Case No.: 1423

UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL

IN THE MATTER OF charges of academic dishonesty filed on September 29, 2022

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters, 1995*

AND IN THE MATTER OF the *University of Toronto Act, 1971*, S.O. 1971, c. 56 as amended S.O. 1978, c. 88

B E T W E E N:

UNIVERSITY OF TORONTO

and

S[redacted] J[redacted]

REASONS FOR DECISION

Hearing Date: November 11, 2022, via Zoom

Members of the Panel:
Mr. Andrew Bernstein, Chair
Professor Vivienne Luk, Faculty Panel Member
Ms. Giselle Dalili, Student Panel Member

Appearances:
Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
Mr. Dmitriy Pak, Downtown Legal Services, for the Student

Hearing Secretary:
Ms. Nadia Bruno, Special Projects Officer, Office of Appeals Discipline and Faculty Grievances

A. Charges and Overview

1. On November 11, 2022, this Panel of the University Tribunal held a hearing to consider the charges brought by the University of Toronto (the "University") against [redacted] (the "Student") under the *Code of Behaviour on Academic Matters, 1995* (the "Code").

(a) On or about December 17, 2021, you knowingly had someone personate you at the final exam in CSC207H5 (the "Course") and/or having an intent to commit the offence of personation under the Code, did or omitted to do something for the purpose of carrying out that intention (other than mere preparation to commit the offence), contrary to sections B.I.1(c) and B.II.2 of the Code.

(b) In the alternative, on or about December 17, 2021, you knowingly obtained unauthorized assistance in connection with the final exam in the Course and/or having an intent to commit the offence of unauthorized assistance under the Code, did or omitted to do something for the purpose of carrying out that intention (other than mere preparation to commit the offence), contrary to sections B.I.1(b) and B.II.2 of the Code.

(c) In the further alternative, on or about December 17, 2021, you knowingly represented as your own an idea or expression of an idea or work of another in the final exam in the Course and/or having an intent to commit the offence of plagiarism under the Code, did or omitted to do something for the purpose of carrying out that intention (other than mere preparation to commit the offence), contrary to section B.I.1(d) of the Code.

(d) In the further alternative, on or about December 17, 2021, 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 you submitted in the Course, contrary to section B.I.3(b) of the Code.

2. Until December 2021, the Student was an undergraduate at the University of Toronto Mississauga Campus, in the Faculty of Arts and Science. She had completed 19.5 of the 20 credits required to graduate, and the Course (as defined in the charges) was the last half credit she required. Unfortunately, she made the decision to engage in serious academic misconduct with respect to this last half credit, and will now suffer a long suspension until she can complete her degree.

3. The Panel in this case has given effect to the joint submission as to penalty made by the Provost and the Student, but we are, frankly, not very happy about it. We do so **not** because we think it is merited, but rather because the case law that has been brought to our attention makes it clear that if we were to give her a lesser punishment, it would all but inevitably lead to a successful appeal by the Provost. This would likely do her no favours, as it will enmesh her in further proceedings. We discuss this – and some things that are troubling us about the sanctioning process – below.

B. Liability

4. The Student accepted liability for the violation of the Code, and agreed to a statement of facts. The below summarizes those facts.

(a) Facts

5. The Student was enrolled in the Course, which was being offered online, in the fall of 2021. It was taught by Ilir Dema and Sonya Allin. The final exam was worth 40% of the student's final grade in the Course, and was to be administered online.

6. In December 2021, she was taking care of a friend who had contracted COVID-19. She began to feel pressure about the Course, which was her last required credit. She therefore posted

an advertisement on Freelancer.com asking for help in the course. Someone replied and they started talking. She did not know his name at the time, but as we will see later, he identified himself as [redacted] ([redacted]").

7. The Student sent [redacted] $200 for assistance. She also sent him some screenshots of the exam question and sought his help. This is, of course, serious academic wrongdoing. Students are not supposed to get extraneous help on an exam, even if it is online.

8. [redacted] never provided the help the student had sought. He demanded more money (and possibly other things – we saw a redacted version of an e-mail, which did not tell the entire story). When the student said she could not pay him any more, he threatened to tell her professors. The student told him she had no more money, and, as threatened, he e-mailed both course instructors to advise them she had tried to cheat.

9. When confronted about this by the Dean's designate, the Student admitted to all of this behaviour. She told the Dean that she had been taking care of a friend who had COVID-19, and was under a significant amount of financial stress, as she was an international student and her parents could not afford to pay for another semester at the University. She admitted she had sought assistance, although maintained that she never received any assistance and that the work she ultimately submitted was her own.

(b) Code Violation

10. The Student accepted liability on all charges. However, the Provost has indicated that if there is a finding of liability on Charge #2, it will withdraw the balance of the charges.

11. The Panel finds the Student liable on Charge #2. It is an offence for a student to knowingly "obtain unauthorized assistance in any academic examination" (s. B.i.1(b)). Although the Student did not actually obtain the assistance, the Code specifies that if a member forms the intent to commit an offence, and does anything for the purpose of carrying out that intention, the member is guilty of an attempt to commit the offence and liable to the same sanction (s. B.ii.2). This is clearly what happened here: the Student formed the intent to obtain unauthorized assistance, and took numerous steps to carry out that intention, up to and including sending money to [redacted]. This makes the Student guilty of an attempt to obtain unauthorized assistance.

12. The panel recognizes that trying to buy help on an exam is serious conduct. We do not condone it. We strongly condemn it. We recognize the problems that the internet has caused for academic life in general, and the threat it poses to the integrity of an academic environment. But, as we explain below, we seriously wonder whether the harsh penalty in this case is accomplishing any legitimate objective of a system of academic discipline. We also wonder whether, in the circumstances, the harshness of the likely punishments creates incentives to agree to things that do not necessarily appear fair to the student.

