

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on November 9, 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 -

J ■■■ W ■■■

REASONS FOR DECISION

Hearing Date: October 11, 2023, via Zoom

Members of the Panel:

R. Seumas M. Woods, Chair
Professor Vivienne Luk, Faculty Panel Member
Kerman Sekhon, Student Panel Member

Appearances:

Lily Harmer, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
Sonia Patel, Co-Counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary:

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

Not in Attendance:

J ■■■ W ■■■

THE CHARGES

1. On November 9, 2022, the University of Toronto (the “University”) laid the following charges (the “Charges”) against J■■■ W■■■ (the “Student”) under the *Code of Behaviour on Academic Matters, 2019* (the “Code”):

1. On or about March 8, 2021, you knowingly obtained and/or provided unauthorized assistance in connection with test 2 in LIN205H5, contrary to sections B.I.1(b) and B.II.1 of the *Code*.
2. In the alternative, on or about March 8, 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 test 2 in LIN205H5, contrary to sections B.I.3(b) and B.II.1 of the *Code*.
3. On or about April 5, 2021, you knowingly obtained and/or provided unauthorized assistance in connection with test 3 in LIN205H5, contrary to sections B.I.1(b) and B.II.1 of the *Code*.
4. In the alternative to paragraph 3, on or about April 5, 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 test 3 in LIN205H5, contrary to sections B.I.3(b) and B.II.1 of the *Code*.

The Hearing

2. The Tribunal heard the Charges on October 11, 2023, by videoconference over Zoom. The University attended the video hearing, but even after waiting 15 minutes the Student failed to appear.

Ability to Proceed in the Student's Absence

3. As a result of the Student's failure to attend the hearing, the Tribunal started the hearing by considering whether or not it could proceed in the Student's absence. Ms. Patel, on behalf of the University, submitted that the University Tribunal's *Rules of Practice and Procedure* (the "Rules") entitled the Tribunal to proceed since the Student had been provided with adequate notice of the hearing. In support of that position, Ms. Patel provided the Tribunal with an affidavit from Naomi Carrera-McKail affirmed October 3, 2023, and an affidavit from Andrew Wagg affirmed October 3, 2023.

4. Ms. Carrera-McKail is a law clerk with Ms. Patel's firm. In her affidavit, Ms. Carrera-McKail provided information about the Student's contact information, and in particular, the Student's email. Her affidavit included a letter dated September 27, 2023, which Ms. Huang emailed to the Student at the Student's email address in the Repository of Student Information ("ROSI"). She affirmed that the Student was emailed a copy of the Charges on November 9, 2022, and that on May 23, 2023, an assistant in her office emailed the Student a disclosure letter, an electronic link which the Student could use to obtain a copy of the University's Disclosure Brief. Both were emailed to the Student at the address for the Student in ROSI.

5. Ms. Carrera-McKail further affirmed that:

- (a) On August 16, 2023, the University's Office of Appeals, Discipline and Faculty Grievances (the "ADFG Office") issued a Notice of Virtual Hearing advising the Student that the hearing had been scheduled for October 11, 2023 at 5:45 p.m. over Zoom which the ADFG Office emailed that day to the Student at the Student's email address in ROSI;
- (b) on September 11, 2023, counsel for the University arranged for a courier to deliver a package containing the Notice of Virtual Hearing and the Charges to the condominium unit listed as the Student's address in ROSI. The courier company indicated that the concierge at the condominium indicated that the Student no longer lived there and had not done so for over a year;
- (c) on September 27, 2023, the ADFG Office issued a Revised Notice of Virtual Hearing. The date and time of the hearing remained unchanged. The ADFG Office sent a copy of that notice to the Student at the Student's email address in ROSI;
- (d) on September 28, 2023, Ms. Carrera-McKail called the number listed for the Student in ROSI. The number was still in service, but no one answered the call and there was no voicemail box for the number; and
- (e) on October 3, 2023, counsel for the University, Ms. Patel, emailed the Student, at the Student's address in ROSI, copies of the affidavits on which the University intended to rely at the hearing.

