

THE DISCIPLINE APPEALS BOARD

THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty filed on March 14, 2024,

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

BETWEEN:

Z [REDACTED] L [REDACTED]

Appellant

-and-

UNIVERSITY OF TORONTO

Respondent

REASONS FOR DECISION

Appeal Hearing Date: March 11, 2025, via Zoom

Members of the Discipline Appeals Board Panel:

Paul Michell, Associate Chair

Dr. Allan Kaplan, Faculty Panel Member

Firdaus Sadid, Student Panel Member

Appearances:

Lily Harmer, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

Sonia Patel, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

Z [REDACTED] L [REDACTED]

Hearing Secretary:

Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances

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

A. Introduction

1. On March 11, 2025, we heard the appeal of Z█████ L█████ (the “Student”), an undergraduate at the Faculty of Arts & Science, from the University Tribunal’s July 11, 2024 decision on liability and sanction under the *Code of Behaviour on Academic Matters* (the “Code”). The Tribunal’s reasons for decision were released on September 27, 2024.

2. The Student did not attend the hearing before the Tribunal. He delivered a notice of appeal on August 1, 2024. The Student did not seek to amend his notice of appeal after the Tribunal released its reasons for decision. The gist of the Student’s appeal was that he had not been aware that discipline proceedings were being held before the Tribunal. The Student raised two specific grounds raised in his notice of appeal. First, that the sanction imposed by the Tribunal—a recommendation that the Student be expelled from the University—did not align with the severity of the offences committed. Second, that the Tribunal did not consider the Student’s admission made to Campus Police the day after the Student’s second offence.

3. The Student did not challenge the Tribunal’s conclusion that he had reasonable notice of the hearing before it.

4. We would dismiss the appeal. We do not accept the Student’s submission that the penalty imposed by the Tribunal is disproportionate to the two offences at issue. To the contrary, in the circumstances we find no basis to interfere with the Tribunal’s conclusion on penalty. The Student was found to have committed two serious offences only months apart.

5. We also disagree with the suggestion that the Tribunal did not consider the Student’s admission to the Campus Police in July 2023. The Tribunal’s reasons expressly refer to the

Student's admission. We see no error in the way in which the Tribunal relied on the Student's admission.

6. Implicit in the Student's position was the claim that he had been unaware of the hearing before the Tribunal. This position is inconsistent with the Tribunal's findings on notice, which, as noted above, the Student did not challenge in his notice of appeal. But more fundamentally, the Student's position is flawed. Appeals are heard based on the record that was before the Tribunal. Logically, this does not include evidence that a student did not submit to the Tribunal. If the student did not attend the hearing because he or she was unaware of it, then the student should take steps to get evidence to that effect before the Board on appeal. There is a mechanism to do so: a motion to the Board to admit fresh evidence. Yet the Student here did not bring a motion seeking to have the Board admit fresh evidence for use on his appeal. Having not done so, he was left unable to argue based on evidence he says he would have led had he attended the hearing before the Tribunal.

B. The Charges Against the Student

7. On March 14, 2024, the Provost charged the Student with respect to two incidents.

8. The first two charges concerned events on December 15, 2022:

- 1) On or about December 15, 2022, you knowingly used or possessed an unauthorized aid or aids and/or obtained unauthorized assistance in connection with the final exam you submitted in MGE06H3: Macroeconomic Theory and Policy: A Mathematical Approach ("Macroeconomic Theory"), contrary to section B.I.1(b) of the *Code*.
- 2) In the alternative, on or about December 15, 2022, 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 you submitted in Macroeconomic Theory, contrary to section B.I.3(b) of the *Code*.

9. The second two charges concerned events on July 21, 2023:

- 1) On or about July 21, 2023, you knowingly had someone personate you during a term test in MGE02H3: Price Theory: A Mathematical Approach (“Price Theory”), contrary to section B.I.1(c) of the *Code*.
- 2) In the alternative, on or about July 21, 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 a test you submitted in Price Theory, contrary to section B.I.3(b) of the *Code*.

C. Tribunal’s Decision on Notice

10. Since the Student did not attend the hearing on July 10, 2024, the Tribunal began its reasons by addressing the issue of notice. The Provost submitted evidence of efforts to contact the Student to notify him of the hearing. Relying on this evidence, the Tribunal concluded that the Student had been given proper notice of the hearing, and ordered that the hearing proceed in his absence.

