

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on September 20, 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 -

S [REDACTED] Y [REDACTED]

REASONS FOR DECISION

Hearing Date: February 27, 2024, via Zoom

Members of the Panel:

Shaun Laubman, Chair
Professor Zoraida Beekhoo, Faculty Panel Member
Samantha Chang, Student Panel Member

Appearances:

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

Hearing Secretary:

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

Not in Attendance:

S [REDACTED] Y [REDACTED]

1. The Trial Division of the University Tribunal heard this matter on February 27, 2024. As discussed below, S██████ Y██████ (the “Student”) did not attend, and the hearing proceeded in her absence.

2. The Student was charged for offences related to two separate courses as follows:

The STA256H5 Final Exam

a. On or about April 13, 2023, you knowingly used or possessed an unauthorized aid or aids and/or obtained unauthorized assistance in connection with the final exam in STA256H5, contrary to section B.I.1(b) of the *Code*.

b. On or about April 13, 2023, you knowingly represented as your own an idea or expression of an idea or work of another in connection with the final exam in STA256H5, contrary to section B.I.1(d) of the *Code*.

c. In the alternative, on or about April 13, 2023, 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 final exam in STA256H5, contrary to section B.I.3(b) of the *Code*.

The ECO202Y5 Final Exam

d. On or about April 16, 2023, you knowingly used or possessed an unauthorized aid or aids and/or obtained unauthorized assistance in connection with the final exam in ECO202Y5, contrary to section B.I.1(b) of the *Code*.

e. On or about April 16, 2023, you knowingly represented as your own an idea or expression of an idea or work of another in connection with the final exam in ECO202Y5, contrary to section B.I.1(d) of the *Code*.

f. In the alternative, on or about April 16, 2023, 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 final exam in in ECO202Y5, contrary to section B.I.3(b) of the Code. (the “Charges”)

3. For the reasons set out in this decision, the Student was found guilty at the hearing of two counts of having knowingly used or possessed an unauthorized aid or aids and/or obtained unauthorized assistance, contrary to section B.I.1(b) of the Code.

Decision to Proceed with the Hearing in the Student's Absence

4. Neither the Student nor any representative on her behalf appeared at the hearing. The Tribunal waited past the scheduled commencement time before beginning the proceeding.

5. The University requested that the Tribunal proceed with the hearing in the Student's absence and presented evidence in support of that submission.

6. The affidavit of Alexciya Blair, a legal assistant at Paliare Roland Rosenberg Rothstein LLP, was tendered and admitted into evidence.

7. Ms. Blair's affidavit detailed the repeated communications sent by the University to the Student regarding the Charges. As discussed later in this decision, the Student participated at the Dean's Designate meeting and admitted guilt. At the meeting, the Student was informed that the matter was going to be forwarded to the Tribunal for resolution. After that, the Student did not respond directly to multiple emails and phone calls from the University and its Assistant Discipline Counsel about the Charges and the Tribunal process sent over the course of 2023 and into early 2024. The emails and calls were made using the Student's contact information on the Repository of Student Information ("ROSI").

8. In October 2023, following an email and phone call by Assistant Discipline Counsel in an effort to contact the Student, an immigration advisor responded to Assistant Discipline Counsel on the Student's behalf. The advisor provided an authorization and direction form signed by the Student.

9. The advisor engaged on the Student's behalf with Assistant Discipline Counsel about the Tribunal hearing and process. The advisor confirmed that Assistant Discipline Counsel should inform the Student regarding the hearing date and time.

10. On January 16, 2024, the Dean's Office, couriered the Notice of Virtual Hearing to the Student's address on record. That same day, Assistant Discipline Counsel called the Student's phone and left a voicemail reciting the contents of the cover letter that had been couriered to her.

11. On February 5, 2024, Assistant Discipline Counsel emailed copies of the affidavits the University intended to use at the hearing.

12. The University also tendered the affidavit of Andrew Wagg, a manager in Information Technology Services at the University. Mr. Wagg's affidavit established that the Student's University email account was last accessed on February 2, 2024.

13. The University must satisfy its burden under the University Tribunal's *Rules of Practice and Procedure* ("Rules") to provide reasonable notice of a hearing before a proceeding will be held without the student's participation. However, at the same time, a student cannot derail the disciplinary process by remaining silent and refusing to participate.

14. In this case, based on the evidence presented, the Tribunal was satisfied that the University had discharged its obligation to provide reasonable notice to the Student regarding the Charges and the hearing scheduled for February 27, 2024. The Student was aware from the Dean's Designate meeting that the matter was being referred to the Tribunal. The University made repeated efforts following that meeting to communicate with the Student, using email, phone calls and a courier package. The Student's email account was accessed as recently as February 2024. In October 2023, the Student authorized an immigration advisor to communicate on their behalf with Assistant Discipline Counsel regarding the Charges and Tribunal process. All of these facts led to the conclusion that reasonable notice was provided. Therefore, the Tribunal determined that it would proceed with the hearing in the Student's absence.

