

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty filed on November 1, 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 -

A [REDACTED] M [REDACTED]

REASONS FOR DECISION

Date of Hearing: June 25, 2024, via Zoom

Members of the Panel:

Michael Hines, Chair

Professor Zoraida Beekhoo, Faculty Panel Member

Zoë Reichert, Student Panel Member

Appearances:

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

Sonia Patel, Co-Counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary:

Karen Bellinger, Associate Director, Office of Appeals, Discipline & Faculty Grievances

Not in Attendance:

A [REDACTED] M [REDACTED]

Charges and Hearing

1. This panel of the University Tribunal held a hearing on June 25, 2024, via Zoom, to consider charges brought by the University of Toronto against A [REDACTED] M [REDACTED] (“the Student”) under the *Code of Behaviour on Academic Matters, 2019* (the “Code”).

Procedural Issues

2. The Student was charged with the Offences set out in paragraphs 5 and 7, below (the “Charges”). Essentially, they relate to two matters, namely a) the allegation that the Student submitted an assignment that contained unattributed work that was not their own and b) the allegation that the Student made use of a cell phone in an examination in an attempt to obtain assistance from an outside source.
3. The Student did not appear at the hearing. The University requested an Order that the Hearing proceed in her absence, relying on the Affidavit of Kimberly Blake, a law clerk employed by the law firm of Paliare Roland Rosenberg Rothstein LLP. This Affidavit satisfied the Panel that reasonable efforts had been made by the Dean’s Office, the Office of the Vice-Provost and by Ms. Blake personally to locate the Student and bring to her attention the fact that she was facing concerns, charges and, ultimately, prosecution in this Hearing. Accordingly, the Tribunal granted the requested Order. That Order is hereby confirmed.

Charges

4. As stated above, the Student was charged with respect to two separate incidents. The first in time (the “Assignment Offence”) concerned an assignment in biology course BIO220H1: From Genomes to Ecosystems in a Changing World (“BIO220”).
5. With respect to BIO220, the Student was charged as follows:

1. On or about March 16, 2023, you knowingly used or possessed an unauthorized aid or obtained unauthorized assistance in connection with an assignment submitted in BIO220H1 (“BIO220”), contrary to section B.I.1(b) of the Code.
 2. In the alternative, on or about March 16, 2023, you knowingly represented as your own an idea or expression of an idea or work of another in an assignment in BIO220, contrary to section B.I.1(d) of the Code.
 3. In the further alternative, on or about March 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 an assignment in BIO220, contrary to section B.I.3(b) of the Code.
6. The second incident (the “Examination Offence”) arose out of an examination regarding a chemistry course CHM135H1S: Chemistry - Physical Principles (“CHM135”).
7. With respect to CHM135, the Student was charged as follows:
4. On or about April 25, 2023, you knowingly used or possessed an unauthorized aid, or obtained unauthorized assistance, in the final exam in CHM135H1 (“CHM135”), contrary to section B.I.1(b) of the Code.
 5. In the alternative, on or about April 25, 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 an academic advantage in connection with the final exam in CHM135, contrary to section B.I.3(b) of the Code.

Evidence and Findings

8. As noted above, the Student did not attend the hearing and so provided no evidence in this hearing. Additionally, and significantly, the Student did not engage with the Dean or any other representatives of the University following the alleged commission of the offences at issue before us. Consequently, we have no information as to the Student’s perspective on any of the issues and no information from her concerning any facts or factors that might tend to explain or justify any of her actions.

The Assignment Offence

9. The University led its evidence on the merits of the Assignment Offence through the affidavit of Jill Wheeler, Assistant Professor, Teaching Stream, in the Department of Ecology & Evolutionary Biology at the University of Toronto Faculty of Arts and Science. The following facts were established to the Panel's satisfaction:

- (a) In the Winter term of 2023, Prof. Wheeler was the course and lab coordinator for BIO220. The Student was a student in BIO220.
- (b) The BIO220 syllabus informed students that there was a zero-tolerance policy for plagiarism and that students who were caught plagiarizing the work of others in any of their coursework would be reported to the office of Student Academic Integrity. Students were reminded that they must answer and/or complete each assignment independently.
- (c) Students in BIO220 were required to complete several reading assignments, in which they were asked to read an assigned article and answer questions about it.
- (d) The third reading assignment (the "Third Assignment") was worth 5% of students' final grades and was due for the Student on March 15, 2023. The assignment instructions for the Third Assignment included the following reminder regarding academic integrity:

"This assignment must be entirely in your own words. Do not directly copy any text from the article. It is very important that you summarize and/or paraphrase when answering the questions. If you use quotations from the article, you will receive a grade of zero for this assignment."

