

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic misconduct made on July 28, 2022,

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters, 2019,*

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 -

X ██████ M ██████

REASONS FOR DECISION

Hearing Date: December 7, 2022, via Zoom

Members of the Panel:

Alexi Wood, Chair
Professor Blake Poland, Faculty Panel Member
Cameron Miranda-Radbord, Student Panel Member

Appearances:

William Webb, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary:

Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances

Not in Attendance:

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A. OVERVIEW

1. On December 7, 2022, a Panel of the University Tribunal convened by videoconference to hear the University of Toronto's (the "University") allegations that X■■■■ M■■■ (the "Student") violated any or all of sections B.I.1(d), B.I.1(b), and B.I.3(d) *Code of Behaviour on Academic Matters* (the "Code").

2. The Student did not attend the hearing. The Panel found that the Student had reasonable notice of the hearing and the charges pursuant to the *Statutory Powers Procedure Act* ("SPPA")¹ and The University Tribunal's *Rules of Practice and Procedure* (the "Rules"). The hearing proceeded in the Student's absence.

3. At the conclusion of the hearing, the Panel found that the Student was guilty of one count of knowingly obtaining unauthorized assistance, contrary to section B.I.1(b) of the Code.

4. The Panel made the Order outlined below with reasons to follow. These are the reasons.

B. THE CHARGES

5. By letter dated July 28, 2022, the University outlined the charges against the Student as follows:

a. On or about April 5, 2021, the Student knowingly represented as her own an idea or expression of an idea or work of another in Assignment 3 in CSC104H1S, contrary to section B.I.1(d) of the Code.

b. In the alternative, on or about April 5, 2021, the Student knowingly obtained unauthorized assistance in connection with Assignment 3 in CSC104H1S, contrary to section B.I.1(b) of the Code.

¹ RSO 1990, c S.22

- c. In the further alternative, on or about April 5, 2021, 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 academic credit or other academic advantage of any kind in connection with the Assignment 3 in CSC104H1S, contrary to section B.I.3(b) of the Code.

(Collectively, the “Charges”)

6. The Particulars of the Charges are as follows:

- a. At all material times the Student was enrolled at the University of Toronto, Faculty of Arts and Science.
- b. In Winter 2021, the Student enrolled in CSC104H1S (the “Course”).
- c. Students in the Course were required to complete three assignments, which were each worth 10% of their final grade. These were individual assignments. Students were prohibited from sharing their code with others or referencing code from other sources.
- d. On or about April 5, 2021, the Student submitted Assignment 3 in the Course.
- e. The Student submitted Assignment 3:
 - (i) to obtain academic credit;
 - (ii) knowing that it contained ideas, expressions of ideas or work which were not her own, but were the ideas, expressions of ideas or work of other students or others; and
 - (iii) knowing that she did not properly reference the ideas, expressions of ideas or work that she drew from other students or others.

- f. The Student knowingly obtained unauthorized assistance from other students or others, or knowingly provided unauthorized assistance to other students in connection with Assignment 3.
- g. The Student knowingly submitted Assignment 3 with the intention that the University of Toronto rely on it as containing her own ideas or work in considering the appropriate academic credit to be assigned to her work.

C. FINDING

- 7. The Provost agreed that if the Panel found the Student to have committed the offence listed in paragraph 5(b), then the Provost would withdraw the remaining Charges listed in paragraph 5 above.
- 8. After hearing the submissions of Assistant Discipline Counsel, the Panel found that the Student had committed the offence listed in paragraph 5(b).
- 9. As a result of this finding, the Provost agreed to withdraw the remaining Charges listed in paragraph 5 above.
- 10. At the conclusion of the hearing, the Panel ordered that:
 - a. the Student receive a final grade of zero in the Course CSC104H1S in Winter 2021;
 - b. the Student be suspended from the University of Toronto from the date of the order for a period of two years, starting on January 1, 2023;
 - c. a notation of the sanction be placed on the Student's academic record and transcript from the date of the order for a period of three years; and

- d. 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.

