aid or obtained unauthorized assistance in Assessment #2 in ECO101H1F (20209) (the "Course"), contrary to section B.I.1(b) of the *Code*.
- (ii) In the alternative, on or about October 18 and 19, 2020, the Student knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation or otherwise described in the *Code* in order to obtain academic credit or other academic advantage of any kind in connection with Assessment #2 in the Course, contrary to section B.I.3 (b) of the *Code*.

14. The Provost advised that it would withdraw Allegation 2 if findings were made on Allegation 1. Ultimately, Allegation 2 was withdrawn.

15. Detailed particulars in support of the allegations were provided in the Charges.

### **The Evidence**

16. The Panel received affidavit evidence from Robert Gazzale, Associate Professor, Teaching Stream in the Department of Economics, which was supplemented by oral evidence. Professor Gazzale was one of two professors of the Course. The Provost also filed the affidavit of Yiqin Mao, a member of the Association of Professional Language Interpreters, who interpreted a poster for EASY EDU, the significance of which was described in Professor Gazzale's evidence.

17. Professor Gazzale's evidence focused on Assessment #2 of the Course. He explained that the Course is an introductory course on microeconomics, in which the Student was enrolled. The syllabus for the Course contained a specific direction that students were not permitted to receive assistance on any assessment activity that counted toward their course grade. Academic integrity statements were required to be signed and the Student did so.

18. Assessment #2 was an open book assessment, which was required to be written on October 18 and 19, 2020, and was worth 10.5 percent of the final grade. Professor Gazzale

created 77 different questions, of which 40 were multiple choice and 37 required a numeric answer. Those questions were divided into 17 question pools containing anywhere from three to ten questions. Quercus randomly selected one or more questions from every pool and assigned those questions to a student. Every student was then required to complete 23 questions – 22 of which were randomly assigned from the question pools and the first question, asking that the students understood they had to complete their rough work on paper and upload a scan of that work.

19. This was an asynchronous assignment where the assessment was to take place in a 24-hour window. The assignment contained a detailed, lengthy statement of academic integrity which stated:

This is an individual assignment. You CANNOT discuss ANY graded work with ANYONE – this includes classmates, friends, family, tutors (paid or unpaid), neighbours, literally anyone. Checking websites for answers, posting your work for others to use, collaborating, soliciting/receiving answers, stating false or misleading information related to assessments, etc., are examples of actions that violate Academic Integrity. Unintentional mistakes or confusion is not a defence. Ask us if you are unsure.

20. The Student submitted his completed Assessment #2 on October 19, 2020 at 1:36 p.m., as well as his rough work. The Student received a Grade of 43 out of 60.

21. However, Professor Gazzale subsequently was contacted by a student in the Course to advise that there had been a review session held over Microsoft Teams by a commercial tutoring service called EASY EDU. The review session included a copy of a study package which contained 22 questions. The study package specifically indicated it was for the Course. Each of the 22 questions in the study package corresponded directly with one of the questions that had been written for Assessment #2, albeit with some very superficial differences. Professor Gazzale indicated that he was able to confirm that those exact same 22 questions had been provided to another student, Y.L. Y.L. subsequently admitted on October 22, 2020 that he had paid a tutor to check his answers during the assessment period.

22. In the interim, on October 21, 2020, another student emailed the professor, as well as the Student Academic Integrity office, expressing concern about academic integrity and this particular assignment. A link to the YouTube video for the EASY EDU review session was attached. It confirmed that the review session was held at 9:08 p.m. on October 18, 2020 during the assessment window. In the video, the EASY EDU tutor said that “he had asked a couple of his ECO101 students to send him their assessment questions before this review session so that he

was able to prepare everything specifically targeting the questions in this test". The tutor also indicated that he was available to answer questions during the test.

23. In the online review session, the 22 questions of the study package were all solved. The Zoom attendance list included at least 180 students. The total cost for attendance was \$9.90, according to a poster for EASY EDU.

24. Professor Gazzale explained that the study package had four different authors on it. In his view, a proficient person could both modify the questions and develop solutions to the 22 questions in a one hour period. Although the language of the video was Mandarin, Professor Gazzale's evidence was that he understood the math as seen in the video and was able to confirm that the 22 questions that were solved during the seminar were ones that he had written.

25. Professor Gazzale was also able to see the names of the attendees at the review session. The names included the name of the Student. A review of the rough work submitted by the Student, when compared to the answers that EASY EDU provided in the video, revealed a number of similarities. In particular, the Student's rough work for question 6 was nearly identical to an answer given in the video. It also contained an idiosyncratic notation, namely the symbol "S". That was not taught in the Course but was part of the EASY EDU solution as shown on the video.

26. Similarly, the Student's rough work for question 22 was nearly identical to the answer given in the video. This question is the same on both the Student's version of the assessment and Y.L.'s version.

27. Finally, question 23 contained another idiosyncratic notation ("TB") taught in the EASY EDU video. This was not a notation taught by the professors in the Course.