- (e) The assigned article for the Third Assignment was titled "Aquatic eutrophication promotes pathogenic infection in amphibians". Students were provided with a link to the article through Quercus. The Panel was

provided with a copy of this article as an exhibit to Prof. Wheeler's Affidavit.

- (f) The Student submitted her response to the Third Assignment on March 16, 2023. The Panel was also provided with a copy of the Student's submission as an exhibit to Prof. Wheeler's affidavit.
 - (g) The Student's TA informed Prof. Wheeler that they suspected that the Student had obtained unauthorized assistance on the Third Assignment because her answers appeared to correspond to a different article than the one that students had been assigned to read. For example, the Student's answer referred to the survival and immune systems of *Hyla chrysoscelis* tadpoles, which were not organisms that were discussed in the assigned article or the Course generally.
 - (h) Prof. Wheeler then conducted her own review of the Student's submission and concluded that it appeared the Student had obtained unauthorized assistance, as her submission appeared to be about a different article than the one that had been assigned.
 - (i) This conclusion was shared by the Panel members, who had the opportunity to compare the Student's submission with the original article. To take one of several examples noted by Prof. Wheeler, Figure 2A in the article does not look at tadpole survival (as asserted in the Student's submission) and Figure 2B does not look at infection rate in tadpoles (as asserted in the Student's submission).
10. Based upon these findings, the Panel was satisfied that the Student had committed an academic offence with respect to the Third Assignment. Two further areas of discussion arise.
 11. The first is perhaps more semantic than substantive. As stated above, the University alleged that the facts described above made out the offence of using or possessing an unauthorized aid or obtaining unauthorized assistance, contrary

to section B.I.1(b) of the *Code*. In the alternative, the University asserted that the facts disclosed the offence of knowingly representing as one's own an idea or expression of an idea or work of another, contrary to section B.I.1(d) of the *Code*.

12. In response to a question from the Panel, Discipline Counsel advised that neither offence was considered more or less serious than the other – that both offences were considered to be among the most serious listed in the *Code*. Counsel also agreed that the two offences could, in certain circumstances, arise out of the same fact situation.
13. To the extent it may matter, the Panel is of the view that the facts proven as described above more accurately fall under section B.I.1(d) of the *Code*. Particularly given the Student's failure to participate in any of the stages of the disciplinary process, the precise means through which the offensive material was obtained could not be clearly established in this case. This made it challenging to conclude, on a balance of probabilities, that "an unauthorized aid" or "unauthorized assistance" was involved, as the Panel understands those terms. It is, however, clearer to us that the Student represented as her own work that of "another", however that information was obtained.
14. Accordingly, the Tribunal entered a finding of guilt on Charge 2 as set out in paragraph 5, above.
15. The second area of discussion relates, albeit indirectly, to the first. In her Affidavit, Prof. Wheeler noted that, in addition to the Student's assignment, 31 other assignments in the Course were flagged as potential cases of unauthorized assistance or aids because they referred to points that were not in the assigned article or appeared to be about other articles entirely. All of these cases (other than the Student's case) were resolved at the departmental or divisional levels because the students admitted to having obtained unauthorized assistance or using an unauthorized aid.

16. In particular, of the 31 students who made admissions, at least 15 admitted to using ChatGPT, three admitted to using another artificial intelligence tool (such as a paraphrasing or summarizing tool), one admitted to using a translation tool, and one admitted to searching online.
17. The University asked the Panel to use this evidence to support a finding of guilt on Charge 1, - knowingly using or possessing an unauthorized aid or obtaining unauthorized assistance.
18. It is the Panel's view that this evidence regarding the misconduct of other students had little, if any, probative value. Whether applied to a specific allegation of "using an unauthorized aid" (such as ChatGPT) or in support of a more general allegation of academic misconduct of some kind, this evidence invites us to rely upon a form of "guilt by association".
19. When applied to the University's specific suggestion of reliance upon an artificial intelligence tool, it should be noted that this conclusion was evidently not established in approximately one-third of the 31 cases.
20. More generally, it might hypothetically have been possible in a case like this for the University to lead evidence that at least inferentially supported a direct nexus between the Student and one or more of the 18 admitted cases involving artificial intelligence. For example, there might have been incriminating emails between the Student and one or more of the 18 other students establishing a probable common method of cheating. There might have been an improbably high degree of similarity between the mistakes and inaccuracies found in the Student's assignment and those found in one or more of the assignments handed in by the other 18 students. In the face of such evidence, an element of complicity could be used to support the inference that the Student had committed the same sort of improper acts in the same way that other students had engaged in and admitted to.

