

THE UNIVERSITY TRIBUNAL

THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on May 2, 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 amended S.O. 1978, c. 88

B E T W E E N:

UNIVERSITY OF TORONTO

- and -

V [REDACTED] M [REDACTED]

REASONS FOR DECISION

Hearing Date: June 7, 2023, via Zoom

Members of the Panel:

Douglas F. Harrison, Chair

Dr. Blake Poland, Faculty Panel Member

Jessica Johnson, Student Panel Member

Appearances:

Tina Lie, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

Joe Berger, Co-Counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary:

Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty Grievances

Not In Attendance:

V [REDACTED] M [REDACTED]

Charges and Hearing

1. The Trial Division of the Tribunal held a hearing by videoconference on June 7, 2023, to address the following charges brought by the University of Toronto (the “University”) against V [REDACTED] M [REDACTED] (the “Student”) under the *Code of Behaviour on Academic Matters, 2019* (the “Code”), which were set out in a letter to the Student dated May 2, 2022:

1. On or about March 22, 2021, you knowingly obtained unauthorized assistance in connection with Term Test 3 in CSC165H1S (the “Course”), contrary to section B.I.1(b) of the Code.
2. In the alternative, on or about March 22, 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 Term Test 3 in the Course, contrary to section B.I.3(b) of the Code.

Particulars of the offences charged are as follows:

1. At all material times you were a student enrolled at the University of Toronto Faculty of Arts and Science.
2. In Winter 2021, you enrolled in CSC165H1S (Mathematical Expression and Reasoning for Computer Science).
3. Term Test 3 in the Course was administered online on March 22, 2021 (the “Test”).
4. Students were required to complete the Test independently, without obtaining any assistance from other students (or other individuals).
5. On March 22, 2021, you submitted your answers to the Test.
6. You knowingly obtained unauthorized assistance from others on the Test, which you knew was not permitted.

7. In particular, you did not answer the question asked of you at Question 2 of the Test. Instead, you provided an answer to a question asked in an alternate version. You obtained the alternate version of the question from another source, and in doing so, obtained or sought to obtain unauthorized assistance in the Test.
8. You knowingly committed a form of cheating, academic dishonesty, or misconduct for the purposes of obtaining academic credit and/or other academic advantage.

Service

2. The Student did not attend the hearing. In order to proceed with the hearing in the Student's absence, the Tribunal therefore had to determine if reasonable notice was given to the Student, as required by section 6 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "SPPA") and by rule 17 of the University Tribunal's *Rules of Practice and Procedure* (the "Rules").

3. On the issue of service, counsel for the University presented affidavit evidence from Kimberly Blake and Andrew Wagg. This evidence, as outlined below, demonstrated that all relevant materials in this matter were delivered to the Student via email to the Student's email address as recorded in the University's Repository of Student Information ("ROSI").

4. Delivery by email to a student's email address as recorded in ROSI is permitted and is considered valid service for a hearing before this Tribunal by virtue of rule 13(c) of the Rules. It is not necessary to physically deliver materials to effect valid service. Pursuant to the University's *Policy on Official Correspondence with Students* (the "Policy"), the University and its divisions may use email for delivering official correspondence to students. This Policy also directs that students are responsible for maintaining and advising the University of their current email address through ROSI. Students are expected to monitor their University email accounts regularly.

5. In the present case, an email was sent to the Student's email address (as recorded in ROSI) on August 31, 2021, by Professor Elizabeth Cowper, Dean's Designate for Academic

Integrity. In this email, Professor Cowper said that the Student Academic Integrity office had received a report from the Department of Computer Science that the Student had committed an academic offence under the Code. In particular, the Student had allegedly obtained unauthorized assistance or used an unauthorized aid during an online assessment on March 22, 2021, in the course CSC165H1S (20211) (the “Course”, as defined above). Professor Cowper said that the Student was entitled to an opportunity to meet with her to discuss the matter, which would allow the Student a chance to explain what happened. She also said that based on that meeting she could decide to impose a sanction, refer the matter to the Vice-Provost, or dismiss the case. She also said that the Student could waive the meeting and admit to committing an academic offence, in which case the Student would receive a mark of zero for the test in question and an annotation in his transcript until August 31, 2022. If the Student wished to meet, she asked him to contact the Student Academic Integrity team by September 15, 2021. She also advised the Student that it was very important for him to meet with an academic advisor for support.