11. The evidence that the Tribunal relied on in reaching this conclusion consisted of an affidavit from Natalia Botelho, a legal assistant at Paliare Roland, the law firm who acts as counsel for the Provost, and of Andrew Wagg, Manager, Incident Response at Information Security, Information Technology Services at the University. That evidence was before us on this appeal. We are satisfied that it supports the Tribunal’s findings on reasonable notice, which we note the Student did not challenge on appeal.

D. Tribunal’s Decision on Liability

12. The Tribunal considered the Provost’s evidence regarding liability, which consisted of affidavits from Karishma Punjabi (an invigilator), Professor Jack Parkinson (the instructor for MGE06H3), Adrian Chen (a teaching assistant and invigilator), and Jack Pienczykowski (a Special Police Constable with Campus Police).

1. Final exam in MGEB06H3 (Macroeconomic Theory)

13. The final examination in this macroeconomic theory course took place in the afternoon of December 15, 2022. The Student attended the exam. Mr. Punjabi observed that he did not write anything on his exam paper for 15-17 minutes. Mr. Punjabi asked the Student to change seats. When he did so, he was found to have a mobile phone on his chair that showed a white page with handwriting on it. The Student promptly locked his phone, but later opened it, and the instructor took photographs of WeChat communications on it. The WeChat thread showed the Student sending photographs of exam questions to a third party, and responses from the third party showing (variously) handwritten responses to the exam questions, a typed response, and text messages in Mandarin.

2. Tribunal's findings with respect to MGEB06H3

14. Based on this evidence, the Tribunal found that the Student had surreptitiously used his mobile phone during the exam to receive messages with correct answers for the exam from a third party collaborator. It found the Student guilty of the first charge.

3. Test in MGEB02 (Price Theory)

15. A test in this Price Theory course was held in the evening of July 21, 2023. Early in the test, a teaching assistant reported that something shiny had been seen under the desk where the Student was supposed to be writing the test. Mr. Chan noted that the person writing the exam in that seat appeared to be looking under his desk. During the recording of attendance, Mr. Chan looked at the test-writer's TCard and recorded his name. Mr. Chan then asked the test-writer to change seats. When he did so, Mr. Chan noticed that his mobile phone was on his chair, was turned on, and was open to a notes application.

16. Mr. Chan asked the test-writer to hand the phone to him. He started to do so, but did not let go of the phone once Mr. Chan took hold of it. The test-writer asked Mr. Chan what the consequences would be. Mr. Chan said that he did not know, and took a photo of the phone with his other hand. The test-writer then suddenly grabbed the test paper and his other belongings and ran out of the room. Mr. Chan continued to hold the test-writer's phone and was brought along with him as he ran. Once out in the lobby, the test-writer elbowed Mr. Chan in the chest, which caused him to release the test-writer's phone, and the test-writer ran out of the building. Mr. Chan provided a description of the test-writer to Campus Police. Campus Police also reviewed security footage from a camera in the lobby.

17. Campus Police asked the Student to attend for an interview, which he did on the evening of July 22, 2023. The Student initially claimed that he had attended the test on the previous evening, and that he had his phone with him during the test. The Student claimed that when he was seen by a teaching assistant with the phone, he panicked and ran out of the room with his test paper, which he claimed he later destroyed. Campus Police asked him what he was wearing during the test, and what car he had driven that evening. The Student answered, and claimed that the car belonged to a friend. Campus Police asked for details about the friend. Eventually, the Student admitted that he had not written the test. He said that he had found someone online through TikTok to write the test for him, and had given the person his TCard. The Student said that he was barely passing. He said that this was the first time that he had had someone write a test for him, but that he had cheated once before with his mobile phone.

4. Tribunal's findings with respect to MGEB02

18. Based on this evidence, the Tribunal found that the Student had arranged for a third party to impersonate him and to attend the exam to write it in his place. The Tribunal also noted that the Student had admitted to this. It found the Student guilty of the third charge.

E. Penalty

19. In light of the Tribunal's finding of guilt on the two main charges, the Provost sought an order recommending that the Student be expelled from the University, and related relief.