21. We have no such evidence in this case. In the absence of such evidence, we are of the view that it would not be fair to judge the Student charged in this case based upon the actions of other students.
22. This is not to suggest that such evidence of complicity existed and was somehow overlooked by the University in presenting its case. It simply means that, in the absence of more concrete evidence connecting the Student to the actions (and admissions) of other students, the evidence of what 31 other students did is not helpful to us in deciding what the Student did.
23. As matters have unfolded, and for reasons expressed above, it was not necessary for the Panel to rely upon this evidence since the other evidence before us satisfactorily discharged the University's burden of proof in establishing that the Student knowingly represented as her own an idea or expression of an idea or work of another, contrary to section B.I.1(d) of the *Code*.

The Exam Offence

24. As stated above, the Exam Offence involves the allegation that the Student made use of a cell phone in an examination in an attempt to obtain assistance from an outside source. The University led its evidence on the merits of the Exam Offence through the affidavit of Xiao Fei (Sophie) Feng. At all material times, Ms. Feng worked as a Chief Presiding Officer ("CPO") at the University of Toronto Faculty of Arts and Science. The following facts were established to the Panel's satisfaction:
 - (a) As a CPO, Ms. Feng was responsible for administering and invigilating exams. This included, among other responsibilities, setting up and collecting exam packages, monitoring exams as students wrote, and checking students' TCards and obtaining signatures for attendance purposes.

- (b) On April 25, 2023, Ms. Feng was the CPO for the final examination for CHM135. The exam took place in person at the Myhal Centre in room MY330 from 7 to 10 p.m.
- (c) The Student attended the CHM135 exam.
- (d) The exam coversheet included a list of reminders on the front page, including the following:
 - (i) As a student, you help create a fair and inclusive writing environment. If you possess an unauthorized aid during an exam, you may be charged with an academic offence.
 - (ii) Turn off and place all cell phones, smart watches, electronic devices, and unauthorized study materials in your bag under your desk. If it is left in your pocket, it may be an academic offence.
- (e) In addition to the reminders on the exam papers, Ms. Feng made an announcement at the start of the exam reminding students that all electronic devices, such as cell phones, must be turned off and placed in a bag under each student's chair, and that failing to do so may be an academic offence.
- (f) Once the exam officially started, Ms. Feng began making her rounds to verify each student's identity and collect their signature.
- (g) Near the very beginning of the exam, at approximately 7:05 p.m., the Student raised her hand and asked to go to the washroom. The Student indicated that she had a nosebleed and pointed to a red blot on her sweatshirt.
- (h) Ms. Feng brought the Student a pack of tissues and asked her to wait to leave the room until she had finished collecting signatures from all of the students. The Student agreed.

- (i) Ms. Feng continued her rounds and reached the Student's seat at approximately 7:30 p.m. She asked the Student to return the extra tissues that she had given her so that she could give them to another student. However, she noticed that the Student's tissues did not appear to have any blood on them. She asked the Student about this, and the Student told her that the bleeding had stopped.
- (j) At approximately 8:10 p.m., the Student raised her hand again and asked to go to the washroom. Ms. Feng asked the Student to empty her pockets before leaving the room, which she did.
- (k) Ms. Feng escorted the Student to the washroom and waited inside the room. After many minutes of waiting, Ms. Feng heard papers rustling and what sounded like light tapping on a phone. She knocked on the door to the stall and asked the Student to come out and hand over the documents. The Student coughed loudly and did not respond. Ms. Feng repeated her instruction.
- (l) The Student came out of the stall and handed over her exam papers and phone. The Student's phone was turned on. It contained photographs of the Student's CHM135 exam papers. Ms. Feng took photographs of the Student's phone and confiscated it. Copies of these photos were attached as an exhibit to Ms. Feng's Affidavit for the Panel's review. They clearly show photographs on the Student's phone of pages to the CHM135 exam.
- (m) Since the Student had emptied her pockets before leaving the exam room, Ms. Feng suspected that the Student had hidden the papers and phone underneath her clothes.
- (n) Ms. Feng escorted the Student back to the exam room. The Student signed a Possession of an Unauthorized Aid During a Final Exam form, in which she acknowledged that she had brought an unauthorized aid with her to the final exam. A copy of the Possession of an Unauthorized Aid