28. Of note, the Student only did marginally better on the EASY EDU covered questions, providing a correct answer for 9 out of 11 questions. On the ones that EASY EDU had not covered during the review session, the Student gave the correct answer of 7 out of 11 questions. Yet, given the similarity of answers and the indication of the Student's name on the video, the Provost argued that the Student must have attended the EASY EDU session.

29. The Provost also provided the decision in Y.L. This was not considered to be evidence but was relevant to provide context and, later, on sanction. It explained Y.L.'s role in the creation of EASY EDU video as it was Y.L. who provided the 22 questions that were solved in the video.

30. The Provost submitted that the Student was guilty of receiving unauthorized assistance. The Student's name, appears in the review video on a number of occasions, and is the only student with that name in the Course. The evidence of Professor Gazzale supported that the answers provided in the video were used in the Student's rough work on at least three separate questions. The Provost submitted that, on a balance of probabilities, it is more likely than not that the Student attended the review session when he ought not to have done so.

31. The Student did not attend the hearing but was deemed to deny the Charges.

### **Decision of the Panel on Charges**

32. Having considered all the affidavit and oral evidence, the Panel found that the Student had committed an academic offense, in that he obtained unauthorized assistance in the Course contrary to section B.I.1(b) of the Code.

33. The Panel was convinced on a balance of probabilities that the student whose name appeared on the review video was the same person as the Student who was the subject of these charges. There was only one student by that name in the Course, and therefore only one student of that name motivated to attend. In addition, the similarities of the specific idiosyncratic notations between the EASY EDU video and the Student's rough work established that he in fact received and used the unauthorized assistance in order to complete Assessment #2. The similarities in those responses cannot be otherwise be explained, particularly in light of the name that appeared on the video. Further, based on the content of the video, it was clearly directed only to the Course taught by Professor Gazzale and therefore would have only been of interest to the students in it.

34. The Panel considered but does not accept that it would be a likely or even plausible situation that another student with the same name but not registered in the Course happened to attend this EASY EDU session. This is particularly in light of the similarities between the rough work handed in by the Student and the video itself.

35. Accordingly, the Panel found that the Provost had established Allegation #1. Having been advised of these findings, the Provost withdrew Allegation #2.

### **Penalty**

36. The University sought the following penalties:

- (a) a final grade of zero in the Course;
- (b) a suspension from the University for three years from the date the Tribunal makes its order;

- (c) a notation of the offence on the Student's academic record and transcript for four years from the date of the Tribunal's order. The Provost also indicated that it sought, as part of the order, that the case be reported to the Provost for publication of a notice of the Tribunal's decision and the sanction imposed with the Student's name withheld.

37. The Provost called no further evidence in support of the penalty.

38. However, the Provost made extensive submissions and provided a helpful summary of the relevant cases. The Provost argued that there was no evidence either on the character of the Student or relevant to mitigation, as a result of the Student's decision not to attend the Hearing. While there have some cases in which the commission of offence during the pandemic is seen as a mitigating factor, particularly when the offence occurred in the first semester when the switch to online learning was disruptive, in this case, the fall 2020 course was online from the outset. The Provost argued that there was no evidence to suggest that the pandemic affected this particular Student or otherwise served as a reason or rationale for the breach of the expectation of academic integrity. Therefore, while the pandemic may be relevant, it would not be significant in terms of mitigation.

39. In this case, the Student had no prior offences nor was there any evidence of the likelihood of repetition. The Provost argued however that the key factors were the nature of the offence, the detriment to the University and general deterrence. The Provost drew the Panel's attention to the decision of the *University of Toronto v. T.J. (Case No. 1102, November 5, 2021)* ("T.J.") The panel in that decision noted specifically that: "the Covid-19 pandemic has amplified the importance of trust. Online learning provides more opportunities for students to cheat..." With respect to the need to deter others, the panel in *T.J.* went further to note that

cheating on exams must always be denounced and deterred in order to protect the academic integrity of the University. In today's online world, it is all too easy for students to find new outlets for unauthorized assistance. Students must understand that this kind of misconduct will have serious repercussions, so they will be dissuaded from the temptation to cheat when under pressure. (p.12)

40. The Provost also argued that the fact that there was a commercial nature to the offence, namely that the students paid to attend the review session has previously been considered to be an aggravating factor, resulting in a three-year suspension. The Provost pointed to the chegg.com cases as situations involving offenses with a commercial element and the potential for mass cheating. Where there was no subscription and no payment, the absence of the commercial element resulted in a two-year suspension in the absence of any prior conduct. In this case, given the commercial nature, the Provost argued that a three-year suspension was appropriate.



41. The Panel carefully considered the factors as set out in the *University of Toronto and Mr. C.* (Case No.1976/77-3, November 5, 1976) as follows:

(a) The character of the Student

As the Student did not participate in the proceeding, there is no evidence before the Panel regarding the Student's character other than the facts relating to this offence. While those facts were concerning, this was a first time offence by the Student and we note, in particular, that this was a situation where at least 180 students also attended the EASY EDU session.

