

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on May 12, 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*

BETWEEN:

UNIVERSITY OF TORONTO

- and -

M [REDACTED] B [REDACTED]

REASONS FOR DECISION

Hearing Date: December 8, 2022, via Zoom

Members of the Panel:

Sabrina A. Bandali, Chair
Dr. Maria Rozakis-Adcock, Faculty Panel Member
Harvi Karatha, Student Panel Member

Appearances:

Tina Lie, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
Joseph Berger, Co-Counsel, Paliare Roland Rosenberg Rothstein, LLP

Hearing Secretary:

Nusaiba Khan, Quasi-Judicial Administrative Assistant, Office of Appeals, Discipline & Faculty Grievances

Not in Attendance:

M [REDACTED] B [REDACTED]

1. This panel of the University Tribunal (the "Tribunal") held a hearing by videoconference on December 8, 2022 to consider the charges brought by the University of Toronto (the "University") against M [REDACTED] B [REDACTED] (the "Student") under the *Code of Behaviour on Academic Matters, 2019* (the "Code").

A. The Charges and Particulars

2. The Charges against the Student were detailed in a letter to the Student dated May 12, 2022, as follows:
 - (a) On or about October 14, 2020, you knowingly represented as your own an idea or expression of an idea or work of another in Test 1 in MAT133Y1 (the "**Course**"), contrary to section B.I.1(d) of the Code.
 - (b) In the alternative, on or about October 14, 2020, you knowingly obtained unauthorized assistance in connection with Test 1 in the Course, contrary to section B.I.1(b) of the Code.
 - (c) In the further alternative, on or about October 14, 2020, 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 1 in the Course, contrary to section B.I.3(b) of the Code.
3. At all material times the Student was enrolled at the University of Toronto Faculty of Arts & Science.
4. In Fall 2020 and Winter 2021, the Student enrolled in MAT133Y1 (Calculus and Linear Algebra for Commerce).
5. Students in the Course were evaluated on the basis of, among other things, 6 tests worth a combined 35% of their final grade (with the lowest score dropped).

6. Test 1 was administered online during a 24-hour period on October 13-14, 2020. The second part of the test consisted of a series of written response questions. Students were permitted to consult the course materials but were not permitted to communicate with one another or to get outside help, including through the use of websites or online forums.
7. On or about October 14, 2020, the Student submitted Test 1 in the Course.
8. The Student submitted Test 1:
 - (a) to obtain academic credit;
 - (b) knowing that it contained ideas, expressions of ideas or work which were not the Student's own, but were the ideas, expressions of ideas or work of others, including the authors of answers that were posted on Chegg.com, which is a website that allows subscribers to post questions on the site and to view questions and answers posted on the site (the "**Chegg Sources**"); and
 - (c) knowing that the Student did not properly reference the ideas, expressions of ideas or work that the Student drew from the Chegg Sources or from others.
9. The Student knew that the Chegg Sources were not an authorized source to which the Student was allowed to refer in completing Test 1.
10. The Student knowingly obtained unauthorized assistance in Test 1 from the Chegg Sources or from others.
11. The Student knowingly submitted Test 1 with the intention that the University of Toronto rely on it as containing the Student's own ideas or work in considering the appropriate academic credit to be assigned to the Student's work.

B. Preliminary Issue: Notice of Hearing and Proceeding in the Absence of the Student

12. The Tribunal assembled for the hearing at the scheduled 1:45 p.m. start time. The Student was not present and was not represented by counsel. The Tribunal waited for 10 minutes to allow time for the Student to appear. The Student did not appear by 1:55 p.m. or afterward and the Tribunal proceeded to have the charges read.
13. As a preliminary issue, Counsel for the University, Mr. Berger, asked the Tribunal to find that the Student had been provided with reasonable notice of the hearing and that the hearing should proceed in the Student's absence.

1. Applicable Law

14. Pursuant to section 7 of the *Statutory Powers Procedure Act* ("SPPA") and Rule 17 of the University Tribunal's *Rules of Practice and Procedure* (the "Rules"), where reasonable notice of an oral hearing has been given and the party does not attend the hearing, the Tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.
15. Reasonable notice and service requirements are governed by sections 6 and 7 of the SPPA and Rules 9, 13, 14 and 16 (as they were). Pursuant to Rule 9, a Notice of Hearing may be served on a student by various means, including by sending a copy of the document by courier to the student's Repository of Student Information ("ROSI") mailing address or by emailing a copy of the document to the student's ROSI email address.
16. The University's *Policy on Official Correspondence with Students* expressly states that students are responsible for maintaining a current and valid postal address and email account on ROSI. Students are expected to monitor and retrieve all mail, including emails, on a frequent and consistent basis.
17. The onus of proof is on the University to demonstrate that it provided a student with reasonable notice of the hearing.