During a Final Exam form was attached as an exhibit to Ms. Feng's affidavit. In the Form, the Student agreed to the following characterization of the events in question:

"I acknowledge that I brought an unauthorized aid with me to this final examination, and that the Item was confiscated for the duration of the examination. For the final examination, these aids were not permitted. I admit that by doing so, I have committed an academic offence under Section B.i.1 (b) of the University's *Code of Behaviour on Academic Matters*."

- (o) The Student was permitted to continue writing the exam.
 - (p) At the end of the exam, Ms. Feng asked the Student to remain in the room. The Student admitted that she was going to send the photos of the exam to her friend, who was a chemistry major. The Student was unclear as to whether any photos were actually sent, and Ms. Feng was not able to verify this.
25. Based on this uncontested evidence, the Panel finds that, as she evidently admitted to Ms. Feng, the Student brought an unauthorized aid with her to this final examination, and that by doing so, she committed an academic offence under Section B.i.1 (b) of the *Code*.
26. The fact that she was not actually successful in using the aid to secure assistance is irrelevant, since the *Code* treats attempts to commit offences as seriously as it treats realized offences – see Section B(ii)2.

Sanction

27. The University submitted that the Student should receive grades of zero in both BIO220 and CHM135 and should be suspended from the University for three years. For the reasons set out below, we agree with this sanction.

28. In support of its position, the University submitted the affidavit of Christina Amodio, an Academic Integrity Specialist at the University of Toronto Faculty of Arts and Science, Office of the Dean. This affidavit established that the Student had, shortly before the events underlying the Charges, engaged in a prior incident of academic misconduct (the “Prior Offence”).
29. Specifically, in March 2023, the Student had admitted to plagiarizing part of an assignment that she had submitted on February 3, 2023, for the Winter 2023 BI0130H1S course. The assignment was worth 8% of the final grade. The allegation was resolved at the departmental level. The Student received a sanction of a zero on the particular question of the assignment at issue. No other discipline was imposed.
30. The timing of the Prior Offence and the disciplinary procedural steps surrounding it are significant. According to an email sent from Dinesh Christendat, Associate Chair, Undergraduate, Cell and Systems Biology, to the Student on March 20, 2023, a discussion took place on March 14, 2023, between the Student and a Dr. Adriana Caragea regarding the February 3, 2023 BI0130H1S assignment containing plagiarized material. A copy of the March 20, 2023 email was attached as an exhibit to Ms. Amodio’s affidavit.
31. According to the March 20, 2023, email, the Student admitted at that March 14, 2023 meeting to the allegation of plagiarism. The Student, as noted previously, did not attend our hearing to dispute this prima facie evidence, and the Panel accepts it as accurate.
32. Just two days following this March 14 departmental disciplinary meeting concerning the Prior Offence, i.e., on March 16, 2023, the Student submitted her response to the Third Assignment in BIO220, the assignment that ultimately constituted the Assignment Offence of plagiarism dealt with above.
33. On March 20, 2023, four days after submitting the plagiarized BIO220, assignment, the Student was sent the email mentioned above from Associate

Chair Christendat concerning the Prior Offence – the plagiarized BI0130H1S assignment. The email described the plagiarism and the Student’s admission to Dr. Caragea. It imposed the penalty mentioned above – a grade of zero on the particular question in the assignment worth 8%. The email stated, in part:

“Sanctions are imposed to ensure that you understand the seriousness with which offences are considered by the University. Because you have admitted the offence and the assignment in question is worth 10% or less (8%), I am authorized to impose a sanction for this offence without referring the matter to Student Academic Integrity for resolution....