Paragraph 10(a) through (d) will be referred to as the Penalty Ordered.

D. NOTICE

11. Section 6 of the SPPA requires reasonable notice of the hearing be provided to the parties. Rule 9 of the Rules as they existed at the time of the Hearing provides for the methods of service of documents, including charges and notices of hearing. This includes personal service, sending a copy of the document by courier to the student's mailing address contained in the "ROSI", or sending a copy of the document by email to the email address contained in ROSI.

12. The University's *Policy on Official Correspondence with Students* requires that students provide the University with their current postal and email address through ROSI. Students are expected to monitor and retrieve all mail, including emails, on a frequent and consistent basis.

13. Section 7 of the SPPA and Rule 17 of the Rules as they existed at the time of the Hearing allow this tribunal to proceed in the absence of a student where notice has been given. When proceeding in the absence of a student, the University must demonstrate it took reasonable steps to notify the student of the charges and of the hearing. The University does not need to prove actual notice.²

14. The Student was neither present nor represented at the hearing.

² *The University of Toronto and O.E.R.* (Case No 981, March 4, 2019) at para 37.

15. The University filed evidence regarding service and attempts to contact the Student. That evidence included:

- a. On July 28, 2022, the Office of the Vice-Provost, Faculty and Academic Life served the charges in this matter on the Student by email to the email address the Student provided in ROSI.
- b. On that same day, Mr. William Webb, Assistant Discipline Counsel to the University, emailed the Student, introducing himself and suggesting that they have a call to discuss next steps.
- c. On that same day, July 28, 2022, Samanthe Huang, an Administrative Assistant with the Office of Appeals, Discipline and Faculty Grievances emailed the Student a letter regarding the charges that were filed against her and a pamphlet for Downtown Legal Services. Ms. Huang sent the email to the email address the Student provided in ROSI.
- d. On October 4, 2022, Ryan Shah, an articling student at Paliare Roland, acting on behalf of Mr. Webb, emailed a disclosure letter and a disclosure brief to the Student. The email was sent to the email address the Student provided in ROSI.
- e. On October 24, 2022, Mr. Shah emailed the Student to schedule a hearing date. Mr. Shah stated that if he did not hear back from the Student by October 31, 2022, the University would request that a hearing date be scheduled. Mr. Shah advised the Student that she would receive confirmation of the hearing date and time. He further stated that if she did not attend the hearing, it could take place in her absence.

- f. Mr. Shah did not receive a response to his October 24, 2022 email and on November 2, 2022, he emailed the Office of Appeals, Discipline and Faculty Grievances to request that a hearing date be scheduled for December 7, 2022. The Student was copied on this email.
 - g. On November 11, 2022, Ms. Huang issued a Notice of Electronic Hearing for the hearing scheduled for December 7, 2022, at 5:45 p.m. The Notice of Electronic Hearing was sent to the Student by email to the address the Student provided in ROSI.
 - h. On November 11, 2022, Mr. Webb's office delivered a package by courier to the mailing address and permanent address provided by the Student in ROSI. The courier package contained correspondence from Mr. Webb, the Notice of Electronic Hearing and Charges.
 - i. Mr. Webb's office received confirmation that the package was delivered on November 12, 2022.
 - j. On November 18, 2022, Mr. Shah attempted to call the Student at the phone number listed in ROSI. He received a message that the call could not be completed.
16. None of the emails were returned and there were no bounce backs received to any of the emails. The office of Assistant Discipline Counsel did not receive any communication from the Student.
17. The University also filed evidence from Andrew Wagg, an Incident Report Architect at Information Security, Information Technology Services at the University. Mr. Wagg stated on

November 21, 2022, he checked the portal records to determine the last time someone accessed the Student's mail.utoronto.ca email.

18. According to Mr. Wagg, that email was last accessed on October 11, 2022. This date is after the initial correspondence serving the charges (July 28, 2022) as well as Mr. Shah's email sending the disclosure letter and disclosure brief (October 4, 2022) but before the Notice of Electronic Hearing was served (November 11, 2022).