20. The Tribunal's treatment of penalty was relatively brief. It indicated that the Provost had submitted a book of documents regarding sanction, which contained case law addressing the two offences at issue, unauthorized aids or assistance, and personation. With respect to personation, in some of the cases the penalty imposed was a recommendation of expulsion, while in others the lesser penalty of suspension had been imposed. The Tribunal considered these cases, and held that the penalty sought by the Provost was consistent with them. It specifically noted that it had been referred to cases where a recommendation of expulsion had been imposed even in the presence of mitigating circumstances. The Tribunal did not identify these cases in its reasons, but the Provost submitted them to us on this appeal.

21. The Tribunal also indicated that it had reviewed and considered the *Provost's Guidance on Sanctions* at Appendix "C" to the Code, which advised students that the Provost would seek a recommendation of expulsion in cases of personation.

22. The Student did not attend the hearing, nor did he submit any evidence to the Tribunal. The Tribunal found that the Student had neither cooperated nor participated in the prosecution. As a result, there was no evidence before the Tribunal of personal circumstances or mitigating

factors, if any. The Tribunal took into consideration that the Student had committed the two offences at issue within an eight-month period.

23. The Tribunal made the order sought by the Provost, namely, a recommendation to the President of the University that he recommend to the Governing Council that the Student be expelled from the University; that the Student be immediately suspended from the University for a period of up to five years from the date of the Tribunal's order or until the Governing Council made its decision on expulsion, whichever came first, and that a corresponding notation be made on the Student's academic record and transcript; that the Student receive a final grade of zero in the two courses; and that the 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.

F. Notice of Appeal

24. On August 1, 2024, after the Tribunal's order, but before the release of its reasons for decision, the Student delivered a notice of appeal. He raised three grounds of appeal:

- (a) the sanction of recommended expulsion does not align with the severity of the offences committed;
- (b) the Adjudicator at the Trial Division did not consider my admission made at the Campus Security Office on July 22, 2023; and
- (c) such further and other grounds this Appeal Division may permit.

25. As relief, the Student sought an order excluding the sanction of recommended expulsion, or that the matter be remitted to the Trial Division for a new hearing.

26. Accordingly, the Student made only two complaints: that the sanction ordered was too severe, and that the Tribunal had not taken his admission into account. Both of these grounds of

appeal concern the sanctions ordered by the Tribunal. The Student did not challenge the Tribunal's decision on notice, or its findings on liability.

27. The Student submitted a brief factum dated November 25, 2024. As we discuss in the next section, the Student's factum led the Provost to raise certain concerns.

G. The Student's Factum and Directions Regarding Fresh Evidence

28. The Student's factum contained a mixture of submissions and evidence. In essence, he claimed that he had not attended the hearing before the Tribunal because he had not been aware of it. He claimed to have been operating under a misunderstanding as to how the University's student discipline process operates. He said that he had been studying recently at another educational institution outside Ontario. He claimed to have been under the impression (generated in part, he said, from his review of Tribunal decisions on the Appeals, Discipline and Faculty Grievances ("ADFG") website) that so long as he had admitted to an offence to Campus Police, it would be unnecessary to attend the hearing with respect to that offence. He went on to argue that the penalty imposed was unduly harsh, and sought a new hearing to challenge it.

29. Much of the explanation that the Student advanced in his factum was not based on evidence in the record. Unsurprisingly, the Provost objected to it. On December 17, 2024, the parties attended a virtual proceedings management conference before me, at which I directed that if the Student wished to bring a motion seeking to have this Panel admit fresh evidence in support of his submissions, he would have to do so pursuant to a schedule I established, including a January 31, 2025 deadline for the Student to submit motion material.

30. The Student did not bring a motion to admit fresh evidence by the deadline, or subsequently. He was of course under no obligation to do so. However, if he did not, then there

would be consequences for his appeal. On February 3, 2025, once it had become clear that the Student would not bring a fresh evidence motion, I set a schedule for the hearing of this appeal. The Student later indicated that he did not want to submit another factum for the appeal, but wished to rely on his November 2024 factum. Understandably, the Provost took issue with this request, since it was the Student's November 2024 factum that had led to the December 2024 proceedings management conference. The Provost sought a direction excluding portions of the Student's factum from consideration on the appeal. On February 25, 2025, I made a direction to that effect. The description of the contents of the Student's factum above is designed simply to illustrate the Student's position on this appeal, not to rely on those submissions that I had directed should be excluded.