... Please be advised that all your current and future academic work must follow the rules and regulations of the University. I sincerely hope that you have learned from this experience and appreciate the importance of conducting yourself with integrity as you progress through your studies. A record of this matter has been sent to Student Academic Integrity (SAT) which maintains cases into their central database. **Should you be involved in a subsequent allegation of academic misconduct, please note that it will be taken into account that it is not your first allegation and consequences may be more severe.**” [emphasis added]

34. As noted, this sanction and the accompanying admonishment quoted above were received by the Student only after having submitted the plagiarized BIO220 assignment. However, one would have hoped that simply the meeting with Dr. Caragea on March 14 would have prevented the Student from submitting another plagiarized assignment two days later. That did not occur.
35. In any event, one would certainly have hoped that the tenor of the March 20, 2023 email from Associate Chair Christendat would have prevented the Student from attempting to cheat in her CHM135 exam on April 25, 2023. That did not occur either.

36. It is within this context that the University's proposal for a three-year suspension must be evaluated.
37. The University invites us to take into account three separate perspectives in assessing its proposal – the Provost's Guidelines as set out in the *Code*, the case law involving similar fact situations and the factors set out in the well-known case of *University of Toronto and Mr. C* (Case No. 1976/77-3, November 5, 1976). We will address these in reverse order.
38. The six factors identified in *Mr. C* have been used to evaluate many cases similar to this one, cases involving repeated examples of the related offences of plagiarism and/or using an unauthorized aid. As in one of those cases, *University of Toronto and N.A.* (Case No. 1186, September 21, 2021), our conclusions are as follows:
 - (a) **Character**: because the Student chose not to attend the hearing, we have no evidence before of us of the Student's character, although we note that the Student committed a similar offence shortly before the two before us;
 - (b) **Likelihood of Repetition**: given the evidence about the Student's prior offence, there is a real risk of the same offences currently under review being repeated absent a significant sanction;
 - (c) **Nature of Offence**: both plagiarism and the reliance on unauthorized forms of assistance in an examination are very serious offences. They strike at heart of the University's core values of honesty and integrity. They have the potential to affect other students adversely by allowing cheaters to obtain grades higher than they actually merit by presenting the work of others as their own. They harm the reputation of the University as a whole. The *Code* itself makes all this very clear. Consequently, those who commit either or both of these offences merit serious sanctions;

(d) **Extenuating Circumstances:** there is no evidence of any extenuating circumstances in this case;

(e) **Detriment to the University:** as noted above, offences of the kind committed in this case strike at the heart of the University's core values of honesty and integrity. They cannot be tolerated;

(f) **Deterrence:** serious sanctions are required to discourage others from committing similar offences,

39. The Panel accepts that a multi-year suspension is warranted in this case. We believe that the issue before us is whether the sanction should be a three-year suspension as requested by the University, or a two-year suspension. This brings us to the case law and the Guidelines.
40. In attempting to treat like cases alike, we must compare the case before us to cases involving the commission of multiple offences of plagiarism/unauthorized assistance by a student who has already been the recipient of discipline for a similar offence in the past. Cases involving "first offences" do not attract the same level of discipline as repeat offences, and so are of little assistance. Similarly, cases involving Joint Submissions on Penalty carry less precedential value, given the constraints placed on the Tribunal in such cases and the considerations that militate against tempering or increasing agreed-upon penalties where such agreements are reached.
41. Within this structure, the University brought to our attention a number of cases involving plagiarism/unauthorized assistance as the subject offence where the convicted student had been previously disciplined for similar reasons.
42. The sequence of events in our case is notable in that the University's proposed three-year suspension, a very significant penalty, is intended to follow an extremely mild penalty for the first disciplinary incident. As stated above, the student did not receive a zero in BI0130H1S as a consequence of her plagiarized BI0130H1S assignment, nor did she even receive a zero for the entire

assignment. For her admitted plagiarism, the Student only received a mark of zero for the question in the assignment to which the plagiarism was related.

