

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on October 5, 2023,

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters*, 1995,

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 [REDACTED] Z [REDACTED]

REASONS FOR DECISION

Hearing Date: August 22 and September 3, 2024, via Zoom

Members of the Panel:

Shaun Laubman, Chair

Professor Richard B. Day, Faculty Panel Member

Harvi Karatha, Student Panel Member

Appearances:

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

J [REDACTED] Z [REDACTED]

Hearing Secretary:

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

1. The Trial Division of the University Tribunal heard this matter against J [REDACTED] Z [REDACTED] (the “Student”) by videoconference.
2. For the reasons provided below, the Tribunal found the Student guilty of academic misconduct and imposed the following penalty:
 - a. A recommendation (with the Student Panel Member dissenting) to the President of the University that the President recommend to the Governing Council that the Student be expelled from the University;
 - b. An immediate suspension from the University for a period of up to 5 years from the date of this Order or until Governing Council makes its decision on expulsion, whichever comes first, and that a corresponding permanent notation be placed on their academic record and transcript;
 - c. A final grade of zero in ECO359H1; and
 - d. That this case be reported to the Provost, with the Student’s name withheld, for publication of a notice of the decision of the Tribunal and the sanctions imposed.

Charges

3. The Student was charged as follows:
 - 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 ECO359H1, contrary to section B.I.1(b) of the Code.
 - b. On or about April 13, 2023, you knowingly attempted to use an unauthorized aid or aids and/or obtained unauthorized assistance in connection with the final exam in ECO359H1, contrary to sections B.I.1(b) and B.II.2 of the Code.
 - c. 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 ECO359H1, contrary to section B.I.1(d) of the Code.
 - d. On or about April 13, 2023, you knowingly attempted to represent as your own an idea or expression of an idea or work of another in connection with the final exam in ECO359H1, contrary to sections B.I.1(d) and B.II.2 of the Code.

- e. 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 ECO359H1, contrary to section B.I.3(b) of the Code.
4. The Student was accused of using a micro “button” camera and earpieces to cheat during her final exam in the course ECO359: Financial Economics II.
5. The University relied on five affidavits during the offence stage of the hearing. None of the affiants were cross-examined by the Student, who attended and was self-represented. At the hearing, the Student confirmed she was prepared to proceed without counsel.
6. The University’s affiants established the following facts:
 - a. The course syllabus contained a warning regarding academic integrity, including about not using or possessing an unauthorized aid during an exam;
 - b. Students were warned at the start of the exam that they could not have any electronic devices on their person and that anyone possessing or using an electronic device during the exam would be reported;
 - c. During the exam, an invigilator, Anthony Gagnon, checked the Student for a miniature camera and earpieces. The Student put her hands to her ears and appeared to remove something from them. When Mr. Gagnon asked to see what was in her hands, she revealed two mini earpieces, which were confiscated;
 - d. Mr. Gagnon noted a large black button on the Student’s shirt that he believed was a mini camera. When he asked the Student to give him the button, she did not respond. In order to respect the Student’s personal boundaries, Mr. Gagnon did not pursue the matter or take a picture of the button;
 - e. Another invigilator, Gabriel Briex, also noticed the large black button on the Student’s shirt and found it unusual. When the Student was asked about the button, she said it was just part of her shirt. Mr. Briex did take a photo of the button;

- f. The incident was reported, and the Student was asked to attend a Dean's Designate meeting. The Student then sent the Student Academic Integrity office an email on May 4, 2023, in which she apologized for her actions, admitted she asked other people to help her with the exam but claimed she did not successfully cheat because she was too nervous and afraid. In her email, the Student acknowledged that she would be sanctioned but she asked for leniency because the semester in question was particularly challenging for her;
- g. On May 5, 2023, the Student attended the Dean's Designate meeting. At that meeting, the Student claimed she got the earpieces from her boyfriend and that she was speaking with him. She said she had a camera during the exam but that she kept it in her pocket and did not use it. She also claimed that she did not use the earpieces during the exam and that she removed them from her ears and that's when the invigilator saw her;
- h. When asked at the Dean's Designate meeting, the Student admitted to using unauthorized aids during the exam;
- i. In March and April 2024, the Student sent emails with a statement to the Office of Appeal, Discipline and Faculty Grievances and the Assistant Discipline Counsel, Mr. Webb. Her statement was entered into evidence and included the following statements:
 - i. She expressed regret and said it was never her intention to undermine the integrity of the exam or gain unfair advantage;
 - ii. She claimed she had no intention of using the earpieces and camera to cheat. She admitted having the earpieces and a camera in her pocket but said there was no attempt to use them to gain an unfair advantage;
 - iii. She said the rules regarding electronic devices were unclear and her having them was an act of negligence rather than an intentional attempt at cheating;
 - iv. She said she immediately admitted her error and made no attempt to conceal her mistake. She also accepted any consequences deemed appropriate;