6. Mr. Wagg is the Manager, Incident Response at Information Security, Information Technology Services at the University. His affidavit evidence was that on September 11, 2023, he checked to determine the last time anyone had accessed the email account for the Student in ROSI. Mr. Wagg determined that someone had accessed that account on August 7, 2023.

7. Under rule 13(c) of the Rules, service of charges, notices of hearing and disclosure, amongst other things, may be served on a student by emailing a copy of the document to the student's email address contained in ROSI. Based on the evidence before us, we were satisfied that the Student had received reasonable notice of the Charges and this hearing and therefore we could proceed with the hearing in the Student's absence.

8. While direct evidence that the Student had personally accessed the email account identified as the Student's email account in ROSI after the Charges and the initial Notice of Virtual Hearing were emailed to the Student would have established that the Student had had actual notice of both the Charges and the date of this hearing, the Rules do not require the University to establish actual notice. To the contrary, the Rules allow the University to provide students with documents by emailing them to the student at their email address in ROSI. Students are responsible for monitoring their account in ROSI. They fail to do so at their own risk.

9. In this case, the Student was notified of the Charges by email sent to the Student's address on ROSI on November 9, 2022. There is evidence that someone accessed that account as late as August 7, 2023. The Student was notified of the date of this hearing by emails sent to the Student's email address on ROSI on August 16, 2023, and September 27, 2023. As such, under the Rules the Student had notice of both the Charges and the date of this hearing. In all the circumstances of this case, the Student had reasonable notice of the hearing under rule 13 of the Rules. We may

therefore proceed to hear and consider the University's evidence in the Student's absence under rule 17 of the Rules.

Merits of the Charges

10. In support of its allegations against the Student, the University tendered an affidavit from Ai Taniguchi, an Assistant Professor (Teaching Stream) in the Department of Language Studies at the University of Toronto, Mississauga, and an affidavit from Charles Elkabas. Professor Elkabas was until 2020 a professor of French Studies, Language Teaching and Learning in the Department of Language Studies at the University of Toronto Mississauga. He currently serves as a Dean's Designate for Academic Integrity with the Office of the Dean.

Professor Taniguchi's Evidence

11. In Winter 2021, Professor Taniguchi was the instructor for LIN205H5S (the "Course"). The Student was one of 420 students in the Course. The syllabus for the Course informed students of the importance of academic integrity. It warned students that misconduct would be treated seriously and provided examples of potential offences. Since the Course was delivered remotely, Professor Taniguchi included in the syllabus a specific section dealing with academic integrity in the digital environment:

With regard to remote learning and online course, UTM wishes to remind students that they are expected to adhere to the Code of Behaviour on Academic Matters regardless of the course deliver method. By offering students the opportunity to learn remotely, UTM expects that students will maintain the same academic honesty and integrity that they would in a classroom setting. Potential academic offences in a digital context include, but are not limited to:

- Accessing unauthorized resources (search engines, chat rooms, Reddit, etc.) for assessments.

- Using technological aids (e.g. software) beyond what is listed as permitted in an assessment.
- Posting test, essay, or exam questions to message boards or social media.
- Creating, accessing, and sharing assessment questions and answers in virtual “course groups”.
- Working collaboratively, in-person or online, with others on assessments that are expected to be completed individually.

12. Professor Taniguchi’s evidence was that students in the Course were evaluated on the basis of, amongst other things, three term tests, each of which was worth 20% of the final grade in the Course. Students were prohibited from working with others on the tests.

13. The second test (“Test 2”) was administered on March 8, 2021. Students could take it at either 3:10 p.m. or 9:40 p.m. It consisted of 20 multiple choice and true or false questions, as well as three short answer questions. The three short answer questions each contained multiple sub-questions. Test 2 was administered through Crowdmark. The order of the questions on the test was randomized and there were four different versions of the test.

