

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on January 26, 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:

UNIVERSITY OF TORONTO

- and -

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REASONS FOR DECISION

Hearing Date: July 11, 2023, via Zoom

Members of the Panel:

Cynthia Kuehl, Chair

Professor George Cree, Faculty Panel Member

Farhana Islam, Student Panel Member

Appearances:

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

Afsheen Chowdhury, Summer Student, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary:

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

Not in Attendance:

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1. The Trial Division of the University Tribunal was convened on July 11, 2023, by Zoom, to consider charges of academic dishonesty (the “Charges”) brought by the University of Toronto (the “University”) against Y■■■ C■■■ (the “Student”) under the *Code of Behaviour on Academic Matters, 2019* (the “Code”). The Student was informed of the Charges by letter dated January 26, 2023.

Preliminary Issue: Proceeding in the absence of the Student.

2. The hearing was scheduled to commence at 5:15 p.m. The Panel waited until 5:30 p.m. before commencing the hearing. The Student did not appear. Pursuant to sections 6 and 7 of the *Statutory Powers Procedure Act* (the “Act”) and rules 17 and 21 of the University Tribunal’s *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 and the Rules. Where a party does not attend the hearing and reasonable notice has been given, a party is not entitled to further notice.

3. Pursuant to rule 13, a Notice of Hearing may be served on a student by various means including by: sending a copy of the document by courier to a student’s mailing address contained in the Repository of Student Information (“ROSI”) or emailing a copy of the document to a student’s email address in ROSI. According to the *Policy on Official Correspondence with Students*, students are responsible for maintaining on ROSI a current and valid mailing address and a University-issued email account, and are expected to check mail and email on a frequent and consistent basis.

4. In this case, the University requested that the Panel proceed in the absence of the Student. For the reasons that follow, the Panel granted this request.

5. In support of its request, counsel for the University filed two affidavits. The Affidavit of Alexciya Blair set out the numerous attempts by the University to contact the Student. This included the fact that, on January 26, 2023, the Office of the Vice Provost, Faculty and Academic Life served the Charges on the Student by email to their University of Toronto email address. On the same day, counsel for the University followed up to introduce himself and suggest that he and the Student have a call to discuss the case and next steps.

6. According to the Affidavit of Andrew Wagg, Manager, Incident Response at Information Security, Information Technology Services at the University, the portal records for the University determined that the last time someone accessed the Student's email account was on January 26, 2023, after the Charges had been served and after the email from the University's counsel.

7. The Affidavit of Ms. Blair confirmed that the disclosure letter and brief was emailed on April 22, 2023. Counsel confirmed to the Student that the hearing would be scheduled in the absence of a response from the Student. Thereafter, counsel for the University arranged for a courier to deliver a package to the Student at the Student's mailing address in ROSI, which was signed by the front desk of his building. In addition, counsel for the University called the Student's number in ROSI on multiple occasions, both at his main telephone number, his cell number and an alternative number. Despite all these attempts, no contact was made with the Student.

8. In this case, it is also important to note that, on August 18, 2022, the Student had signed a form acknowledging possession of an unauthorized aid during a final exam form (discussed below) and, shortly thereafter, he ordered an e-transcript from the University. While the weight that the Panel placed on this form is discussed below, its execution and the prompt ordering of the e-transcript suggest that the Student was aware of the potential that there would be some review of his conduct. The Panel also noted that there were attempts to set up a meeting to discuss the

allegations with the Student, to which he had not responded. The Student has not taken any courses at the University since Fall 2023.

9. Based on the totality of this evidence, the Panel was satisfied that the Student received the Notice of Hearing, advising that the hearing was scheduled for July 11, 2023, and that reasonable notice had been provided in accordance with the Rules and the Act. The Panel further noted that, given the Student's failure to respond to any communications from the University or counsel for the University despite the provision of reasonable notice of the Charges and of the hearing, there was no reason not to proceed in the absence of the Student. In accordance with section 7(3) of the Act, the Panel proceeded to hear the case on its merits in the absence of the Student.