6. From October 15, 2021, to November 5, 2021, the Student Academic Integrity Office of the University’s Faculty of Arts and Science (“SAI”) sent three emails to the Student’s ROSI email account, attempting to schedule a meeting between the Student and the Dean’s Designate for Academic Integrity, to discuss the allegation of academic misconduct at issue. SAI did not receive a response from the Student. On January 17, 2022, SAI sent the Student an email, informing him that his file was being sent to the Vice-Provost for review, with the recommendation that charges be laid and the Student’s case be heard by the University’s Tribunal.

7. On May 2, 2022, the Office of the Vice-Provost, Faculty and Academic Life sent an email to the Student’s ROSI email address, serving the Student with a copy of a letter from Professor Heather Boon, the University’s Vice-Provost, Faculty & Academic Life, attaching the charges. On the same day, the Office of Appeals, Discipline and Faculty Grievances (“ADFG”) sent an email to the Student’s ROSI email account, serving the Student with a letter regarding the charges filed, together with copies of the charges, the Code, links to the websites of Downtown Legal Services and of the Law Society Referral Service, and a link to a database of past Tribunal decisions.

8. Emails were sent to the Student, to his ROSI email account, by Tina Lie, a partner with Paliare Roland Rosenberg Rothstein LLP (“Paliare Roland”), who acts as Assistant Discipline Counsel to the University, as follows:

1. May 17, 2022, Ms. Lie introduced herself to the Student and advised that important documents and correspondence would be sent in future to the Student’s contact email address;
2. September 21, 2022, Ms. Lie attached a disclosure letter and PDFs of the University’s Disclosure Brief and its *Policy on Official Correspondence with Students*;
3. March 22, 2023, she proposed dates for the hearing of this matter, asked the Student to respond by March 29, 2022, regarding his availability, advised that the hearing would proceed electronically via videoconference unless the Student requested otherwise, and invited the Student to contact her to discuss the case; and
4. March 31, 2023, Ms. Lie noted that she had not heard from the Student and requested that the hearing for this matter be scheduled for June 7, 2023 at 9:45 a.m.

9. On April 10, 2023, the ADFG Office served the Student, via the Student’s email address in ROSI, with the Notice of Electronic Hearing for a hearing on Wednesday, June 7, 2023, at 9:45 a.m. Eastern Time (the “Notice”), together with copies of Professor Cowper’s and the ADFG Office’s May 2, 2022, letters regarding the charges and enclosures. The email from the ADFG Office also included the coordinates to access the Zoom videoconferencing platform for the hearing.

10. On May 16, 2023, Joseph Berger, a lawyer at Paliare Roland working with Ms. Lie, emailed the Student, providing the Student with the affidavit evidence of the Provost’s witnesses, and asked if the Student intended to conduct cross-examinations.

11. Neither Ms. Lie nor Mr. Berger received any correspondence or other response from the Student. In addition, neither of them received a bounce back message indicating that their email messages to the Student could not be delivered.

12. At the request of Mr. Berger, on May 30, 2023, Andrew Wagg, Manager, Incident Response, at Information Security, Information Technology Services at the University of Toronto, checked the last time someone had accessed the Student's university email account (the contact email in ROSI). Mr. Wagg determined that the last time was on March 1, 2022, at 12:06 a.m. (Toronto time).

13. In addition to their email address, students are required to provide a current telephone number and mailing address in ROSI. On March 30 and April 19, 2023, Kimberly Blake, a legal assistant at Paliare Roland who works with Ms. Lie, attempted to call the Student at the phone number the Student provided in ROSI. On both occasions, her calls went to a recording that indicated that the person was not available and inviting her to leave a message.