- v. She presented mitigating factors in her defence, including the statement that it was her first academic integrity issue and that it would be her last. She said her previous academic record is clean;
 - vi. She requested leniency and said that she was committed to learning from the experience and taking proactive steps to avoid future incidents.
- 7. The Student adopted her statement at the hearing.
- 8. During cross-examination of the Student, the University introduced evidence that the Student had prior academic offences. While this evidence is ordinarily inadmissible at the offence stage, the University argued that it was relevant to the Student's credibility and particularly her evidence that the incident was an act of negligence and that she had a clean academic record and no prior offences. The University relied on the Ontario Court of Appeal decision in *R. v. Chizanga*, 2024 ONCA 545.
- 9. Since the Student opened the door with her evidence that she had no prior academic offences and a clean academic record, the evidence of her prior offences was admitted as the probative value outweighed the prejudicial effect.
- 10. When presented with that evidence on cross-examination, the Student admitted to lying. She said she did so to receive a more lenient sanction. Otherwise, the Student largely maintained her previous statements, that she did not use the devices to cheat and that she got the earpieces from her boyfriend.
- 11. The Student admitted that she was familiar with the *Code of Behaviour on Academic Matters* when she wrote the exam and that she had reviewed the course syllabus and the warning about academic misconduct contained therein.
- 12. The Student's evidence was contradictory or unclear at best as to whether she knew the devices were prohibited or that she was unaware and her having them was an act of negligence in her words. She gave evidence of both during her testimony.
- 13. Based on the evidence presented to it and the submissions, the Tribunal found the Student guilty of Charge One: knowingly using or possessing an unauthorized aid or aids and/or

obtaining unauthorized assistance in connection with the final exam in ECO359H1, contrary to section B.I.1(b) of the Code.

14. The Tribunal did not find the Student's evidence about her intentions and what transpired during the exam to be credible. The Student admitted during cross-examination to lying about her academic record and that she did so to get a more lenient sentence. She only admitted the truth when confronted with her prior offences.
15. The Student's account of whether she knew the mini earpieces and camera that she had with her were prohibited varied. Sometimes she admitted knowing and at other times she said she did not understand that they were prohibited. Similarly, her evidence that she had the earpieces but got scared and took them out on her own initiative and without using them did not align with the timing of when she removed the earpieces according to the University's witnesses. Their evidence went unchallenged and was preferred by the Tribunal.
16. The Tribunal found that the Student possessed the miniature earpieces and a camera with the intention of cheating on her exam. She was warned at the start of the exam that electronic devices were not allowed and yet the undisputed evidence is that she kept the earpieces in her ears. She only removed them when questioned by the invigilator.
17. The University withdrew the other charges based on the finding of guilt on Charge One.

Penalty

18. At the penalty stage, the University relied on the evidence of Christina Amodio, an Academic Integrity Specialist with the Faculty of Arts and Science.
19. Ms. Amodio's evidence established that the Student had been found guilty of three prior academic offences. Each offence was resolved at the Dean's Designate level. Each time the Student was warned that the consequences of a subsequent academic offence may be more severe.
20. The Student did not present any further evidence during the penalty phase. She relied on the statements contained in her written statement that was introduced during the offence stage, including that the semester that she took ECO359H1 was particularly challenging. This was

the same statement which the Student admitted on cross-examination contained false statements.

21. The University submitted that the Tribunal should take account of the *University of Toronto v. Mr. C.* (Case No. 1976/77-3, November 5, 1976) factors to determine the appropriate penalty.
22. The University submitted that the Student's offence was a serious one. It was premeditated and designed to avoid detection. The use of miniature earpieces and cameras is considered a serious breach of academic integrity and requires a strong sanction as a general deterrent. The Panel agrees.
23. The Student's case was particularly troubling as she already has three prior offences on her record. She then lied about that fact throughout the discipline process until she was confronted with evidence of those prior offences. The number of prior offences demonstrated that the Student had failed to learn from her previous mistakes and that there was a strong likelihood that she would commit further offences absent a very serious penalty.
24. The Student did not present compelling evidence of mitigating circumstances. She relied on her written statement which contained the false statement that she had a clean academic record as its first mitigating factor. In addition, she stated the rules were unclear, which is rejected. Otherwise, she made vague and uncorroborated statements that she was under significant personal stress due to her mental status and anxiety emotions at the time of the offence. General statements of this nature should not be given much weight when lined up against the strong evidence in favour of imposing a serious sanction.
25. In prior decisions involving the offence of unauthorized assistance through the use of earpieces and a miniature camera, such as the *University of Toronto v. Q.C.* (Case No. 1505, November 24, 2023) ("Q.C.") and the *University of Toronto v. T.D.* (Case No. 1560, June 3, 2024) ("T.D."), 5-year suspensions were imposed. In T.D., the student undertook never to reapply to the University. These cases can be distinguished from the present one on two bases: the students in Q.C. and T.D. did not have a prior record and they cooperated with the discipline process, agreeing to an Agreed Statement of Facts and a Joint Submission on

Penalty. Those elements were absent from this case. As stated, the 3 prior convictions and the Student's ongoing attempts to minimize her culpability, including lying about her past record, are factors that weigh in favour of expulsion.

26. Based on the evidence and submissions, a majority of the Tribunal, with one member dissenting on the recommendation of expulsion, accepted the University's submissions on penalty and imposed the following penalty on the Student:

- a. A recommendation (with the Student Panel Member dissenting) to the President of the University that the President recommend to the Governing Council that the Student be expelled from the University;
- b. An immediate suspension from the University for a period of up to 5 years from the date of this Order or until Governing Council makes its decision on expulsion, whichever comes first, and that a corresponding permanent notation be placed on their academic record and transcript;
- c. A final grade of zero in ECO359H1; and
- d. That this case be reported to the Provost, with the Student's name withheld, for publication of a notice of the decision of the Tribunal and the sanctions imposed.

27. One panel member dissented on the appropriate sanction as follows: the offence does not merit the penalty of expulsion. The Student's prior offences were less serious, none meriting a suspension. A lengthy suspension of 5 years for this offence achieves the deterrent effect and sends a strong message that the offence will be treated seriously.

Dated at Toronto, this 18th day of December, 2024.

Original signed by:

Shaun Laubman, Chair

On behalf of the Panel