Liability - The Charges

10. At the material times, the Student was enrolled at the University of Toronto Faculty of Arts & Science.

11. In the Charges, the University made the following two allegations:

- i. On or about August 18, 2022, the Student knowingly used or possessed an unauthorized aid or aids or obtained unauthorized assistance in connection with the final exam in MAT244H1F, contrary to section B.I.1(b) of the Code;
- ii. In the alternative, on or about August 18, 2022, 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 final exam in MAT244H1F, contrary to section B.I.3(b) of the Code.

12. The University advised that it would withdraw Allegation 2 if findings of guilt were made on Allegation 1. Ultimately, Allegation 2 was withdrawn.

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

The Evidence on Liability

14. The Panel received affidavit evidence from two witnesses: M [REDACTED] K [REDACTED], a doctoral student in the Department of Mathematics at the University of Toronto, who taught MAT244H1F: Introduction to Ordinary Differential Equations (the “Course”) in which the Student was enrolled; and the Affidavit of C [REDACTED] H [REDACTED], who worked as the Chief Presiding Officer invigilating exams at the University of Toronto, including the final exam in the Course. In that regard, Ms. H [REDACTED] was responsible for distributing and picking up the exams, and monitoring for and reporting on academic misconduct.

15. In his affidavit, Mr. K [REDACTED] explained that the Course required the completion of a number of assignments and a final exam, the latter of which was worth 45% of the final grade. The Course syllabus contained a warning regarding academic integrity, which made it clear that suspected cases of academic dishonesty would be investigated following the procedures set out in the Code, and directed students to information available on the University website. The final exam in the Course had a number of reminders for students, including the requirement to turn off and leave all cell phones, smart watches, electronic devices and unauthorized study materials in their bag under the desk because, if left in the pocket, it could be an academic offence.

16. Ms. H [REDACTED]’s affidavit was detailed as to the events that took place during the final exam of the Course. She explained that in addition to the written advice on the examination described above, she verbally announced those rules to everyone in the examination room at the commencement of

the exam. Her affidavit specifically outlined that she told the students that they were required to turn off and place all their electronic devices in their bags. After her announcements and the commencement of the examination, she began to collect any unused exam papers from empty desks at approximately 2:30 p.m.

17. Not long thereafter, while she was still collecting the unused papers, she noted that the Student had a sandwich on his desk. This was unusual to her as students were not permitted to eat during the examinations. This drew her attention to the Student, whom she observed as being quite hunched over with his arm covering pages of the exam. She saw him making a motion with his hand that appeared to be pressing buttons. She attended at the Student's desk and asked him to remove the sandwich and some other items to the desk in front of him. As he was moving the belongings, she noted that the Student had an iPhone under his arm and that it was open to an application that looked like a scientific calculator. When she inquired whether the Student had a cell phone, he tried unsuccessfully to cover up the iPhone with his arm. She confiscated his iPhone.

18. Ms. H■■'s evidence was that she identified the Student by name, and advised him to continue writing the exam and to pick up the cell phone at its conclusion.

19. Ms. H■■ advised that she filled out a form titled the "Possession of An Unauthorized Aid During a Final Exam" in which she detailed her observations of the Student and the steps she had taken. At the conclusion of the examination, she provided the form to the Student and asked him to review and sign it. That form specifically stated that the Student had to execute the form, which includes an acknowledgement that the statements on the form regarding use of an unauthorized aid are true, in order to have the iPhone returned. Later that day, Ms. H■■ filled out a form called "Alleged Academic Misconduct Report Form" which further detailed the same events that happened with the Student.

20. Thereafter, Ms. H [REDACTED] and Mr. K [REDACTED] had no further involvement with the Student. The attempts to address the issues with the Student was detailed in the materials reviewed earlier with respect to notice of the hearing.

Decision of the Tribunal on Charges

21. Having considered all the evidence presented during the hearing, which was solely in the form of affidavit evidence, the Panel found that the Student committed academic offence 1, in that he knowingly used or possessed an unauthorized aid, namely the iPhone, in connection with the final exam in the Course.