Student's Guilt

15. The University presented three affidavits with evidence to support its case at the offence phase:

- a. Virupaksh Agrawal – the Chief Presiding Officer for the STA256H5S final exam in Winter 2023;
 - b. Ishnoor Singh - the Chief Presiding Officer for the ECO202Y5Y final exam in Winter 2023; and
 - c. Timothy Yusun - an Assistant Professor who met with the Student for the Dean's Designate meeting.
16. The University's evidence was unchallenged and established the following facts:
- a. The Student wrote the final exams for both STA256H5S and ECO202Y5Y in April 2023;
 - b. The front page for both final exams contained a warning about academic integrity that warned against the use of unauthorized electronic devices during the exams;
 - c. During the final exam for STA256H5S on April 13, 2023, the Student was found to be wearing a miniature camera poking out of a buttonhole in her jacket and connected to a cellphone that was turned on. The cellphone, wire and camera were confiscated during the final exam and returned to the Student following the final exam;
 - d. Three days later, on April 16, 2023, the Student wrote the final exam for ECO202Y5Y;
 - e. During the final exam for ECO202Y5Y, the Student was found to be wearing tiny earpieces in her ears. When asked, she denied having a cellphone on her and claimed the earpieces were merely to block out noise. However, a cellphone was found on her. The cellphone was connected by a wire to a miniature camera. The electronic devices were confiscated, and the Student then completed the final exam;

f. In June 2023, the Academic Integrity Unit emailed the Student to arrange the Dean's Designate meeting for the alleged academic offences committed in STA256H5S and ECO202Y5Y. The Student responded by email and admitted committing offences in both classes. The Student's email included the following admissions:

I will attend the meeting on June 09, and I am so sorry for committing academic offenses in my exams of STA 256 and ECO 202. During the time while waiting for the academic integrity department's update, I have researched so much about academic integrity including reading the university's code on this subject, so now I have learned how serious my offenses are, and I am extremely regretful about these. Therefore, I want to apologize for my actions sincerely.

* * *

I know what I did could not be changed, and I want to promise I will never make such mistakes again in the future. I know I must be sanctioned due to my own mistake, and I will certainly respect the university's decision on it.

g. The Dean's Designate meeting was held on June 9, 2023. At the start of the meeting, the Student was given the warning required by the Code about being entitled to seek advice, or to be accompanied by counsel at the meeting, before making, and not being obliged to make, any statement or admission, but that if she made any statement or admission in the meeting, it may be used or receivable in evidence against her in the hearing of any charge with respect to the alleged offences;

h. The Student admitted to using a cellphone with a camera and wearing earpieces during the final exams for STA256H5S and ECO202Y5Y. She did it so that other people could see the exams she was writing. The Student admitted that she was being provided hints by other people while she was writing the final exams. She admitted paying \$300 to a tutoring service named Easy Education or Easy Edu for this assistance;

i. The Student explained that her grandfather was sick and that his illness affected her ability to study for the final exams; and

j. When asked at the Dean's Designate meeting how she pled for the alleged offences, the Student pled guilty to the charges in connection with the final exams for STA256H5S and ECO202Y5Y.

17. There was clear and convincing evidence of the Student's guilt for the academic offences of knowingly using and possessing an unauthorized aid or aids and/or obtaining unauthorized assistance in connection with the final exams in STA256H5 and ECO202Y5, contrary to section B.I.1(b) of the Code.

18. The academic offences the Student committed were very similar and occurred within days of one another. The Student was caught with unauthorized devices during the final exams for both classes. Prior to both exams, she was warned against the use of unauthorized devices.

19. The Student subsequently admitted her guilt and that she used unauthorized devices and received unauthorized assistance during both final exams.

20. There is no doubt regarding the Student's liability. The Tribunal found her guilty of two offences for having knowingly used or possessed an unauthorized aid or aids and/or obtained unauthorized assistance in connection with the final exam in STA256H5 and ECO202Y5, contrary to section B.I.1(b) of the Code. Based on these findings of guilt, the University withdrew the remaining Charges.