14. The third test (“Test 3”) was administered on April 5, 2021. As with Test 2, students could take Test 3 at either 3:10 p.m. or 9:40 p.m. Test 3 consisted of a mix of 22 multiple choice and true or false questions. Test 3 was administered through Quercus. Both the order of the questions and the order of the answer questions were randomized, resulting in each student receiving a unique version of the test.

15. The Student took Test 2 at 3:10 p.m. on March 8, 2021. The Student received a grade of 43 out of 44 on Test 2, answering incorrectly one of the true or false questions. The Student took Test 3 on April 5, 2021, at 3:10 p.m. The Student received a perfect grade of 22 out of 22 on it.

16. The day after Test 3's administration, Professor Taniguchi received an anonymous email from people who said they were students in the Course. The email reported that many students in the Course were part of a WeChat group that had shared answers to the questions in the tests while they were being administered. The email attached screenshots and videos of a WeChat group with over 80 members. The email stated that the group had shared answers for all three of the tests in the Course, but the screenshots were for only Tests 2 and 3.

17. Professor Taniguchi reviewed the screenshots, confirming that they showed that questions and answers to Test 2 and 3 had been posted during the test period that had begun at 3:10 p.m. on the days the tests had been administered.

18. The anonymous students sent Professor Taniguchi screenshots showing the user IDs of the people in the WeChat group, and a list matching the names to user IDs, based on the students' social media information. She determined that a total of the WeChat group included 40 students in the Course. The Student was not among those 40 students.

19. After reviewing the screenshots of Test 2 and Test 3 to determine which version of the tests had been posted, Professor Taniguchi was able to ascertain that the version of Test 3 posted to the WeChat group was the version the Student had completed, and that the posted version of Test 2 was a version which the Student (amongst others) had completed. Professor Taniguchi therefore concluded that the Student had shared screenshots of her answers to Test 3.

20. Professor Taniguchi met with the Student on May 13, 2021, to discuss her concerns about the tests. Following that meeting, she referred the matter to the Chair of the Department of Language Studies at the University of Toronto Mississauga for further action.

Professor Elkabas' Evidence

21. Professor Elkabas' evidence was that after receiving an academic integrity report from the Chair of Language Studies, he met with the Student on August 4, 2021, via Zoom. Jade Hazell, an academic integrity assistant was also present at the meeting and took notes of it.

22. Professor Elkabas' evidence was that at the commencement of the meeting, he cautioned the Student that they had the right to have someone with them, and were not required to answer any questions, and that the interview would be recorded. The Student indicated that they understood and agreed.

23. Professor Elkabas asked the Student if they had shared their test answers with anyone. The Student responded that they had. The Student did not have the names of the persons with whom their answers had been shared. The Student indicated that they were part of a paid tutoring group. The Student had shared their answers because their grade point average was very low, and they wanted to do better. One of the students ("Student X") in the group, whom she could not name, had offered to compare answers with the Student.

24. The Student told Professor Elkabas that they had used a translation aid to complete Test 2. The Student further admitted that they had checked their answers on Test 3 with Student X on WeChat while writing the test. The Student acknowledged that they had shared screenshots of their answers with Student X, and that Student X had shared their answers with the Student. The Student denied posting their answers to the WeChat group. The Student did not know that Student X was sharing answers with a group. The Student denied receiving any rewards or presents for sharing their answers.

25. The Student further admitted to comparing their answers with the answers they received from Student X but said they did so only after writing their own answers and consulting a translator.

Decision on the Merits

26. The University has the burden of establishing on the balance of probabilities, using clear and convincing evidence, that the Student committed the academic offence with which he or she has been charged. In this case, and only dealing with the first and third charges, that requires the University to establish that the Student knowingly obtained and/or provided unauthorized assistance in connection with Test 2 and Test 3.