22. In particular, the Panel accepted Ms. H [REDACTED]'s evidence that she personally observed the Student with the iPhone out on his desk during the course of the examination and, further, that he was making motions consistent with pressing buttons. The Panel further accepted her evidence that she saw what appeared to be a scientific calculator in use during the examination. Of note, possessing the iPhone alone would be sufficient to make a finding with respect to section B.I.1(b) of the Code, as it was made clear both in the written and oral instructions for the examination that cell phones had to be turned off and put away. However, the totality of the evidence of the Student's conduct as observed by Ms. H [REDACTED] supported that, not only did the Student possess the iPhone, he used it during the course of the examination itself.

23. In coming to its conclusion, the Panel did not place significant or any weight on the Student's execution of the Possession of an Unauthorized Aid During a Final Exam Form. The Panel noted that the Student had to sign the form in order to have his iPhone returned to him and that there may have been reasons why he would have signed that form even if he did not agree

with its contents. However, the remainder of the evidence, taken in its totality, well supported the finding in respect to Allegation #1 of the charges.

24. Having been advised of this finding, the University withdrew Allegation #2.

Sanction – The Position of the University

25. The University sought the following penalties:

- a. A final grade of zero in MAT244H1F in Summer 2022;
- b. A suspension from the University for a period of five years commencing on the date of the Tribunal's Order; and
- c. A notation of the sanction on the Student's academic record and transcript until graduation.

26. The University also sought as part of the order that the 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.

The Sanction Evidence

27. In addition to the evidence in support of the findings of the offence, the University filed an Affidavit of Professor John Coleman, Professor Emeritus in the Department of Cell & Systems Biology at the University, and the Dean's Designate for Academic Integrity with the Student Academic Integrity ("SAI") office in the Faculty of Arts and Science. Professor Coleman explained that the SAI is responsible for investigating allegations of academic misconduct and for maintaining a database of allegations of academic misconduct that have been made against students in the Faculty of Arts and Science.

28. According to SAI's records, the Student had committed two prior academic offences. In the first, in December 2019, it was alleged that the Student used a cell phone on a final examination. The Student subsequently attended a Dean's Designate meeting and admitted that he had used the cell phone on the final examination. The Dean's Designate imposed a sanction of a grade of zero in the course and a two-year notation on his academic record and transcript. As a result of that finding, SAI sent a letter to the Student which included, among other matters, a warning that, if the Student was involved in a subsequent allegation of academic misconduct, it would be taken into account that it was not his first allegation and the consequences may be more severe.

29. In February 2020, the Student wrote a final exam in MAT244H1, in which the Chief Presiding Officer alleged that the Student had used a cell phone during the final examination. The Student attended a Dean's Designate meeting and admitted that he committed an academic offence on the final examination. At that time, the Dean's Designate imposed a final grade of zero in the course, a four-month suspension from the University, and a notation on his academic record and transcript until graduation. Again, the SAI sent the Student an email confirming the sanction imposed and warning that if there was a further incident of academic misconduct, his previous offence would be taken into account. It is significant to note that this incident of academic misconduct took place in the same Course for which the Panel made findings in this hearing.

Decision of the Tribunal on Sanction

30. The Panel heard submissions regarding the appropriateness of the sanction and reviewed relevant past decisions of the Tribunal as submitted by the University. It carefully considered the factors set out in *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 hearing, there is no evidence before the Panel regarding the Student's character other than the facts relating to this offence, and the fact that the Student has had multiple previous offences for use of an unauthorized aid. The facts are concerning, given that this Student has been given more than one opportunity to make different choices and has failed to do so.

b. The likelihood of a repetition of the offence.

The University indicated that this was the single most important factor in this case. There are two prior offences for the exact same type of misconduct and one of the prior findings is for the same course. The Panel was very concerned that this was not an isolated incident and that the Student had committed the very same type of misconduct despite two written warnings and meetings. To date, nothing has deterred the Student from this type of behaviour which was highly concerning both to the University and to the Panel in its consideration of the appropriate penalty.

c. The nature of the offence committed.

