

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed ON January 5, 2023,
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 -

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REASONS FOR DECISION

Hearing Date: May 3, 2023, via Zoom

Members of the Panel:

Sana Halwani, Chair
Dr. Lynda Mainwaring, Faculty Panel Member
Syeda Hasan, 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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I. Charges and Procedural History

1. The Trial Division of the Tribunal held a hearing on May 3, 2023, to address the following charges brought by the University of Toronto (the “University”) against H■■ Z■■ (the “Student”) under the *Code of Behaviour on Academic Matters, 2019* (the “Code”):
 - a. On or about the following dates, you knowingly obtained and/or provided unauthorized assistance in connection with the following term tests in ECO2201Y1 (the “Course”), contrary to section B.I.1(b) of the Code:
 - i. October 23, 2020 in connection with Term Test 1; and
 - ii. December 4, 2020 in connection with Term Test 2.
 - b. In the alternative, respectively, on or about the following dates, you knowingly represented as your own an idea or expression of an idea or work of another in connection with the following term tests in the Course, contrary to section B.I.1(d) of the Code:
 - i. October 23, 2020 in connection with Term Test 1; and
 - ii. December 4, 2020 in connection with Term Test 2.
 - c. In the further alternative, respectively, on or about the following dates, 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 following term tests in the Course, contrary to section B.I.3(b) of the Code:
 - i. October 23, 2020 in connection with Term Test 1; and
 - ii. December 4, 2020 in connection with Term Test 2.
2. The Panel was advised at the hearing that the University was not proceeding with the charges relating to Term Test 2, and therefore that only charges relating to Term Test 1 were at issue.

II. Notice

3. The Student was not in attendance at the hearing and, as a result, Assistant Discipline Counsel addressed the issue of notice.

4. On review of the evidence, and on considering the *Statutory Powers and Procedures Act*, Rules 13, 14, 17 and 21 of the University Tribunal's *Rules of Practice and Procedure*, and the University's *Policy on Official Correspondence with Students*, the Panel was satisfied that notice had been adequately provided to the Student and decided to proceed with the hearing despite his absence.
5. The evidence of notice included three affidavits as follows:
 - a. Affidavit of Alexciya Blair, a legal assistant at Paliare Roland Rosenberg Rothstein LLP, providing evidence of all the efforts to contact the Student about the charges and the hearing, prior to the hearing date including by email to the Student's utoronto account, by phone to the Student's telephone number listed in the Repository of Student Information ("ROSI"), and by courier to the Student's address listed in ROSI; and
 - b. Affidavit of Elizabeth Cowper, Department of Linguistics at the University of Toronto and a Dean's Designate for Academic Integrity with the Student Academic Integrity office ("SAI") in the Faculty of Arts and Science, describing the attempts made to schedule a Dean's designate meeting in March to June 2022, and attaching the Student's academic record;
 - c. Affidavit of Andrew Wagg, Manager, Incident Response at Information Security, Information Technology Services at the University, providing evidence of the last time someone accessed the email account [REDACTED]@mail.utoronto.ca, (the email address identified as the email address of the Student in their ROSI record). The last time someone logged into this email address was on July 13, 2022, which was after the SAI attempted to contact the Student.
6. As set out in Rule 21 of the *Rules of Practice and Procedure*: "Where notice of a virtual hearing, an in-person hearing, a hybrid hearing, or a written hearing has been given to a party in accordance with this Part, and the party does not attend at or does not participate in the hearing, the panel may proceed in the absence of the party or without the party's participation and the party is not entitled to any further notice in the proceeding." This language was repeated in the Notice of Electronic Hearing emailed to the Student.