43. In reviewing the cases submitted by the University, it would appear that three-year suspensions are typically imposed by the Tribunal only where a prior disciplinary sanction has been imposed. The Tribunal can impose and has imposed two-year suspensions for a first offence of plagiarism/unauthorized assistance – see, for example, *University of Toronto and H.L.* (Case No. 886, March 16, 2017).
44. The Panel was particularly concerned to know whether three-year suspensions have been imposed in other cases where the prior offence was treated as mildly as we see in the case before us – the imposition of a score of zero in respect of part of an assignment.
45. In the case of *University of Toronto and N.A.* (Case No. 1186, September 21, 2021), a three-year suspension for plagiarism was imposed as the “next step” following a prior disciplinary sanction involving an imposed grade of zero on a single assignment. In that case, the student had, in their prior offence, submitted an assignment that was largely based on a published paper not properly cited and that incorporated many sentences that were not properly paraphrased. The Department of Biology had resolved the earlier case by giving the Student a grade of zero for the assignment. Given the nature of the assignment, it may not have been possible to give a zero for part of the assignment, as occurred in our case. As stated, the Tribunal followed this with a three-year suspension for a subsequent act of plagiarism.
46. In *University of Toronto and J.Z.* (Case No. 1406, May 24, 2023), the Tribunal imposed a three-year suspension for plagiarism. This sanction was determined, in part, because the student had received, just months prior to the subject offence, a grade of zero on a term test worth 25% of her final grade for an admitted act of plagiarism. Again, the possibility of giving a zero for a part of the test was evidently not discussed.

47. It should be noted here that our case involves arguably more egregious “subsequent” misconduct than that found in *N.A.* and *J.Z.* in that the Student in our case committed two academic offences following her first offence, whereas the students in the cases mentioned above were guilty of only one subsequent offence. We recognize that the first of the two “subsequent” offences in our case, the Assignment Offence, took place before a sanction had been imposed in respect of the Student’s Prior Offence involving the BIO130H1S assignment.
48. In *University of Toronto and W.L.J.* (Case No. 815, January 19, 2016), the student had, with respect to a prior incident, admitted guilt to academic misconduct in plagiarizing and obtaining unauthorized assistance for an assignment which he had submitted for credit. Although the Decision does not state the precise sanction imposed for this first offence, it would appear not to have involved a suspension, since the student committed the offence actually adjudicated by the panel only five weeks after his admission of guilt in his first offence. The Tribunal imposed a suspension of three years for the second offence.
49. Returning to the facts of our case, and bearing the foregoing in mind, it appears that the imposition of a three-year suspension in this case would not be inconsistent with prior Tribunal case law.
50. Despite that fact, the Panel considered the situation faced by the Student in our case. Having been caught plagiarizing portions of her submission in the February 3, 2023 BIO130H1S assignment, the Student was given the mildest of sanctions - a grade of zero on the particular portion of the assignment.
51. To be sure, the Student was also advised by email that should she be involved in a subsequent allegation of academic misconduct, it would be “taken into account” that it was not her first offence and that “consequences may be more severe” [emphasis added].

52. In considering the sanction to be imposed in this case, the Panel had some concern that this rather equivocal language coupled with the very mild sanction imposed would not have suggested to the Student that the sanction for any further offence would be something as significant as a three-year suspension from the University.
53. At this point, it is appropriate to mention the third perspective from which the University asks us to evaluate its proposed three-year suspension, namely the perspective of the non-binding Provost's Guidance on Sanctions (the "Guidelines") that is set out in Appendix "C" to the *Code*.
54. Specifically, the University invites us to consider paragraph 8(c) of Part B concerning sanctions to be issued in proceedings before the Tribunal. That section states:
8. To provide guidance to students facing a hearing at the Tribunal, absent exceptional circumstances, the Provost will request that the Tribunal:...
- ...(c) suspend a student for three or more years for any offence involving academic dishonesty, where a student has committed a prior offence; [emphasis added]
55. Standing alone, this statement is fairly unequivocal. It can be contrasted with the language of the preceding Section 8(b), which states that "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" [emphasis added]. The emphasized words clearly exclude the Student in our case from consideration under Section 8(b).
56. Nothing in Section 8(c) requires anything other than "a prior offence" in order to lead to a request by the Provost for a three-year suspension. The Guidelines do not contemplate the need for a two-year suspension (or any suspension) as a pre-requisite to a request for a three-year suspension under section 8(c), so long as a "prior offence" has been committed. The *Code* (which includes the Guidelines) was sent to the Student in the communications leading up to this

hearing. It therefore should have come as no surprise to the Student, had she attended the hearing, that the Provost was seeking a three-year suspension.