(b) The likelihood of a repetition of the offence

The Student did not have a prior record of academic offences. Given the Student did not attend the hearing, the Panel is unable to make any findings regarding the likelihood of repetition of offence in the future.

(c) The nature of the offence committed; and

(d) any extenuating or mitigating circumstance.

The University must be able to trust that asynchronous testing will be completed with the same academic integrity as if the test was administered in person. As noted by the Panel in *T.J.*, this way of online testing, which became necessary in the Covid-19 pandemic, should not be considered to provide an easier avenue for students to cheat. Rather, academic integrity requires that students always ensure that their academic performance is their own, and that they do not engage in unauthorized assistance. In this case, that could not have been made more clear than in the warning provided by Professor Gazzale.

Here, there is also no evidence before the Panel of any mitigating or extenuating circumstances.

(e) The detriment to the University occasioned by the offence.

The Panel accepts that the University's trust in the Student was harmed as a result of this incident. In addition, and importantly, the University is harmed whenever students participate in a mass cheating incident, as it potentially sends a message to the broader community regarding the University's integrity.

- (f) The need to deter others from committing a similar offence.

General deterrence is an important factor in these cases. As if evidenced from the chart of cases provided by the Provost, most of which occurred in the last two years, it is apparent that the abuse of asynchronous/online testing is an ongoing issue at the University. Unauthorized assistance strikes at the heart of academic integrity. Accordingly, it is appropriate to send a strong message to students that this type of misconduct will be treated very seriously.

42. The determination of appropriate penalty depends on the assessment of the principles and factors in light of the individual circumstances in a particular case. There should also be a general consistency in the approach of the Panel to sanction so that students are treated fairly and equitably. Accordingly, the Panel spent some time considering the reasonable range of penalty dispositions that were set out in the various authorities put before it by the Provost.

43. While the starting point for a penalty is a two-year suspension plus a three-year notation on the academic record, where there has been a commercial nature to the unauthorized assistance, the chart of cases indicates that there is a longer suspension. However, the chart of cases provided by the Provost demonstrates that often a three-year suspension is given in situations where there has been more than just a commercial element to the misconduct. The Panel had particular regard to two cases.

44. In *the University of Toronto and D.K. (Case No. 1119, July 21, 2021)* (“D.K.”) there was no evidence that the student had paid for access to chegg.com, and had no history of prior misconduct (see: *the University of Toronto and T.J. and the University of Toronto and A.K. (Case No. 1181, November 5, 2021)*). Nonetheless, the student in that case received a 2.5-year suspension. This was in part because not long after breaching the Code by bringing an iPhone into an exam, the student “chose to knowingly submit answers on another final exam that had been taken from a commercial website”. Accordingly, this was a case where although there had been no prior conduct, there was evidence of actual repetition. This single aggravating factor warranted something more than a two-year suspension, but not a three-year suspension.

45. In comparison, the panel in the *University of Toronto and S.C. (Case No. 1215, January 13, 2022)* (“S.C.”) decision noted that, by using a paid commercial subscription service, the student had committed a more serious form of academic misconduct. In addition, in that case, the Panel commented specifically at paragraph 71 that it was concerned by the student’s adamant denial of the allegations and refusal to accept responsibility. There were very real concerns about

the student's conduct and attitude, and how that reflected both on the character of the student and on the likelihood of repetition. Accordingly, while a three year suspension was imposed, there were additional aggravating factors in addition to the commercial nature of the offence that warranted that length of suspension.

46. The Panel agrees that, where there is the use of a commercial provider, there ought to be consequences over and above the typical two year suspension for unauthorized assistance and conventional academic dishonesty. *S.C.* and *D.K.* are good examples of incremental increases in the length of suspension. In the absence of any other aggravating factors and any prior misconduct as was seen in *S.C.*, the Panel determined that a suspension of 2.5 years, representing the aggravation of a commercial nature of enterprise only, was appropriate.

47. The notation on the academic record should therefore be for 3.5 years. Such a lengthy suspension should have the effect of sending a clear message that this type of conduct will not be tolerated, while recognizing this was the Student's first (and hopefully, only) time before this Tribunal.

48. Accordingly, at the conclusion of the Hearing, the Panel made the following order:

- (i) **THAT** the hearing may proceed in the absence of the Student;
- (ii) **THAT** the Student is guilty of one count of knowingly using or possessing an unauthorized aid or obtaining an unauthorized assistance in Assessment #2 in ECO101H1F (20209), contrary to section B.I.1(b) of the *Code*;
- (iii) **THAT** the following sanctions shall be imposed on the Student:
  - (a) The final Grade of zero in ECO101H1F (20209);
  - (b) A suspension from the University for 2 years and 6 months from the date the Tribunal makes its order; and
  - (c) A notation of the offence on his academic record and transcript for 3 years and 6 months from the date of the Tribunal's order.
- (iv) **THAT** this case be reported to the Provost for a publication of the notice of the Tribunal's decision and the sanctions imposed, with the Student's name withheld.

Dated at Toronto this 11th day of July, 2022.

Original signed by:

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Ms. Cynthia Kuehl, Chair

On behalf of the Panel