7. Rule 17 provides that “the Secretary shall provide the University with reasonable notice of a hearing and shall deliver such notice to the student’s last known ROSI email address.”
8. As set out in Rule 13: “Charges, notices of hearing, disclosure material for use on motions or hearings, orders, and reasons for decision may be served on a student or sent to a student: [...] by e-mailing a copy of the document to the student’s e-mail address contained in ROSI, or to the students’ representative, if such representative has confirmed its authority to accept service, and service shall be effective on the day the document is sent by e-mail.” Repeated attempts were made to contact the Student at his e-mail address contained in ROSI, including sending the Notice of Electronic Hearing.
9. There was evidence provided to the Panel that the Student was likely aware of the allegations that led to the charges. Numerous emails were sent to the Student’s email address in March to June 2022 attempting to schedule a meeting with the Dean’s Designate to discuss the allegations. These emails were all sent prior to the last time someone logged into the Student email address, per Mr. Wagg’s evidence.
10. The evidence also indicates that the Student had not provided his unit number for his address in ROSI, and no other addresses were provided by the Student in ROSI. Further, when the Assistant Discipline Counsel called the Student at the cellular number that was listed in ROSI, he received a message that the phone number was no longer in service. The Student appears to have taken deliberate steps to avoid communications from the University.
11. Although the evidence provided did not go so far as to confirm that the Student had received the Notice of Hearing (because he never responded or acknowledged receipt), it is clear from the evidence that the Student was given *reasonable* notice under the *Rules of Practice and Procedure*. The University served the Student by email to his official ROSI email, and attempted to reach the Student by courier and phone. The University took many steps beyond what is strictly required by the University’s *Policy on Official Correspondence with Students*.
12. On this basis, the Panel was of the view that reasonable notice had been provided under the Rules and was content to proceed with the hearing in the Student’s absence.

III. Summary of Evidence

13. The Student was a student in the Course and in Fall 2020 and Winter 2021.
14. In 2021, SAI received allegations that over 100 students in the Course obtained unauthorized assistance on several term tests. The Dean's Designate meetings took a significant amount of time and resources and the University prioritized cases where students responded or were set to graduate. As of today, nearly all of these cases have been resolved. The case before the Panel is one of the last such cases to be resolved.
15. The Panel was provided with this evidence to explain the time lag between the offence and the hearing.
16. The evidence of the University on the charges was presented by way of affidavit from Professor Jennifer Murdock in the Department of Economics, who has taught the Course since 2004.
17. As the Student did not attend and was not represented at the hearing, Professor Murdock was not cross-examined but was made available to the Panel for any questions.

A. The Course

18. The Course was administered online due to the pandemic. There were five sections in the Course. Students registered for one of these five sections.
19. Students in the course were required to write four term tests, each worth 12.5% of their final grade. Each test contained six open-ended questions, with a complete answer requiring some combination of writing, graphing, and/or quantitative analysis.
20. The term tests were administered online. Students were required to write their answers on paper, scan or take a photo of each answer, and upload an image for each question to Crowdmark, the University's online grading platform. Professor Murdock required students to upload a separate image for each question because Crowdmark has a feature that allows instructors to grade question-by-question. This feature on Crowdmark was used to increase the consistency in grading.
21. The syllabus stated that students were prohibited from collaborating on the term tests: "[t]here is absolutely no collaboration allowed on Term Tests #1 to #4 or the short writing assignments. Your submissions must be entirely your own work." In addition, Professor

Murdock posted academic integrity instructions to Quercus for each term test, which stated that academic integrity is a fundamental value of learning and scholarship at the University of Toronto and that students were prohibited from collaborating. Students were required to submit a signed academic integrity statement that stated they agreed to fully abide by the *Code of Behaviour on Academic Matters* for each term test. Each term test also stated that “[t]here is absolutely no collaboration and absolutely no communication until after we return your marked work to you.”

B. Term Test 1

22. Term Test 1 was administered online on October 23, 2020. Students had 105 minutes to write the test and 15 minutes to scan and upload their test. Students from the first three sections of the course could choose to write their term tests at any time during the early test window (7:00 a.m. to 1:00 p.m. ET). Students in the other two sections of the course could choose to write their term tests at any time during the late test window (11:00 a.m. to 5:00 p.m. ET).
23. Professor Murdock prepared eight different versions of Term Test 1 to deter cheating. Students were assigned a particular version of the test at random.
24. On October 23, 2020, the Student and a second student (“N.G.”) completed and submitted version 4 of Term Test 1.