Penalty Phase

21. During the penalty phase of the hearing, the University asked the Tribunal to impose the following sanctions on the Student:

- a. a recommendation to the President of the University that the President recommend to the Governing Council that the Student be expelled from the University;
- b. immediately suspending the Student from the University for a period of up to five years from the date of the Order or until Governing Council makes its decision on expulsion, whichever comes first, and that a corresponding notation be placed on the Student's academic record and transcript;
- c. a final grade of zero in STA256H5;
- d. a final grade of zero in ECO202Y5; and
- e. reporting the decision to the Provost for publication of the decision and the sanctions imposed, with the name of the Student withheld.

22. The University tendered an additional affidavit by Timothy Yusun for the penalty phase. Mr. Yusun's second affidavit provided evidence of a prior academic offence for which the Student was convicted and sanctioned. The prior conviction was also for the offence of obtaining unauthorized assistance during a final exam. The offence was committed during the Winter 2021 semester.

23. For her prior conviction, the Student received a mark of zero on the final examination and a notation on her academic record and transcript for 12 months. At the time, the Student was warned that the consequences for subsequent allegations of academic misconduct may be more severe.

24. The University reviewed the factors that a tribunal should consider when imposing a sanction outlined in the decision in *University of Toronto and Mr. C* (Case No. 1976/77-3, November 5, 1976). Those factors are:

- 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.

25. Since the Student elected not to participate at the hearing, there was no positive character evidence for the Tribunal to consider. Similarly, there was no direct evidence of extenuating circumstances. While there was limited and indirect evidence that the Student's grandfather was ill at the time the offences were committed, the onus of establishing mitigating circumstances rests with the Student and she did not lead any evidence at the hearing. She also could not be cross-examined due to her non-participation. Furthermore, while the Student initially accepted responsibility and admitted guilt at the Dean's Designate meeting, this early cooperation was then undermined by the Student's subsequent non-responsiveness. Based on a full consideration of these elements, the limited evidence on extenuating circumstances should be given little weight.

26. On the other hand, there was the fact that the Student had repeatedly committed the academic offence of knowingly using or possessing an unauthorized aid and/or obtaining unauthorized assistance with a final exam. The repetition of the offence, including the fact that the two offences that were at issue at the hearing were committed within days of one another, was a consideration weighing in favour of imposing a significant sanction.

27. The Tribunal was satisfied on the evidence that the Student was aware that what she was doing was wrong but she proceeded to commit the offences anyway. Days after being caught with an unauthorized aid in STA256H5, the Student proceeded to commit the very same offence in ECO202Y5. The fact the Student was a repeat offender points to a strong likelihood of a repetition of the offence if the Student is not expelled and instead is given another opportunity to attend the University.

28. The Student's offences were very serious. The University took the Tribunal to the recent decision in *University of Toronto and Q.C.* (Case No. 1505, November 24, 2023) ("Q.C."), which is the first reported tribunal decision dealing with the unauthorized use of a miniature camera and earpiece in order to obtain assistance during a test. Like the case in Q.C., this case involved deliberate and premeditated planning and subterfuge by the Student. It also involved a commercial element as the Student paid a tutoring service to assist her with cheating on the exams. Past tribunal decisions have recognized that offences involving a commercial element require a strong deterrent to discourage others from committing a similar offence.

29. The Tribunal agrees with the following findings from the Q.C. case at para 57, which apply with at least equal force to this case:

In the present case, the Student has been found to have engaged in an extremely serious breach of academic integrity. What occurred is among the worst things a student could do. It is deserving of a harsh sanction. Her actions were completely premeditated and deliberate. She went to a great deal of trouble and planning to conceal a camera in a button and to wear earpieces that had to be installed and removed with a special tool, which enabled her to show the test to the tutor and to receive the answers verbally in the exam room.

30. There were several extenuating circumstances present in Q.C. that led the Tribunal in that case to impose a penalty of suspension from the University for five years instead of a recommendation of expulsion. Those circumstances were absent from the present case.

31. As stated above, the repeat nature of the offences committed by the Student combined with the very serious nature of the offences and the lack of evidence regarding extenuating or mitigating factors demonstrated to the Tribunal that the penalties requested by the University were reasonable and appropriate. Accordingly, the Tribunal ordered that the following sanctions be imposed on the Student:

- a. a recommendation to the President of the University that the President recommend to the Governing Council that the Student be expelled from the University;
- b. immediately suspending the Student from the University for a period of up to five years from the date of the Order or until Governing Council makes its decision on expulsion, whichever comes first, and that a corresponding notation be placed on the Student's academic record and transcript;
- c. a final grade of zero in STA256H5;
- d. a final grade of zero in ECO202Y5; and
- e. reporting the decision to the Provost for publication of the decision and the sanctions imposed, with the name of the Student withheld.

Dated at Toronto, this 17th day of May, 2024.

Original signed by:

Shaun Laubman, Chair

On behalf of the Panel