57. Any formulation of a concept of progressive discipline within the University context must also take into account Part C.i.(b) of the *Code* concerning Divisional Sanctions. This is relevant in assessing the significance of the Department's decision regarding the Prior Offence. Specifically in our case, section 1 of that Part states:
1. In an assignment worth ten percent or less of the final grade, the department chair may deal with the matter if,
 - (i) the student admits guilt; and
 - (ii) the assignment of a penalty is limited to at most a mark of zero for the piece of work. [emphasis added]
58. Unlike the Guidelines, this section of the *Code* is not discretionary. Section 1 limits the power of a department chair in reacting to an offence concerning "an assignment worth ten percent or less of the final grade". That was the case in the Prior Offence. Associate Chair Christendat had no power to issue a suspension. Had such a sanction been sought, the matter would have to have been referred by the Department to the Dean.
59. The Guidelines would appear to be sensitive to the fact that, for many good reasons, discipline will often be dealt with at the Divisional level, and therefore that, again for many good reasons, first offences may well lead to sanctions falling far short of a suspension where the offence is admitted. These facts do not, under the Guidelines, preclude the Provost from seeking a three-year suspension in any case "where a student has committed a prior offence", whatever the sanction for that prior offence may have been. It is to be recalled, however, that such a request can be anticipated, but only "absent exceptional circumstances".

60. Putting all of this together, it is quite possible that, despite (or perhaps because of) the language in the March 20, 2023, email from Associate Chair Christendat, the Student in our case might have misinterpreted the seriousness of her wrongdoing. She was given a zero for part of her assignment and was told only that, because of her Prior Offence, the “consequences” flowing from any subsequent academic offence(s) “may be more severe”. In particular, no reference was made to the possibility (if not the likelihood) that if a second offence was committed, a three-year suspension would likely be sought by the Provost.
61. Even if the Student had independently reviewed the Guidelines at the time of the proceedings surrounding the Prior Offence, the language of Section 8(c) coupled with the email would not necessarily have communicated the extreme level of disapproval that, both objectively and in light of prior Tribunal case law, the Assignment Offence and the Exam Offence would invite. If she had reviewed the Guidelines, the Student might have concluded that the mildness of the sanction in the case of her Prior Offence could be seen in any future disciplinary process as an “exceptional circumstance” that might invite a penalty less extreme than the three-year suspension now requested by the University.
62. We would respectfully suggest that communications to students participating in the same kinds of disciplinary processes that involved the Student in March 2023 could perhaps be clarified to some extent. For example, in letters outlining the future implications of agreed-upon or imposed “first” discipline, it might be possible to include a statement of the future implications of the first offence that is clearer than saying simply that “they may be more severe”. Indeed, the attention of a student might be drawn specifically to Section 8(c) of the Guidelines, indicating that a three-year penalty would, in the absence of exceptional circumstances, likely be sought for any further offences. Such direct communication might more effectively serve the purpose of deterrence contemplated in the case of *Mr. C.*

63. Returning to our case, we acknowledge that, in imagining how the Student may have interpreted the materials provided to her, we are engaging in speculation, rather than evaluating evidence. This fact is attributable to the failure of the Student to appear at the hearing. Had the Student testified persuasively regarding what she took from the communications that are in evidence, we may have been inclined to question more seriously the sanction requested by the University in this case.
64. In the absence of such evidence, we are left with a student who, very shortly after having been engaged in a disciplinary process involving an investigation and admission of plagiarism, engaged in not one but two further academic offences - a further act of plagiarism and the attempt to obtain outside assistance in an examination by the use of a hidden cell phone and a story designed to play on the sympathies of the invigilator. As noted above, these facts are more egregious than those which supported three-year suspensions in *N.A.*, *J.Z.* and *W.L.J.*
65. In view of the considerations articulated in the case of *Mr. C.*, the case law provided to us and particularly the consideration of the number and nature of the offences that have been proven in this case, we are prepared to accept the recommendation of the University that a three-year suspension be imposed.
66. Accordingly, after reading the evidence submitted and hearing submissions from Discipline Counsel, the Tribunal orders that:
 - (a) The hearing may proceed in the absence of the Student;
 - (b) The following sanctions shall be imposed on the Student;
 - (i) a final grade of zero in BIO220H1 in Winter 2023;
 - (ii) a final grade of zero in CHM135H1 in Winter 2023;
 - (iii) a suspension from the University for three years from July 9, 2024; and

- (iv) a notation of the sanction on the Student's academic record and transcript for four years from July 9, 2024.
- (c) This case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the name of the student withheld.

Dated at Toronto this 8 day of October, 2024.

Original signed by: _____

Michael Hines, Chair

On Behalf of the Panel