14. When she called on March 30, 2023, Ms. Blake left a message indicating that she was calling on behalf of Ms. Lie, who was prosecuting an academic discipline matter for the University involving the Student and advising the Student to check his University email account, before the voice message was cut off and the call was ended. She called back moments later and left another message, asking that the Student call Ms. Lie and to check his University email account. Ms. Blake also advised that Ms. Lie wanted to resolve the matter or set a hearing date, and that if the Paliare Roland office did not hear back from the Student, they would attempt to schedule a hearing date in June 2023.

15. When she called on April 19, 2023, Ms. Blake left a detailed message for the Student advising that a hearing date had been scheduled for June 7, 2023, that Ms. Lie wanted to speak with the Student and advising the Student to check his University email account.

16. As of June 2, 2023, no communication had been received by Paliare Roland from the Student.

17. The Tribunal convened at 9:45 on the morning of June 7, 2023, in accordance with the Notice. The Tribunal then waited 15 minutes to allow the Student or a representative of the Student to sign in to the hearing. After that time, neither the Student nor a representative appeared.

18. The University complied with its obligations to provide reasonable notice of the charges and the hearing to the Student by delivering all its letters and notices to the Student via the Student's email address in ROSI. The University even went beyond what was required by trying to telephone the Student and leaving voicemail messages. The Student's email was last accessed on March 1, 2022, after SAI had emailed the Student at least four times about this matter. The Student chose to ignore the University, at his peril. It is not necessary to find that the Student received actual notice, or that the Student's email address was last accessed after the charges were sent to that email. It was the Student's responsibility to check his email account or provide another email address to the University if the one in ROSI was no longer current.

19. This case is similar to *University of Toronto and Y.P.* (Case No. 1313, October 31, 2022). In that case, it was clear the student was not checking their email by the time the charges and the hearing notice were served. However, the student had been told in emails sent prior the last time their email account was accessed, that they were subject to an allegation of academic misconduct and meetings with the Dean's Designate to discuss the matter were scheduled. The Tribunal in that case determined that there had been reasonable notice of the charges and the hearing in accordance with the notice requirements set out in the SPPA and the Rules and proceeded with the hearing in the student's absence.

20. Accordingly, the Tribunal concluded that the Student had received reasonable notice of the hearing and of the charges, and ordered that the hearing proceed in their absence, as permitted by section 7(3) of the SPPA and rule 21 of the Rules.

Facts

21. In support of the charges, Counsel for the University tendered an affidavit from Francois Pitt, an Associate Professor, Teaching Stream, in the Department of Computer Science, in the

Faculty of Arts and Science, the contents of which are described below. As noted above, a copy of this affidavit was emailed to the Student by Mr. Berger on May 16, 2023. Professor Pitt was available if the Tribunal had any questions for him (it did not).

22. In the Winter 2021 term, the Student was a student in CSC165H1S: Mathematical Expression and Reasoning for Computer Science (as defined above, the “Course”). Professor Pitt was the course coordinator and an instructor for the Course. The Course was designed to provide students with an introduction to logical notation and reasoning, and an understanding of using and developing precise expressions of mathematical ideas, including definitions and theorems.

23. Students in the Course were evaluated based on the results of 11 weekly preparation assignments, five problem sets, five term tests, and four research surveys. The Course’s complete grading scheme was provided to all students in the course outline. The weekly preparation assignments were together worth 5%, the problem sets were together worth 33% (with set “0” worth 1% and sets 1-4 each worth 8%), the term tests were together worth 61% (test “0” worth 1%, tests 1-3 each worth 12%, and test 4 worth 24%) and the four research surveys were together worth 1%.

24. The outline for the Course indicated, under the heading “Academic Integrity” on page 8, that all work students submitted must be their own and that it is an academic offence to copy the work or someone else, even someone who is not a student, unless that work is explicitly and clearly attributed to its original source. Students were welcome to work appropriately with other students. However, collaboration on problem set and term test solutions was “strictly forbidden”, other than between group members on problem sets. The outline also stated, “Certainly you must not let others see your solutions, even in draft form. Please do not cheat.”