C. Sanction

13. The parties entered into a joint submission on penalty. They agreed to the following:

(a) a final grade of zero in the course CSC207H5 in Fall 2021;

(b) the Student will be suspended from the University of Toronto for a period of five years, from May 1, 2022 to April 30, 2027; and

(c) this sanction will be recorded on the Student's academic record and transcript until graduation.

14. The Panel notes that a five-year suspension is the harshest penalty that this Tribunal can give out. The only harsher penalty available is expulsion, which this Tribunal can recommend but has to be approved by the Governing Council.

15. It is trite before this tribunal that the appropriate sanction is decided by reference to factors set out in the case *University of Toronto and Mr. C.* (Case No. 1976/77-3, November 5, 1976). However, there are special considerations when there has been a joint submission as to penalty. In those cases, the Discipline Appeals Board has made it clear that "a joint submission may be rejected only in circumstances where to give effect to it would be contrary to the public interest or bring the administration of justice into disrepute." (*University of Toronto v. Fernando*, October 30, 2012, para. 18). In other words, only a truly unreasonable or unconscionable joint submission should be rejected (*Fernando,* para. 22).

16. We have some concerns about the penalty that is the subject of the joint submission. In the absence of case law setting out similar penalties for similar offences, we might well have concluded that our concerns rise to the level of making the penalty "unreasonable or unconscionable." We do not necessarily agree with this case law but recognize that consistency is a hallmark of an effective tribunal process. It was on that basis that we agreed to give effect to the joint submission on penalty. But we would be remiss if we did not discuss our misgivings, for what they are worth.

17. Punishments have many purposes: to discourage the offender from committing another offence (specific deterrence), to discourage others from committing offences (general deterrence), to take away the offender's ability to commit another offence (incapacitation), to make a statement that the conduct is unacceptable (denunciation), to help the offender change so

that they are not inclined to offend again (rehabilitation) and to extract a "price" that the offender must "pay" for their offences (retribution). The seminal case for this Tribunal is *Mr. C.* and even almost fifty years ago, it recognized that some of these purposes are more relevant than others. As Mr. Sopinka QC (as he then was) stated (at p. 13)

> Punishment is not intended to be retribution to get even, as it were, with the student for what he has done. It must serve a useful function. The classical components of enlightened punishment are reformation, deterrence and protection of the public.

18. Although that was no doubt current as of 1976, it is questionable to what extent it remains so. In the criminal context, the value of general deterrence as a sentencing principle has been called seriously into question by significant academic research – some of it done by prominent researchers at our own University – that "accepts the null hypothesis" that sentence severity has no relationship to rate of offending – see Anthony N Doob & Cheryl Marie Webster, "Sentence Severity and Crime: Accepting the Null Hypothesis" (2003) 30 Crime & Justice 143 at 144–46. Other research confirms that – see Raymond Paternoster, "How Much Do We Really Know about Criminal Deterrence?" (2010) 100:3 J Crim L & Criminology 765 at 789–800.

19. The theory behind general deterrence is that potential offenders weigh the "expected value" of the punishment against the benefit (B) that they obtain from committing the offence. The expected value of punishment considers the probability of being caught (P) and the likely sanction (S), and multiplies them ("PS"). So if PS is greater than B, they will not offend. If PS is lower than B, they will. We know that in the university setting, and notwithstanding the university's efforts, it is difficult to catch cheating, so P is low. This means to keep PS greater than B, we need to make S high.

20. The problem that the Doob article points out is that the social science evidence questions this construct. It seems that few potential offenders go through this mental process of weighing B against PS. In fact, it seems they rarely consider the consequence at all. And while the Doob article relates to criminal justice rather than studies in the context of academic discipline, it is at least worth asking the question as to why we expect there to be differences. There may well be reasons as this is a closed system perhaps more akin to professional discipline than criminal law. But we do not really know, and simply collectively deciding "this is different" is antithetical to how we answer difficult questions in an academic environment.

21. So the panel is left with at least some doubt about the value of general deterrence as it relates to long suspensions. In our view, it is given too much weight in selecting a sanction. Certainly, the sanction is difficult to justify for any other purpose. It is hard to believe that a five-year suspension (as opposed to a substantial, but significantly shorter suspension) serves any rehabilitative purpose in this case. It is hard to believe that the Student is such a danger to the academic integrity of the school that we need to remove her from the environment for 5 years. It is hard to believe that 5 years is needed for specific deterrence or even denunciation.

22. Our misgivings are compounded by some of the risks associated with presumptively harsh sanctions: they give the Provost implied leverage to obtain joint submissions on penalty which largely takes sanctions out of the hands of the Tribunal. In this case, we fear that the Student and her counsel agreed to this penalty out of fear of expulsion. While we are certain that the extremely professional Assistant Discipline Counsel (who did an excellent job, as always) would not do this intentionally, the spectre of even harsher punishment invariably lurks over any negotiations. It goes without saying that this harms the process in numerous ways.

23. Finally, we wonder if the Student will really learn anything from this experience. We wonder whether she will think that she has been treated fairly. Her conduct was unacceptable. But for that conduct, she ended up being extorted by [redacted], denied her last half-credit, and now her academic career is on hold for five years. No doubt that she put herself in this situation. But that does not mean that she deserves anything and everything that might happen to her after.

24. This is an unhappy end to an unhappy situation. Notwithstanding our significant misgivings, we order the penalty agreed to by the parties, and order that these reasons be provided to the Provost and published with the Student's name withheld. But we hope that the Provost will have occasion to consider the concerns we are expressing, either as a general matter, or specifically in future cases.

Dated at Toronto, this 3rd day of January 2023

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Mr. Andrew Bernstein, Chair
On behalf of the Panel