C. The Investigation

25. In March 2021, a course teaching assistant notified Professor Murdock that several students wrote similar answers to questions on Term Test 3. Professor Murdock reviewed these similarities, had concerns that students were collaborating, and decided to investigate.
26. From March to May 2021, Professor Murdock spent significant time investigating the issue and found evidence of widespread collaboration. She reviewed every term test that every student in the course submitted and found that a large number of students wrote similar answers to some or all of the questions on term tests 1, 2, and 3. Based on similarities between students’ answers, Professor Murdock concluded that some students appeared to collaborate in small groups, while others appeared to be part of a larger network or group of students.

27. Professor Murdock suspected that the Student and N.G. collaborated on Term Test 1 because there were striking similarities between their answers to questions 1, 2, 3(a), and 5 in the Test.
28. Professor Murdock provided the Panel with a chart that compared these answers showing verbatim similarities, verbatim similarities with different syntax, and non-verbatim conceptual similarities.
29. There were many ways that students could have and did express their answer to the questions in Term Test 1. Despite the many ways that students could have written their answers, the answers to the tests of the Student and N.G. were very similar in terms of word choice, syntax, structure and quantitative analysis. In addition, both students made the identical or very similar mistakes in answers to a number of questions. Professor Murdock provided evidence that the degree of similarity between the answers of the Student and N.G. was “striking and unusual.”
30. On May 10, 2021, Professor Murdock met with N.G. to discuss her concerns that N.G. had obtained unauthorized assistance on term tests 1, 2, and 4. During that meeting, N.G. told Professor Murdock that she had a paid tutor, named “Jessica”, to help her on the term tests, and she knew that Jessica was helping other students in the course in real time during graded work.
31. On May 10, 2021, Professor Murdock also met with the Student to discuss her concerns that he had obtained unauthorized assistance.

IV. Finding on Charges

32. The Student is charged with cheating on Term Test 1 in the Course. As is described below, the Panel found the Student guilty of this charge.
33. The burden is on the University to prove charges on a balance of probabilities. This means that the University must prove that it is more likely than not that the student committed the offence.
34. The Course syllabus in the Course was clear that collaboration during tests was a potential academic offence. There is no question that the Student knew or ought to have known

that such actions would be academic offences. The question for the Panel was therefore whether the Student did in fact cheat in Term Test 1.

35. Following deliberation and based on the affidavit evidence and the documents in the University's Book of Documents (re: Offence), the Panel concluded there was clear and convincing evidence, on a balance of probabilities, that the Student did commit the offence with which he was charged.
36. Assistant Discipline Counsel made submissions that where the University leads evidence that a student's answer is similar to another student's answer to prove an academic offence, the Panel should consider the following factors to evaluate the quality of the evidence¹:
 - a. The nature of the question, including the number of ways that one could express an answer to the question, whether the question is new, etc. Here, the evidence of Professor Murdock is that there were numerous ways to express answers to many of the questions in Term Test 1.
 - b. The nature of the similarities, including idiosyncrasies, unusual features, mistakes, concepts or notations not taught in the course, etc. Here, the students made the same or very similar errors.
 - c. The degree of the similarities, ranging from modest to striking similarities. Here the answers were strikingly similar with respect to structure, word choice, etc.
 - d. The student's explanation, if any, for the similarities. Here, we have no explanation from the Student because the Student has not participated in the proceeding.
 - e. Any other factors that are relevant in the circumstances, including whether other students who submitted similar answers have admitted to an offence in connection with the same piece of academic work. Here, N.G. admitted to obtaining help from