19. The University is not required to provide actual notice. This Panel finds that the University complied with the Rules and has demonstrated that it took reasonable steps to notify the Student of the charges and of the hearing.

20. The University emailed the Student the required documents to the email address in ROSI. Mr. Shah attempted to call the Student at the phone number provided by the Student in ROSI. The Student is required to check her email account, and it was accessed after the Student was served with the charges and after Mr. Shah emailed the disclosure brief, but before the Notice of Electronic Hearing was served.

21. The University sent a copy of the Charges and the Notice of Electronic Hearing by courier to the address listed by the Student in ROSI. The package was delivered. There is no evidence before this Panel to confirm that the Student received the package.

22. The University complied with Rule 9. Indeed, the University took extra steps by attempting to call the Student and sending the materials by courier to the address in ROSI. The Panel appreciates these extra steps taken, given the lack of evidence that the Student had actual knowledge of the hearing.

23. The Panel determined it would proceed to hear the case on its merits in the Student's absence.

E. FACTS

24. At all material times, the Student was registered at the University of Toronto.

25. In the Fall 2022 term, the Student was enrolled in CSC104H1S (Computational Thinking), or the Course. The Student was enrolled in other courses at the University in the Fall 2022 and then Winter 2023 terms, but she received no academic marks for any of those courses. All courses for those two terms are marked "IPR" or "in progress."

26. At the time of the Hearing, the Student had accumulated 13 credits, with a cumulative GPA of 2.98.

The Course and the Assignment

27. The University filed the affidavit of Thomas Fairgrieve, an Associate Professor in the Department of Computer Science at the University.

28. At the request of the Panel, Dr. Fairgrieve testified at the hearing. While Dr. Fairgrieve was not a course instructor, he has taught other computer science courses at the University and is the Chair's Designate for Academic Integrity.

29. Dr. Fairgrieve had reviewed the Student's answer to Assignment 3. He testified about his factual observations. He was not offered as an expert witness.

30. According to Dr. Fairgrieve’s evidence, which is uncontested, the Course is a first year course that teaches students about basic coding and computer science skills. Students in the Course were required to write three coding assignments, each worth 10% of their final grade.

31. The Course syllabus contained an academic integrity warning that stated: “Assignments, timed assignments, and PCRS exercise must be completed as independent work. As a CSC104 student, you are responsible for ensuring the integrity of your work and for understanding what constitutes an academic offence.”

The Student’s Assignment 3

32. Assignment 3 was due on April 5, 2021. The instructions for the assignment contained a warning that stated: “This is an individual assignment. Do NOT share your code with others, or reference code from other sources.”

33. For Assignment 3, students were required to write code in the general-purpose programming language Python. They were given “starter code” as the base for their assignment.

34. Three other students also submitted responses to Assignment 3: A.Z., Y.S., and Y.L. (the “Other Students”).

35. Dr. Fairgrieve provided an affidavit that contained side by side comparisons of the Student’s and the Other Students’ code from Assignment 3. Dr. Fairgrieve reviewed these comparisons and in his affidavit stated that the four students “clearly copied each other in some way.” He further stated that it was “highly unlikely that these similarities are due to coincidence.”

36. Dr. Fairgrieve testified at the hearing that there were many different ways students could have written their code. Dr. Fairgrieve acknowledged that the Student's code contained different variables names, and he testified that the content of the Student's code and the content of the Other Students' code was identical. He drew the analogy of drafting a short story about "Bob" and then changing each instance of the name "Bob" to the name "Carole." The name may have changed, but the content would be identical and it would be extremely unlikely two students would have that exact same content.

37. Dr. Fairgrieve also stated the Student and the Other Students all used strange spacing and indentations. While not incorrect, Dr. Fairgrieve stated it was strange formatting that was unlikely to occur by coincidence.

38. Dr. Fairgrieve testified that the similarities in the Student's code and the Other Students' code were extremely unlikely to have occurred by coincidence. It was more likely than not that the Student and the Other Students shared work and copied each other.