25. Term Test 3 in the Course (“Term Test 3”) was administered online on March 22, 2021, using an online platform called “MarkUs”. It was available to students in the Course from 9:00 a.m. to 9:00 p.m. that day. Students in the Course were given 60 minutes to complete Term Test 3, starting from the time they first accessed it online. Students were required to complete the test independently.

26. Term Test 3 consisted of four questions. Professor Pitt prepared multiple versions of each of the four Term Test 3 questions, which were randomly assigned to students in the Course, in order to prevent students from collaborating with each other on the test. There were six different versions of Question 2 on Term Test 3. The Student received Version 4 of Question 2 (“Version 4”).

27. The Student submitted his answers to Term Test 3 on March 22, 2021, in three separate files (two files were submitted at 5:41 p.m.; the third and final file was submitted at 5:50 p.m.). Along with his answers, the Student submitted a signed Academic Integrity Statement, attesting to fact that he had “abided fully by the Code of Behaviour on Academic Matters”, that he had “not committed [sic] academic misconduct” and that he was “aware of the penalties that may be imposed if I have committed an academic offense”.

28. The Student received an overall grade of 14.04 out of 16 on Term Test 3 (an earned grade of 15/16, with a - 0.96 penalty for late submission).

29. The T.A. marking the Student’s answer to Term Test 3, marked Question 2 as if the Student had received Version 5 instead of Version 4, as the Student’s answer in fact corresponded with Version 5. The Student therefore received a grade of 3/3 on Question 2 of Term Test 3.

30. Upon reviewing the Student’s Term Test 3 answers, Professor Pitt noticed the Student’s answer to Question 2 corresponded with Version 5, rather than Version 4 which had been distributed to the Student. This suggested to Professor Pitt that the Student had collaborated with another Student in the Course, who had been provided Version 5, for the following reasons:

1. On Version 4, in answering question 2(a) students were asked to provide a four-digit long number. On Version 5, in answering question 2(a) students were asked to provide a five-digit number. The Student provided a five-digit number, consistent with what was asked in Version 5, not Version 4.

2. On Version 5, in answering question 2(a) students were asked to produce a number which included “exactly two 0’s and three one’s, with no leading 0’s”. This was not a component of the question in Version 4. The Student’s answer to 2(a) (“10011”) contained exactly two 0s and three ones, without a leading 0, consistent with what was requested in Version 5, not Version 4.

3. On Version 4, in answering question 2(a) students were asked to make their answer as large as possible, whereas in Version 5 students were asked to make their answer as small as possible. The Student's answer was consistent with Version 5, by using digits that were as small as possible under the constraints of the problem given in Version 5.

4. On Version 4, in answering question 2(b) students were asked to provide a three-digit long number. On Version 5, in answering question 2(b) students were asked to provide a four-digit number. The Student provided a four-digit answer (“FEDC”), consistent with what was asked in Version 5, not Version 4.

5. On Version 4, in answering question 2(b) students were asked to write a number in base 8 (with the subscript 8), while on Version 5, 2(b) students were asked to write a number in base 16 (with the subscript 16). The Student provided an answer in base 16, consistent with what was asked in Version 5, not Version 4.
 6. On Version 4, in answering question 2(b) students were asked to make their answer as small as possible, whereas in Version 5 students were asked to make their answer as large as possible. The Student's answer was consistent with Version 5, by using digits that were as large as possible under the constraints of the problem.
 7. On Version 4, in answering question 2(c) students were asked to write a number in base 16 (with a subscript 16), while on Version 5, in answering question 2(c) students were asked to write a number in base 8 (with a subscript 8). The Student provided an answer in base 8, consistent with what was asked in Version 5, not Version 4.
 8. On Version 4, in answering question 2(c) students were asked to make their answer as large as possible, whereas in Version 5 students were asked to make their answer as small as possible. The Student's answer was consistent with Version 5, by using digits that were as small as possible under the constraints of the problem given in Version 5.
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31. On May 6, 2021, Professor Pitt met with the Student regarding alleged academic offences.
 32. The matter was forwarded to the University's Department of Computer Science and ultimately to SAI.