2. The Evidence

18. Mr. Berger led the following evidence in support of proceeding in the Student's absence: the Affidavit of Andrew Wagg, Manager, Incident Response at Information Security, Information Technology Services, University of Toronto; and the Affidavit of Kimberly Blake, legal assistant at Paliare Roland Rosenberg Rothstein LLP. Mr. Berger also referred the Tribunal to the Affidavit of Cindy Blois, Assistant Professor, Teaching Stream, in the Department of Mathematics at the University. Professor Blois taught the course in which the Student is alleged to have committed academic misconduct. Finally, the correspondence from the Department of Mathematics to the Student Academic Integrity Office of the University of Toronto Faculty of Arts and Science ("SAI") was entered as an exhibit.
19. This evidence indicated that several attempts were made to contact the Student regarding the allegations at issue in this proceeding.

(a) Initial Contact with the Student

20. Following the events that led to the allegation of misconduct, on December 2, 2020, the Student was contacted by the Instructional Course Administrator with the Department of Mathematics in order to arrange an instructor's meeting to discuss possible academic misconduct with respect to Test 1.
21. The Student responded on December 4, 2020, asking for more information but did not agree to arrange a meeting time.
22. The Student was contacted again on December 7, 2020, in order to arrange an instructor's meeting, however the Student did not respond to this email. As a result, no instructor's meeting was held for this Student and the matter was referred to the SAI.

(b) Attempts to Contact the Student Prior to the Charges Being Laid

23. From October 29, 2021 to March 14, 2022, the SAI attempted to schedule a meeting between the Student and a Dean's Designate for Academic Integrity to discuss the allegation of academic misconduct at issue in this proceeding. On March 31, 2022, SAI sent the Student a letter by email, to the University of Toronto email address that the Student had provided in ROSI (the "ROSI email address"), informing the Student that their file was being sent to the Vice-Provost for resolution.

(c) Notice from the Office of the Vice-Provost, Faculty and Academic Life

24. On May 12, 2022, both the Office of the Vice-Provost, Faculty and Academic Life and the Office of Appeals, Discipline and Faculty Grievances (the "ADFG Office") served the charges in this matter on the Student by email to the ROSI email address. Included with the letter from the ADFG Office regarding the charges, were copies of the charges, the *Code of Behaviour on Academic Matters*, the *Rules of Practice and Procedure* and a pamphlet for Downtown Legal Services.

(d) Communication from Assistant Discipline Counsel

25. On May 17, 2022, Assistant Discipline Counsel sent the Student an email to introduce herself. Assistant Discipline Counsel advised that important documents and correspondence would be sent to the Student's mail.utoronto.ca email address.
26. On June 10, 2022, Assistant Discipline Counsel emailed the Student a disclosure letter, a link to a disclosure brief, and a copy of the University's *Policy on Official Correspondence with Students* (together with another copy of the charges).
27. On September 21, 2022, Assistant Discipline Counsel emailed the Student about scheduling a hearing date. Assistant Discipline Counsel advised that if she did not

hear back by September 28, 2022, she would request a hearing date be scheduled.

28. The Student did not respond. On October 19, 2022, Assistant Discipline Counsel emailed the Student advising that she would request a hearing be scheduled for Thursday, December 8, 2022 at 1:45 p.m.
29. On October 19, 2022, Assistant Discipline Counsel emailed the ADFG Office to request that a hearing be scheduled for Thursday, December 8, 2022, at 1:45 p.m. The Student was copied on this email.
30. On October 21, 2022, the ADFG Office served the Student with the Notice of Electronic Hearing for a hearing on Thursday, December 8, 2022, at 1:45 p.m., together with copies of the ADFG letter regarding the charges that were filed against the Student (dated May 12, 2022) and enclosures (which included the charges), by email to the Student.
31. The email from the ADFG Office advised the Student that the hearing would be conducted using the Zoom videoconferencing platform and provided the Student with the coordinates to access the videoconference.
32. On November 22 and 28, 2022, Assistant Discipline Counsel's staff called the telephone number provided in ROSI for the Student. The voicemail message indicated that the number belonged to an individual with a different name than the Student's.
33. On November 28, 2022, Assistant Discipline Counsel emailed the Student a link to download a copy of the affidavit of the Provost's witness. Assistant Discipline Counsel stated that the Provost would rely on the affidavit at the hearing and asked the Student to let our office know whether she intended to cross-examine the affiant.