39. The Panel also heard testimony from Dr. Elizabeth Cowper, a Professor Emeritus in the Department of Linguistics at the University, and a Dean's Designate for Academic Integrity with the Student Academic Integrity office ("SAI").

40. Dr. Cowper testified that in May 2021, the SAI received a report that the Student and the Other Students were alleged to have committed an academic offence in Assignment 3 in the Course. On May 23, 2021, Y.L. and Y.S., two of the Other Students, admitted an academic offence.

F. FINDING OF GUILT

41. The onus is on the University to establish on the balance of probabilities, using clear and convincing evidence, that the Student committed the academic offence charged.³

42. As Assistant Discipline Counsel argued, the University is not required to prove the method by which the student plagiarized nor does the University have to prove from whom the Student copied. The University's burden is to prove that it is more likely than not that the Student collaborated on her Assignment 3.

43. The Panel concludes that the University has established that the Student collaborated with at least one of the Other Students, two of whom admitted to academic misconduct. As a result, the Student is guilty of academic misconduct as outlined in the charges at paragraph 5(b) of these reasons. As a result of this finding, the University withdrew the charges outlined in paragraphs 5(a) and 5(c) of these reasons.

G. PENALTY

44. The University sought the sanctions in the Penalty Ordered, outlined in paragraph 10 above.

45. Assistant Discipline Counsel submitted that this penalty is in keeping with Appendix C of the Code. Assistant Discipline Counsel also submitted that this penalty appropriately considers the six factors outlined in *University of Toronto and Mr. C.* (Case No 77-3, November 5, 1976) which are:

- a. the character of the person charged;

³ *The University of Toronto and T.J* (Case No. 1102, July 26, 2021) at para 5.

- 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. Assistant Discipline Counsel argued that the penalty sought is in keeping with similar cases of this Tribunal. Assistant Discipline Counsel provided numerous prior cases where the Tribunal ordered the same, or similar, penalties to the Penalty Ordered.⁴

47. In the case of *University of Toronto and GZ* (Case No 1004, February 26, 2020), the Tribunal imposed a sanction of a 0 in the course, a 2 year suspension, and a 3 year transcript notation for a first offence of unauthorized assistance. In that case, the Tribunal observed that there were several factors from the University of Toronto and Mr. C case referenced above on which the Tribunal could not rely because the Student in that case did not participate in the hearing. The Tribunal in that case stated: “As a consequence of this non-participation, the Tribunal had no evidence before it as to any extenuating circumstances that might have weighed in the Student’s favour by mitigating or explaining his conduct.”

48. Similarly, in this case, the Student did not participate in the hearing, and therefore chose to forgo her opportunity to provide evidence on mitigation for penalty. The Panel has no evidence

⁴ See e.g., *University of Toronto and GZ* (Case No 1004, February 26, 2020) at para 31 (imposing a sanction of a 0 in the course, a 2 year suspension, and a 3 year transcript notation for a first offence of unauthorized assistance). See also *University of Toronto and SM* (Case No 865, February 22, 2017), and *University of Toronto and RA* (Case No 738, January 15, 2015) imposing the same sanction as the Penalty Ordered.

before it to explain her actions. Had the Student participated and provided an explanation, the outcome may have been different.

49. However, there are several factors that weigh in favour of a severe penalty, including the seriousness of the offence, the detriment caused to the University by the offence, and the need to deter others from committing similar offences.

50. For these reasons, the Tribunal was satisfied that the appropriate sanction was the one sought by the University.

H. CONCLUSION

51. This Panel orders that:

- a. the Hearing may proceed in the absence of the Student.
- b. the Student receive a final grade of zero in the Course CSC104H1S in Winter 2021;
- c. the Student be suspended from the University of Toronto from the date of the order for a period of two years, starting on January 1, 2023;
- d. a notation of the sanction be placed on the Student's academic record and transcript from the date of the order for a period of three years; and
- e. 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.

Dated at Toronto at this 6th day of March, 2023



Ms. Alexi Wood, Chair
On behalf of the Panel