Finding on Charges

33. The Student was charged under section B.I.1(b) of the Code, by which it is an offence to obtain unauthorized assistance in any academic examination or term test or in connection with any other form of academic work.

34. The Student was also charged, in the alternative, under section B.I.3(b) of the Code, by which it is an offence to engage in any 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.

35. The Student knew that he was not permitted to collaborate with other students during a Term Test.

36. Having considered the evidence of Professor Pitt, and in particular the instances in which the Student's answer to Question 2 of Term Test 3 corresponded with the correct answers to Version 5 of that question, despite the Student's test containing Version 4, the Tribunal finds that on a balance of probabilities, the Student violated the Code by collaborating with someone who had received Version 5, or by somehow improperly accessing answers to Version 5.

37. Accordingly, the Tribunal finds that the Student is guilty of the offence of obtaining unauthorized assistance in a term test, contrary to s. B.I.1(b) of the Code.

38. Upon these findings, Counsel for the University advised that the University was withdrawing the alternative charge, as set out in paragraph 2 of the charges (see paragraph 1, above).

Sanction

39. Section C.II.(B) of the Code sets out that the Tribunal may impose a range of sanctions on a student who has been convicted under the Code, ranging from an oral reprimand to a five-year suspension or, more severely, a recommendation to the President of expulsion or to Governing Council of cancellation of a degree. The Tribunal may also order that any sanction it imposes be recorded on the student's academic record and transcript for a period of time and

may also report any case to the Provost, who may publish a notice of the decision and sanction in the University newspapers, with the name of the student withheld.

40. The Code also contains, in Appendix “C”, the Provost’s Guidance on Sanctions, section B.8(b) of which provides, “absent exceptional circumstances, the Provost will request that the Tribunal: ... suspend a student for two years for any offence involving academic dishonesty, where a student has not committed any prior offences”.

41. In this instance, the University sought an Order that the Student receive a final grade of zero in the Course and a two-year suspension, along with a notation on the Student’s record and transcript for three years and a report to the Provost for publication with the Student’s name withheld.

42. This request was in part based on sanctions handed down by the Tribunal in previous cases, the Provost’s Guidance on Sanctions (but which are not binding on this tribunal), and on the factors laid down by this Tribunal in *University of Toronto and Mr. C* (Case No. 1976/77-3, November 5, 1976) (“*Mr. C*”).

43. The reasons for decision in *Mr. C* set out factors that a tribunal should consider when imposing a sanction:

- a. The character of the person charged;
- 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.

44. With respect to factors (a) and (d), character and extenuating circumstances, respectively, there was no evidence one way or the other before the Tribunal. The Student did not participate

in the process beyond his initial meeting with Professor Pitt in May 2021. There is no evidence of remorse or insight, no evidence of a willingness to take responsibility for his actions and no evidence of a willingness to learn from his mistakes. The onus was on the Student to put forward mitigating evidence and none was presented.

45. With respect to factor (b), likelihood of repetition, the Student was in the Winter term of his first year at the time of the test and has not enrolled at the University since (although it appears the Student transferred five International Baccalaureate higher level credits to his Academic Record in the Summer 2021 term). There is no evidence of a pattern of misconduct but also nothing to show that the Student has learned from his mistake or that he appreciates its gravity. Again, there is no evidence of remorse or insight on the Student's part.