34. Also on November 28, 2022, Assistant Discipline Counsel's office arranged for a courier to deliver a package to the address and permanent address provided for the Student in ROSI. The courier package contained a letter from Assistant Discipline Counsel, a copy of the charges, and the Notice of Electronic Hearing (together with the covering email which contained the Zoom access details).
35. On December 2, 2022, Assistant Discipline Counsel's office received a delivery notification indicating that the package was delivered on December 2, 2022, and that it was signed for by an individual who identified himself with the same name as the student.

(e) No Response from the Student

36. The Student did not communicate in response to any of Assistant Discipline Counsel's attempts to communicate, and no "bounce-back" messages were received to indicate that the email communications could not be delivered.
37. Based on the University of Toronto portal records, the last time someone accessed the ROSI email address was on December 18, 2020.

3. Decision of the Tribunal

38. In light of the evidence and the submissions of Counsel, the Tribunal was satisfied that the Student had been given reasonable notice of the hearing in compliance with the notice requirements of the SPPA and the Rules.
39. In the Tribunal's view, the University did everything it could reasonably do to contact the Student and take the steps it was required to take under the Rules. Whether the Student had actual notice need not be determined, although the Tribunal noted that there was some evidence that the Student was aware of the allegations as a result of the early communication in December 2020 and acceptance of the courier package by a person identifying himself with the same name as the Student in December 2022. Fundamentally, however, the University is entitled to rely on its *Policy on Official Correspondence with Students*. The

University and Assistant Discipline Counsel together made many attempts to contact the Student, including using several means of communication (email, courier, telephone), using contact information that the Student has an obligation to maintain in ROSI. These attempts are reasonable and comply or exceed the notice requirements of the SPPA and the Rules.

40. The Tribunal therefore determined that it would proceed to hear the case on its merits in the absence of the Student, and the hearing proceeded on the basis that the Student was deemed to deny the Charges made against him.

C. *Liability*

1. *Evidenced Tendered*

41. The University tendered the affidavit of Cindy Blois, Assistant Professor, Teaching Stream, in the Department of Mathematics at the University. Professor Blois was not present at the hearing but was available by telephone to answer questions from the Tribunal.
42. In Fall 2020 and Winter 2021, Professor Blois was the course coordinator for and one of five instructors who taught the course in which the Student is alleged to have committed academic misconduct.
43. At the beginning of the course, students were provided a caution on Academic Integrity in the course outline. The course outline indicated that students were expected to read and abide by the University of Toronto's *Code of Behaviour on Academic Matters*. The course outline went on to provide specific examples of academic offences in the context of the Course, including:
 - (a) looking at another student's work during a test;
 - (b) allowing another student to look at your work during a test;
 - (c) communicating with another MAT133 student during a test;

- (d) communicating with any other person about [a] test during the test;
- (e) using unauthorized materials or online resources during a test, such as Chegg

(a) Test 1

44. On October 13 – 14, 2020, students in the Course wrote Test 1. Test 1 was administered online. It was available starting at 8:00 p.m. on October 13, 2020 and was required to be submitted by 8:00 p.m. on October 14, 2020. Test 1 comprised two sections: 10 multiple choice questions and 4-8 pages of written response questions. The Test 1 information and study guide (on page 4) advised students that they were prohibited from communicating with other students in the course, getting outside help from anyone, or accessing or posting on so-called “tutoring websites”, like Chegg.com.
45. On or about October 14, 2020, the Student submitted his answers to Test 1. The Student signed the academic integrity statement at the end of the written responses part of Test 1, affirming that he knew the *Code of Behaviour on Academic Matters* and did not cheat.

(b) Chegg.com

46. Chegg.com is a subscription-based website that allows students to post problems to the site, which are then answered by so-called “experts”. Subscribers are also able to access the questions and answers posted by others on the site. The webpage advertises that a “Chegg Study” subscription costs \$14.95/month and will allow subscribers to “take a photo of your question and get an answer in as little as 30 mins” from an “expert”.
47. The instructors and teaching assistants in the Course found questions and answers from Test 1 posted on Chegg.com, after Test 1 had been distributed to students in the course. In reviewing the Student’s answers to Questions 2 and 3 to the written response portion of Test 1, it was determined that the Student’s

answers were very similar to the answers for Question 2 and 3 of Test 1 that were posted on Chegg.com. Copies of the Student's answers and the answers posted on Chegg.com were included in the documentary evidence put before the Tribunal.

48. Professor Blois's affidavit described the reasons why Professor Blois considered these similarities to be suspicious, including various points of both conceptual and visual similarity between the Student's answers and those posted on Chegg.com in circumstances where there were many ways the Student could have answered the questions.