¹ See for example: *University of Toronto v. G.L.* (Case No. 1262, February 22, 2022), at para. 20, aff'd 2022 DAB 1262; *University of Toronto v. M.R.* (Case No. 1282, December 19, 2022) at paras. 29-31; *University of Toronto v. L.S.* (Case No. 841, March 13, 2017), aff'd 2017 DAB 841 at para. 62; *University of Toronto v. T.Z.* (Case No. 1106, April 5, 2022) at paras. 19-20; *University of Toronto v. J.T.L.* (Case No. 1199, January 26, 2022) at paras. 33-34; *University of Toronto v. X.Y.* (Case No. 1147, November 11, 2022) at paras. 21, 27; *University of Toronto v. H.W.* (Case No. 1179, March 7, 2022) at paras. 19-20; *University of Toronto v. Y.C.* (Case No. 1372, March 7, 2023) at paras. 51-52.

a paid tutor during Term Test 1. The Panel did not place a great deal of weight on this hearsay evidence.

37. The Panel may conclude, based on the evidence before it, that the similarities between two answers were more likely the natural product of the fact that students were writing on the same topic and relying on the same source material.² However, where there is no evidence to support an alternative explanation for the similarities between two students' answers, it is not for the Panel to imagine or speculate if some other possible explanation exists.³
38. Further, in cases like these, it is not necessary to prove the exact mechanism by which the cheating occurred.⁴
39. Assistant Discipline Counsel raised the issue of whether there was evidence that the Student had paid for assistance, which can have a bearing on sanction because cases involving the use of commercial cheating enterprises are treated more severely by the University. Assistant Discipline Counsel candidly conceded that there was likely not enough evidence to draw the inference that the Student was using the same paid tutor as N.G. First, the Student had different answers to questions 4 and 6 on Term Test 1 when identical questions would have been expected if the same tutor had been used. Second, N.G. did not provide any additional evidence about whether the Student or any other Student used the same tutor. Third, there was no other evidence that the Student had used a paid service.
40. The Panel therefore determined that there is sufficient evidence to conclude that the Student obtained unauthorized assistance during Term Test 1 but not that the Student paid for such assistance.
41. Having found the Student guilty of the first charge, the two alternative charges were withdrawn by the University.

² *University of Toronto v. L.S.* at paras. 45-63, aff'd 2017 DAB 841 at para. 62.

³ *University of Toronto v. Z.X.* (Case No. 1285, December 5, 2022) at para. 49.

⁴ *University of Toronto v. G.L.* at paras. 31-33, aff'd 1262 DAB 2022 at paras. 35-36.

V. Finding on Penalty

42. Once the Panel had made a determination on the charges, the University requested the following penalty for the offences relating Term Test 1:
- a. a final grade of zero in ECO220 in Fall 2020 and Winter 2021;
 - b. a suspension from the University for a period of 2 years from the date of this order; and
 - c. a notation of the sanction on the student's academic record and transcript for a period of 3 years from the date of this order;
43. 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.
44. To support this proposed penalty, Assistant Discipline Counsel made submissions on the following:
- a. Relevant factors in determining the appropriate sanctions;
 - b. The typical penalty for similar cases; and
 - c. The date on which the sanction should take effect.

A. Relevant Factors under *Mr. C.*

45. Finally, Assistant Discipline Counsel made submissions on the factors to be considered in penalty as set out in *The University of Toronto v. Mr. C.* (1976) (*Case No.: 1976/77-3*).
46. The Student in this case had not participated at any stage of the process. The Student had therefore not shown any remorse, not presented any character evidence, and not raised any mitigating or extenuating factors to warrant a more lenient sanction. This failure to participate is therefore a neutral factor.
47. With respect to the likelihood of repetition of the offence, the Student has no prior academic offence, and this is therefore a neutral factor.

48. With respect to the nature of the offence, the need to deter others, and the detriment to the University, we echo the words of the Panel in the *University of Toronto v. G.Z.* (Case No. 1004, February 26, 2020):

The use of unauthorized aids is a threat to the integrity of the University's processes for evaluating students, is profoundly unfair to other students, and jeopardizes the University's reputation. These considerations urged against imposing a milder sanction than those typically applied in similar cases.