31. The Student's failure to bring a fresh evidence motion meant that there was little evidence in the record to support his appeal on the grounds he had identified in his notice of appeal. There was no evidence at all to support the arguments that he outlined in his factum but were not set out in his notice of appeal: a challenge to the Tribunal's decision that he had been provided with reasonable notice of the hearing before the Tribunal, and the explanation he sought to advance for why he did not think it necessary to attend a hearing.

H. Standard of Review and Jurisdiction

32. In his brief written and oral argument, the Student did not address the applicable standard of review on this appeal, or our jurisdiction with respect to his grounds of appeal.

33. By contrast, the Provost submitted that although the Board has wide powers to review the Tribunal's findings of academic misconduct and sanctions under section E.7 of the Code, in practice the Board usually intervenes only where the Tribunal has erred in law, in the

interpretation and application of Tribunal and Board cases, or made significant errors of fact finding, particularly where the findings are unsupported by any evidence, citing *University of Toronto and S.C., N.H., M.K.* (Case No. 596, 597, 598, Nov. 23, 2011 (DAB)) at paras. 110-112.

34. The Provost also submitted, based on the same case, at para. 114, that the Board adopts a two-step process to evaluate the sanction imposed. First, the Board asks if the Tribunal made a reversible error of fact or law. Second, if the Tribunal erred, the Board asks if that error should result in a variation of the penalty.

35. We agree with these submissions.

I. Student's Grounds of Appeal

1. Was the penalty imposed by the Tribunal too severe relative to the offences for which the Student was found liable?

36. The Student's main ground of appeal was that the penalty ordered by the Tribunal was disproportionate to the offences he was found to have committed. This argument was relatively undeveloped in the Student's factum, and his very brief oral submissions did develop the point further.

37. The Tribunal found the Student guilty of two offences. The personation offence is the more serious. Personation is inherently premeditated. The case law makes clear that personation is one of the most serious offences, frequently (though not inevitably) punished with a recommendation of expulsion. Where it is not, the penalty is normally a five year suspension, and is usually the result of mitigating factors of which there is no evidence here. See discussion in *University of Toronto and Y.Z.* (Case No. 1563, Aug. 16, 2024), at paras. 42-43; *University of Toronto and Z.G. and M.J.S.* (Case No. 734 and 735, Oct. 2, 2014) at para. 52.

38. A recommendation of expulsion has been made even where the student admitted to the offence in a meeting before the commencement of the Tribunal process: *University of Toronto and M.W.* (Case No. 585, Sept. 1, 2010) at paras. 15, 22.

39. The unauthorized aid or assistance offence is commonly punished with a two or three year suspension, such as in *University of Toronto and D.S.* (Case No. 1041, Dec. 15, 2020) (two years), although recent cases (such as *University of Toronto and S.Y.* (Case No. 1539, May 17, 2024) (“S.Y.”) and *University of Toronto and Q.C.* (Case No. 1505, Nov. 24, 2023) involving the use of more advanced technology to cheat (such as miniature cameras and earphones implanted in a student’s ear) have tended to impose more severe penalties due to the increased difficulty they present for detection.

40. The Tribunal here specifically noted that there were two offences and that they had been committed within months of each other. It also took account that the Student had not participated in the disciplinary process and had not attended the hearing. There was thus no evidence of any mitigating factors. We note (although the Tribunal did not make specific reference to it when discussing penalty) that it was apparent from the evidence before the Tribunal that there was a commercial element to both offences. The Student had paid a third party to assist him in committing the first offence, and to impersonate him in committing the second. Many cases have recognized such a commercial element to be an aggravating factor, including for personation: *e.g., University of Toronto and J.O.* (Case No. 617, Aug. 25, 2011), at paras. 24-26, 30.

41. The penalty imposed by the Tribunal was reasonable and appropriate in the circumstances. We see no error of fact or law that would permit us to interfere with it.

2. Did the Tribunal fail to consider the Student's admission made at the Campus Security Office on July 22, 2023?

42. The Student's second argument was that the Tribunal failed to consider the admission he made at the Campus Security Office on July 22, 2023. In our view, this submission is misconceived. The Tribunal clearly *did* consider the Student's admission. The Tribunal made specific reference to that admission in para. 13 of its reasons, where it referred to the affidavit evidence of Jack Pienczykowski, a Special Police Constable with Campus Police. Mr. Pienczykowski specifically noted that he had interviewed the Student on the evening of July 22, 2023, and although he initially denied it, the Student eventually admitted that he had hired another individual to write the test for him.