2. Decision of the Tribunal on Liability

49. The onus is on the University to establish on a balance of probabilities, using clear and convincing evidence, that the academic offence charged has been committed by the Student.
50. On the basis of the evidence before it, the Tribunal is satisfied that the University has met its burden of proof with respect to Charge 1. No collaboration is permitted with another person, be they a student or otherwise. The mechanics of who and how such materials were accessed are irrelevant. The term "knowingly" in the charge is deemed to have been met "if the person ought reasonably to have known" that they were committing an offence under the Code. Actual knowledge is unnecessary. The plain similarities between the Student's answers and the answers posted on Chegg.com establish that it is more likely than not that the Student represented as his own an idea or expression of an idea or work of another in Test 1, contrary to section B.I.1(d) of the Code.
51. As the Tribunal returned a finding of guilt on Charge 1, the University withdrew Charges 2 and 3.

D. Sanction

1. Penalty Sought

52. The University sought a penalty consisting of:

- (a) A final grade of zero in the course;
 - (b) A suspension for a period of two years from date of the Tribunal's order;
and
 - (c) A corresponding notation on the Student's academic record and transcript for 3 years from the date of the Tribunal's order.
53. The University also requested that this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with the Student's name withheld.
54. The University introduced no additional evidence in support of the sanctions it sought. Counsel for the University made a number of submissions and provided a summary of relevant cases. In support of the proposed penalties, Counsel for the University referred the panel to the Provost's Guidance on Sanctions, contained in Appendix C to the Code ("Sanctions Guidance").
55. Section C.II.(B) of the Code sets out that the Tribunal may impose a range of sanctions on a student who has been convicted under the Code, ranging from an oral reprimand to a five-year suspension or, more severely, a recommendation to the President to recommend to Governing Council of expulsion or to Governing Council of cancellation of a degree. The Tribunal may also order that any sanction it imposes be recorded on the student's academic record and transcript for a period of time and may also report any case to the Provost, who may publish a notice of the decision and sanction in the University newspapers, with the name of the student withheld.

2. Decision of the Tribunal on Sanction

56. The determination of an appropriate penalty depends on the assessment of the principles and factors in light of the individual circumstances in this case. 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 Tribunal carefully

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

57. In determining the appropriate penalty to impose, *University of Toronto and Mr. C* (Case No. 1976/77-3, November 5, 1976) (“Mr. C”) is a foundational decision that sets out factors and principles that a tribunal should consider when imposing a sanction:
 - (a) The character of the person charged;
 - (b) The likelihood of a repetition of the offence;
 - (c) The nature of the offence committed;
 - (d) Any extenuating circumstances surrounding the commission of the offence;
 - (e) The detriment to the University occasioned by the offence; and
 - (f) The need to deter others from committing a similar offence.
58. The Tribunal did not have evidence in respect of several of these factors. As the Student did not participate at any level of these proceedings and did not attend the hearing, there was no evidence before the Tribunal of insight or remorse on the Student’s behalf; no indication that he is inclined to take responsibility for his actions and learn from his mistakes; and no evidence of extenuating circumstances surrounding the commission of the offence that would render a lenient sentence appropriate. The likelihood of repetition was unclear: while the Student had no prior offences, it was uncertain if the Student would be enrolled in the future. No extenuating circumstances were presented.
59. Nonetheless, the nature of the offence, the detriment to the University occasioned by the offence, and the need to deter others from committing a similar offence are all factors that support the penalty sought by the University. Plagiarism is an extremely serious offence that strikes at the heart of the integrity of academic work

and cannot be tolerated by an academic institution (*University of Toronto v. B.S.(Sanction)*, (Case No. 697, January 17, 2014 at para. 14)). It warrants a strong penalty to deter others.

60. The Tribunal considered a number of cases in which this Tribunal has imposed a sanction similar or identical to the one sought here for a first offence of plagiarism where the Student has not attended the hearing. The sanction sought by the University is in line with these past cases and is fair and appropriate.
61. For the above reasons, the Tribunal ordered that the following sanctions be imposed on the Student:
 - (a) a final grade of zero in the course MAT133Y1 in Fall 2020 and Winter 2021;
 - (b) a suspension from the University of Toronto for a period of two years from the date of the Tribunal's Order (December 8, 2022); and
 - (c) a corresponding notation on the Student's academic record and transcript for a period of three years from the date of the Tribunal's order.
62. In addition, the Tribunal orders that this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the name of the Student withheld.

Dated at Toronto, this 2nd day of December, 2024.

Original signed by:

Sabrina A. Bandali, Chair

On behalf of the Panel