The Panel noted that the use of the cell phone as an unauthorized aid may, in the first instance, appear to be something that is not premeditated. Here, however, the Student's behaviour on the day of the examination, including bringing in a sandwich to place on the desk, was consistent with a plan to hide the use of the cell phone. The Student was well aware that the use of a cell phone would not be tolerated given his past history. The University must be able to trust that its students will take its final examinations in manners that accord with academic integrity. When students use unauthorized aids (which is a form

of cheating), they undermine the integrity that the broader community puts in the University.

d. Any extenuating circumstances surrounding the commission of the offence.

There is no evidence before the Panel of mitigating extenuating circumstances.

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

There is no particular or specific detriment to the University occasioned by this offence, aside from the fact that, in this digital world, the University has had to become increasingly vigilant about the use of smart devices, including cell phones, during an examination. The invigilation of examinations becomes more complicated when students will not adhere to clear directions with respect to cell phone use.

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

General deterrence is an important factor in all of these cases. The University provided a number of relevant cases in which unauthorized aids have been used during examinations. The use of unauthorized aids is in the category of attempted or actual cheating which 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, particularly when the student has been given multiple opportunities to correct their behaviour and continue to engage in academic dishonesty.

31. The determination of an appropriate penalty depends on the assessment of these principles and factors in light of the individual circumstances. There should also be a general consistency in the approach of a Panel to sanction, so that students are treated fairly and equitably. Accordingly,

the Panel carefully considered the reasonable range of penalty dispositions as set out in the various authorities put before it by the University.

32. The Panel noted that sanctions of less than five years (i.e., in the area of 3-to-4 year suspensions) tended to be cases where, although there were multiple offences, there were also mitigating factors that spoke to cooperation or remorse, or there were other particular individual circumstances to consider. None of those considerations apply in this case.

33. The cases in which the student received a suspension of five years or expulsion were not, on their face, identical to this matter. However, all of them were circumstances in which there were prior repeated offences. The presence of three offences alone could justify expulsion where there is a level of premeditation and deceit. In this case, the University submitted that there was not the same level of premeditation and deceit, and therefore a suspension in the range of five years was more appropriate.

34. In reviewing this case, the Panel noted that expulsion would typically be available. The Panel was particularly troubled by the fact that the Student had engaged in the exact same form of academic misconduct on three occasions. A clear warning needed to be sent that this type of misconduct will not be tolerated and that the Student, in particular, must reform himself before returning to the University. Against those various significant concerns was the fact that there was not the same level of deceit. Certainly, the Panel was concerned that there was a degree of premeditation and that the Student would have known that the use of a cell phone was not appropriate. That said, there does not appear to have been a significant amount of planning nor did the Student attempt to maintain the deceit once caught by the invigilator.

35. The Student's last suspension was only for four months, which, in the Panel's view, demonstrated leniency to date by the University for which expulsion would be a departure. Accordingly, the Panel concluded that it would not recommend an expulsion but that a suspension from the University for five years would be appropriate.

36. The fact that the notation in the academic record would continue to graduation had already been determined on a previous offence. The decision to maintain the notation to graduation was further warranted in light of the fact that the Student had engaged in this conduct on multiple occasions. It would be important that any professors who choose to work with the Student on independent study in future be aware of the past concerns of academic dishonesty.

37. 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 connection with the final exam in MAT244H1F, contrary to section B.I.1(b) of the *Code of Behaviour on Academic Matters*;
- iii. THAT the following sanctions shall be imposed on the Student:
 - a. a final grade of zero in MAT244H1F in Summer 2022;
 - b. a suspension from the University for a period five years commencing on the date of the Panel's order; and
 - c. a notation of the sanction on the Student's academic record and transcript until graduation.

- iv. THAT this case be reported to the Provost for publication of a notice of the decision of the Panel and the sanctions imposed, with the name of the Student withheld.

Dated at Toronto this 13th day of October, 2023.

Original Signed By:

Cynthia Kuehl, Chair

On behalf of the Panel