43. It is true that the Tribunal did not refer to this admission in its discussion of the appropriate penalty. We see no reversible error in that. First, the Tribunal was aware of the Student's admission. Second, the Provost submitted that the cases do not suggest that an admission by a student to a Campus Police officer is itself a material factor in evaluating penalty. We agree. In *University of Toronto and Y.Z.* (Case No. 1588, Jan. 10, 2025) at para. 51, the Tribunal held that a student's admission of an offence at a Dean's meeting is not a mitigating factor. We might be less definitive on this point, but that conclusion is a reasonable one where, as here, the student has not participated in the discipline process and did not attend the hearing. As the Tribunal noted in *S.Y.*, at para. 25, in such cases any early cooperation must be discounted by the student's subsequent non-responsiveness, and it should be given little weight.

44. A recommendation of expulsion may be the appropriate penalty for personation even where mitigating circumstances are present. In particular, the Tribunal noted that the Student had played no role in the disciplinary process itself. The fact that the Student was found guilty of

personation and a second (albeit less serious) offence suggests to us that the penalty imposed by the Tribunal is appropriate. We see no error of fact or law here.

45. We would not give effect to this ground of appeal.

3. The Student's additional arguments

46. We repeat that in his notice of appeal, the Student did not challenge the Tribunal's determination that he had been provided with reasonable notice of the hearing before it. Instead, he raised arguments in his factum (more precisely, a mixture of argument and assertions that were not in the record) that appeared to challenge the Tribunal's determination on that issue. The combination of his failure to raise an issue in a notice of appeal and the failure to bring a fresh evidence motion to establish a basis for the argument were fatal to the Student's argument on this issue.

47. Similarly, the Student's related argument that he misunderstood the University's disciplinary process and was operating under the misimpression that his admission to Campus Police in July 2023 marked the end of the matter was raised for the first time in his November 2024 factum. It was not raised in his notice of appeal, and there was no evidence in the record to support it. Had the Student wished to advance this argument, it would have been necessary for him to bring a fresh evidence motion. He did not do so. We cannot give effect to it here.

48. We note that in his factum, the Student claims that he had formed this misimpression by his review of unspecified Tribunal decisions on the ADFG website. He also claimed to have learned that "as long as I admit my wrongdoing, I would not have to attend any hearing, since some students in previous cases did not attend hearings and were subsequently suspended from the University (case as Case 1310 published by the University)."

49. Assuming for the sake of argument that this really was the Student's view, it was seriously mistaken. This is best illustrated by the Student's reference to *University of Toronto and L.S.* (Case No. 1310, Apr. 18, 2022) ("*L.S.*"). There are significant differences between that case and his one:

- (a) The focus of *L.S.* was plagiarism, not unauthorized assistance/aid or personation, the latter being a more serious offence. The student in *L.S.* was charged with unauthorized assistance, but the charge was withdrawn in light of her conviction for plagiarism.
- (b) Although the student in *L.S.* did not attend the hearing, she had participated in the disciplinary process. Indeed, she had agreed with the Provost on an agreed statement of facts and joint submission on penalty. The Student here did neither.
- (c) The student in *L.S.* had signed and submitted a request that the hearing proceed in her absence, and waived any right to formal notice. The Student here did not.
- (d) The Tribunal in *L.S.* found that the student was remorseful for her conduct. The Tribunal made no such finding here.
- (e) The joint submission on penalty in *L.S.* sought a five year suspension. Here, there was no joint submission on penalty.

50. In light of these differences, it was unreasonable for the Student to conclude that *L.S.* meant that there was no need to attend the hearing here.

51. Finally, we note that the Student never suggested, either in his notice of appeal, or in his factum, that there were arguments or evidence in mitigation of penalty that he would have sought to advance before the Tribunal had he attended the hearing before it. Absent that, there is no basis for us to draw a different conclusion than the Tribunal on the issue of penalty.

52. We would not give effect to these additional arguments.

53. The appeal is dismissed.

Dated at Toronto, this 21st day of May, 2025.

Original signed by:


Paul Michell, Associate Chair

On behalf of the Discipline Appeals Board Panel