27. As set out above, students had to complete the two tests on their own. They were not allowed to work with others on the two tests. Based on the evidence set out above, the Student failed to comply with that obligation. In particular, the evidence clearly establishes that the Student:

- (a) used a translation aid to answer the questions on Test 2;
- (b) used a translation aid to answer the questions on Test 3;
- (c) checked her answers to the questions on Test 3 with Student X;
- (d) shared a screenshot of her answers to the questions on Test 3 with Student X;
- (e) viewed a screenshot of Student X's answers to the questions on Test 3.

28. Each of the above violated the prohibition against working with others. We therefore find the Student guilty of the charges of obtaining and providing unauthorized assistance on Test 2 and

Test 3. In light of our findings on the above charges, counsel for the University advised us that the University was withdrawing the other charges.

Sanction

Evidence and Submissions

29. On sanction, the University adduced an affidavit from Lisa Devereaux. Ms. Devereaux is the Director of Academic Success & Integrity in the Office of the Vice-Principal Academic and Dean at the University of Toronto Mississauga. Ms. Devereaux's evidence was that the Student had previously committed two academic offences:

- (a) in the Fall 2018 term, the Student had admitted to obtaining unauthorized assistance on a midterm exam worth 15% of the final grade in FAH101H5F. For that breach of the *Code*, the Student received a grade of zero on the exam and a one-year annotation on her transcript, from February 11, 2019 to February 11, 2020;
- (b) in the Spring 2019 term, the Student admitted to providing unauthorized assistance to another student to complete an assignment worth 35% of the final grade in CCT206H5S. For that breach of the Code, the Student received a grade of zero in the course, a four-month suspension from May 1, 2020 to August 31, 2020, and a two-year annotation on her transcript from May 1, 2020 to April 30, 2022.

30. The University submitted that in the circumstances, the appropriate penalty was a grade of zero in the Course, a four-year suspension, and a notation on the Student's academic record and transcript for a period of five years.

Decision

31. The factors this Tribunal must consider in deciding what sanction to impose are well established. The leading case is *University of Toronto v Mr. C.* (Case No 1976/1977-3, November 5, 1976) in which, sitting as a member of the Appellate Division of this Tribunal, former Supreme Court of Canada Justice Sopinka described them this way:

What then are the principles that this Tribunal should follow in dealing with an appeal from sentence? First, in my opinion, punishment is not intended to be retribution to get even, as it were, with the student for what he has done. It must serve a useful function. The classical components of enlightened punishment are reformation, deterrence, and protection of the public. In applying these criteria, a tribunal should consider all of the following:

- (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;
- (f) the need to deter others from committing a similar offence.

32. Considering each of the above factors, the sanction the University seeks is appropriate. In particular:

- (a) ***Character***: because the Student chose not to attend the hearing, we have no evidence of character from the Student themselves. We do, however, have the fact that the Student also provided or obtained unauthorized assistance in each of 2018 and 2019. The Student's commission of those offences reflects negatively on their character;

- (b) ***Likelihood of Repetition***: given the evidence about the Student's prior similar offences, we have concluded that there is a very real risk of the same offence being repeated absent a significant sanction;

- (c) ***Nature of Offence***: Providing or obtaining unauthorized assistance is a very serious offence, striking at the heart of the evaluation process. The University expects students to comply with their obligation not to consult with others when asked not to do so. This is particularly important in today's world, where so many tests and evaluations are administered virtually over the internet rather than in person in a classroom or examination hall. Both the University and the students who attend need to have confidence that students will not take advantage of the many opportunities to cheat that virtual tests and examinations offer. The way these offences came to light only underlines the importance students themselves attach to the rules against providing or obtaining unauthorized assistance. As such, this is a factor that tends to support a serious sanction;

- (d) ***Extenuating Circumstances***: there is no evidence of any extenuating circumstances in this case. We note that the Student did not accept responsibility for their actions by pleading guilty to the offence and cooperating fully during the course of the discipline process. That might have been an extenuating circumstance;

- (e) ***Detriment to the University***: unauthorized assistance strikes at the heart of the University's core values of honesty and integrity. It cannot be tolerated. As such this factor points to a serious sanction;

- (f) ***Deterrence***: sanctions that clearly demonstrate that taking advantage of the opportunities virtual testing offers will be met with serious sanctions is necessary to deter others from this type of conduct.