46. With respect to factors (c), (e) and (f), the nature of the offence, the detriment to the University and the need for deterrence, respectively, obtaining unauthorized assistance, which effectively allows the student to cheat by copying answers from another, improper source onto a test, as the Student has committed, is an extremely serious offence that harms the institution and the academic process. It is a serious breach of academic integrity and can be seen as an attempt to defraud the University. It is always a temptation to seek assistance during a test administered online. Here, the Student clearly gave in to that temptation to try to obtain a better result on the test than he felt he could otherwise achieve. The fact that the Student was caught in this instance is a testament to Professor Pitt's system of employing different versions of the questions and to his vigilance in noticing the anomalies in the Student's answers. Not every instructor would, or could, employ such a system. Therefore, the associated penalty must act as general deterrent against this behaviour.

47. As was noted by this Tribunal in *University of Toronto v. T.J.* (Case No. 1102, November 5, 2021), at para. 11(e), with respect to the need to deter others from committing similar offences (factor (f) in *Mr. C.*):

[C]heating 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 that they will be dissuaded from the temptation to cheat when under pressure.

48. It is accepted that there is no benchmark or starting point that a Tribunal is meant to apply in sanctioning a student who has been found to have violated the Code. The sanction in a particular case is to be determined based on the circumstances of that case. However, previous decisions of the Discipline Appeals Board and this Tribunal have found that students must be treated fairly and equitably when being sanctioned, and that there must be a general consistency in the approach of the Tribunal generally (see *University of Toronto v. B.S.* (Case No. 697, January 17, 2014 (Sanction)), at paragraphs 8-11).

49. Counsel for the University directed the Panel to a number of previous decisions of the University Tribunal on the issue of unauthorized assistance in tests or exams.

50. In *University of Toronto v. S.R.* (Case No. 708, June 6, 2014), the student was found to have collaborated with another student during a midterm test, in which they had been seated in adjoining seats. The clear similarities between their test papers, particularly with respect to identically incorrect answers, and evidence from a witness who had seen the student during the test speaking with the other student in the adjoining seat, established that the student had obtained unauthorized assistance during the test. The student did not participate in the proceeding. The Tribunal imposed a sanction of a mark of zero in the course, a two-year, five-month suspension, and a four-year notation.

51. In *University of Toronto v. X.Y.* (Case No. 1147, November 11, 2021), the student was found to have submitted, in a final exam administered online in April 2020, in a first-year mathematics course, a number of answers that were obviously similar to answers submitted by five other students, including answers with the same random mistakes as other students. The student did not participate in the proceeding. The Tribunal found that the student was guilty of having obtained unauthorized assistance in connection with a final exam, and concluded that it was appropriate to impose a sanction of a mark of zero in the course, a two-year suspension, and a three-year notation.

52. Finally, in *University of Toronto v. Y.C. and L.F.* (Case Nos. 1372 and 1373, March 7, 2023), both students were found to have submitted, in a midterm exam administered online in October 2020, in an introductory Calculus course, answers that were identical or virtually identical, including the same steps and the same mistakes. Where questions called for written answers, the students' answers used virtually identical language. Neither student participated in the proceedings. The Tribunal found both of them guilty of obtaining unauthorized assistance, and imposed on both of them a sanction of a mark of zero in the course, a two-year suspension, and a three-year notation.

53. In the present case, the Student has no prior record of academic misconduct. However, he has been found to have engaged in a serious breach of academic integrity. While the fact that he chose not to participate in this process will not be considered an aggravating circumstance, he passed up the opportunity to present evidence of mitigating or extenuating circumstances. Accordingly, in light of the foregoing, the Tribunal concludes that the sanction requested by the Provost is reasonable and appropriate in the circumstances of this case and is consistent with prior decisions of this Tribunal.

54. The Tribunal therefore orders that the following sanctions be imposed on the Student:

- a) a final grade of zero in the course CSC165H1 in Winter 2021;
- b) a suspension from the University for a period of two years from June 7, 2023; and
- c) a notation of this sanction on the Student's academic record and transcript for a period of three years from June 7, 2023.

55. In addition, the Tribunal orders that this case 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, this 8th day of September, 2023.

A handwritten signature in black ink, appearing to read 'D. Harrison', written in a cursive style.

Douglas Harrison, Chair
On behalf of the Panel