B. Similar Cases

49. The two-year suspension is also in line with similar cases presented by Assistant Discipline Counsel. While the Panel is not bound by any of these decisions, they are helpful in assisting the Tribunal in treating like cases alike.

50. The cases provided to us involved a single count of unauthorized assistance or plagiarism. In all cases presented, the Student had no priors, and there was no Agreed Statement of Facts or a Joint Submission on Penalty. To summarize them briefly:

- a. All but one case involved a 2-year suspension and a 0 in the relevant course.
- b. The one case with a 3-year suspension involved aggravating circumstances, i.e., the Student tried to mislead the Panel at the hearing.

51. In addition, the Panel notes that the Provost's Guidance states that the Provost will request that the Tribunal suspend a student for two years for any offence involving academic dishonesty, where there were not mitigating or aggravating circumstances.

52. The two-year penalty proposed by the University was therefore in line with past similar cases and with the Provost's Guidance.

53. Finally, the Panel also considered whether the unusual circumstances of the Student being one of 100 students to be involved in cheating should have any bearing on the sanction (whether mitigating or aggravating). The Panel concluded that it should not. There was no evidence that the Student had been involved in organising the cheating scheme, and so no evidence of aggravating behavior. There was also no evidence of the fact that the widespread cheating was a mitigating circumstance. Simply, the Student cheated on a test and had no prior offences; the sanction proposed by the University was appropriate for that conduct.

C. Start Date of the Sanction

54. The allegations arise from events in May 2020, three years prior to the hearing. As such, Assistant Discipline Counsel addressed the reasons for the delay in support of the University's request that the sanction be imposed from the date of the Order and not be backdated.
55. This delay arises from a very unusual circumstance – namely, allegations that over 100 students in the Course obtained unauthorized assistance on several term tests – and is not the result of the University sitting on its hands. Both Professor Murdock and SAI have spent hundreds of hours over the last two years addressing and meeting with the over 100 students that were alleged to have cheated on the tests. In addition, SAI prioritised – rightly, in the view of the Panel – students that engaged with the process and/or who were close to graduation.
56. In this case, the Student did not engage with the process, and stopped attending courses at the University in the summer of 2021. In the Panel's view, the Student therefore bears part of the responsibility for the delay in his case being heard by the Tribunal.
57. In general, sanctions should commence from the date that the sanction is imposed, and backdating should only be done for a principled reason; to do otherwise would result in a wide disparity among sanctions.⁵
58. In *S.B.*, the Panel stated that “there must be a principled reason for such backdating, such as an early admission of guilt, or similar circumstances which dictate that the student would suffer unjustified harm as a result of the University's slowness in moving the matter to a hearing.”⁶ Here, there was no evidence that the delay had caused prejudice to the Student. The Panel therefore concluded that there was no basis to warrant backdating the sanction in this case.
59. Taking all these submissions into consideration, the Panel imposed the requested penalty.

VI. Decision of the Panel

⁵ *University of Toronto v. D.S.* (Case No. 451, August 24, 2007) at paras. 53-54.

⁶ *University of Toronto v. S.B.* (Case No. 488, November 14, 2007) at paras. 28-29.

60. At the conclusion of the hearing on penalty, the Panel conferred and made the following order:

- a. The hearing may proceed in the absence of the Student;
- b. The Student is guilty of one count of unauthorized assistance, contrary to B.I.1(b) of the *Code of Behaviour on Academic Matters*;
 - i. The following sanctions shall be imposed on the Student:
 - ii. a final grade of zero in ECO220 in Fall 2020 and Winter 2021;
 - iii. a suspension from the University for a period of 2 years from the date of this order; and
 - iv. a notation of the sanction on the student's academic record and transcript for a period of 3 years from the date of this order;
- c. This case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the name of the student withheld.

DATED at Toronto, May 29, 2023

Original signed by:

Sana Halwani, Chair
On behalf of the Panel