33. We also note the fact that based on the evidence before us, the Student's answers to Tests 2 and 3 were shared to a broader group of students through WeChat. Even accepting the Student's statement to the Dean's Designate that the Student did not know that their answers were going to be shared with the wider group, by sharing their answers with someone else, the Student made it possible for the other student to distribute the answers to a wider group. The wide distribution of the Student's answers tends to reinforce the seriousness of the offences and the need to deter others from similar conduct in the future.

34. Based on the cases provided to us, the range of sanction for the type of conduct that the Student has engaged in ranges from a mark of zero in the course and a three-year suspension, to a mark of zero in the course and a five-year suspension, although expulsion is not unknown. In all of the cases, those penalties have been accompanied by a notation of the sanction on the student's academic record for a period of time.

35. The Tribunal has imposed the lesser sanction of a three-year suspension where either the student has had fewer prior convictions (see the *University of Toronto v N.A.* (Case No. 1186, September 21, 2021)) or has pleaded guilty and cooperated with the disciplinary process (see the *University of Toronto v S.H.K.* (Case No. 732, March 11, 2014)).

36. The Tribunal has imposed the more serious sanction of a four-year suspension where the student has had a prior record of multiple convictions, been found guilty of multiple charges, and/or not cooperated with the disciplinary process. For example:

- (a) in the *University of Toronto v P.F.* (Case No. 1223, October 18, 2022), the student was found guilty of two charges of unauthorized assistance and one charge of plagiarism. The student had used an internet site to post questions and answers to two on-line final examinations, and to help the student complete an assignment in another course. The student had previously been convicted of one charge of plagiarism and did not attend the hearing. Noting that the student had exploited the unique circumstances of the COVID-19 pandemic (namely the virtual administration of examinations) to gain an advantage, and the need to deter such conduct, the Tribunal suspended the student for four years; and,
- (b) in the *University of Toronto v M.R.* (Case No. 1344, November 4, 2022), the student was convicted of two charges of unauthorized assistance, had a prior record of two prior convictions of unauthorized assistance, and did not attend the hearing. The student had accessed on-line resources to answer questions on two final examinations. The Tribunal suspended the student for 3 years, 11 months.¹

37. The Tribunal has imposed a five-year suspension where the student had multiple prior convictions, appreciated the seriousness of their actions and yet all the same went ahead and

¹ By doing so, the student could return to the University at the beginning of the fall 2026 academic term which would not have been possible had the Tribunal imposed a four year suspension.

committed the offence, and demonstrated no remorse. See the *University of Toronto v N.A.* (Case No. 661, February 19, 2012).

38. After carefully considering the precedents provided to us and the facts of this particular case, we are satisfied that the appropriate sanction in this case is a mark of zero in the Course, a four-year suspension, and a notation on the Student's academic record for a period of five years. In our view, that sanction properly reflects the seriousness of the offences and the need to deter others from committing them and considers the Student's prior convictions and lack of cooperation with the disciplinary process.

Order

39. The Tribunal orders that:

- (a) the Student be found guilty of two counts of obtaining and providing unauthorized assistance, contrary to sections B.I.1(b) and B.II.1 of the Code;
- (b) the Student be given a final grade of zero in LIN205H5S in Winter 2021;
- (c) the Student be suspended from the University for a period of four years starting as of October 11, 2023;
- (d) the sanction be noted on the Student's academic record and transcript for a period of five years starting as of October 11, 2023; and,
- (e) the case be reported to the Provost for publication of a notice of the Tribunal's decision and the sanctions imposed, with the Student's name withheld.

Dated at Toronto at this 23rd day of January, 2024

Original signed by:

Seumas Woods, Chair

On behalf of the Panel