

Case No.: 1047

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL**

IN THE MATTER OF charges of academic dishonesty filed on July 25, 2019

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 -

M [REDACTED] S [REDACTED] D [REDACTED] (the “Student”)

REASONS FOR DECISION ON SANCTION

Sanction Hearing Date: June 24th, 2020

Members of the Panel:

Ms. Cynthia B. Kuehl, Chair

Professor Richard B. Day, Faculty Panel Member

Ms. Alice Zhu, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

Mr. Eunwoo Lee, Student’s Representative, Downtown Legal Services

The Student

Hearing Secretary:

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

1. In a written decision released November 18, 2019, the Tribunal found the Student guilty of one charge under the *Code*, namely that he knew or ought to have reasonably known that he possessed an unauthorized aid sheet in connection with the final examination in MIE334H1 (the “Course”), contrary to section B.I.1(b) of the *Code*.
2. On June 24, 2020, this Panel reconvened to determine the appropriate sanction in light of this finding (the “penalty hearing”).
3. It is unusual to have a seven-month delay between a finding and the penalty hearing before this Tribunal. An explanation of that delay is warranted, particularly because the delay, and the causes for it, were relevant to the disposition in this matter.
4. The penalty hearing was initially scheduled to proceed on November 26, 2019. The Student sought an adjournment so he could retain representation at Downtown Legal Services. The Provost consented, with the agreement that the Student would advise on or by January 22, 2020 as to whether he had representation. It was anticipated that the penalty hearing would then proceed after the Student’s representative had taken the required time for preparation.
5. Unfortunately, the Panel was advised at the hearing, by Counsel for the Provost, that the penalty hearing was further delayed by the Covid-19 pandemic. For a brief period of time, no hearings proceeded before the Tribunal, and for a short time thereafter, there was a period wherein electronic hearings were being phased in. The penalty hearing therefore ultimately proceeded via Zoom. No fault is attributed to either the Student or the Provost for the delay that has been occasioned as a result of these events. We agree with Mr. Centa, Counsel for the Provost, that it was reasonable for the Student to wish to have representation for the penalty hearing, which necessitated the adjournment of the first date, and required some time after being retained, to prepare for the sanction hearing. The brief delay occasioned by the pandemic, however, could not be anticipated or avoided. In the result, the penalty hearing proceeded almost 7 months after the initial scheduled date.
6. At the penalty hearing, the parties submitted an Agreed Statement of Facts which included details of two prior academic offences by the Student. The Student admitted to plagiarizing an assignment worth two percent of the final grade in a course in April 2017. In August 2017, the

Student was advised that he was receiving a mark of zero in another course, having admitted to possessing an unauthorized aid (a cell phone) during the final examination in that course. This Agreed Statement of Facts supplemented the evidence from the Student at the previous hearing at the finding phase.

7. In addition to the Agreed Statement of Facts, the Student submitted an affidavit in which he explained that he is anxious to graduate from the University of Toronto in order to help financially support his family. He is currently working on his internship and his employer had planned to give him a full-time job upon graduation. He expressed that this experience had been incredibly stressful on him and that he understands that he will need to take additional precautions to ensure no academic offences happen again. The Panel accepts the sincerity of the Student's expressions of remorse and the importance of completion of his degree. At the same time, we agree with Mr. Centa's comment that the economic situation of students cannot be routinely used as an excuse for, or to mitigate the sanction arising from breaches of the *Code*.

8. The Provost and the Student also agreed on the appropriate penalty and jointly submitted that, in the circumstances of the case, the Tribunal should impose the following sanctions on the Student:

- (a) A final grade of zero in the Course;
- (b) A suspension from the University from the date the Tribunal makes its order (which was June 24, 2020) until August 30, 2022; and
- (c) A notation of the sanctions on his academic record and transcript for four years from the day the Tribunal makes its order.

9. This case will also be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the Student's name withheld.

10. It is important to note that, in its original iteration (as set out in the Agreed Statement of Facts), the Joint Submission on Penalty contemplated that the suspension would be considered effective as of September 1, 2019 and run until August 30, 2022. As described below, previous cases before this Tribunal establish that three years is the usual length of suspension for this type

of academic misconduct where there has been one or two prior offences. Mr. Centa explained that, had the penalty hearing proceeded as originally scheduled in November 2019, the Provost would have sought a suspension to August 30, 2022, being almost three years. Reductions of a few months from the typical length of suspension are not unusual so as to permit a student to return at the start of an academic year.

11. Mr. Centa explained that the intention of the proposed Order put before the Panel is the same, namely that the Student be able to return to the University as of August 31, 2022. Because of the delay in scheduling the penalty hearing, part of the intended time for suspension has already passed. While the Student has been able to attend the University in this ensuing time period, both Mr. Lee (for the Student) and Mr. Centa urged on us to accept the Order as proposed so as not to visit the consequences of the delay unfairly on the Student. Otherwise, for reasons that were reasonable (i.e., the adjournment to seek representation, plus preparation thereafter) or beyond his control (i.e., the delay occasioned by the pandemic), the Student's return to the University to complete his studies would be delayed to 2023.

12. The cases put before this Panel, helpfully summarized by Mr. Centa in a chart, support that a suspension of three years is the usual disposition in similar cases. In three cases: the University of Toronto v. (K.T., Case No.: 906, October 27, 2017), the University of Toronto v. A.K. (Case No.: 881, May 30, 2017), and the University of Toronto v. S-H.K. (Case No. 732, dated March 11, 2014), this exact disposition was given in circumstances where each of the students had one to two prior offences. In other cases before the Tribunal, even in the absence of prior offences, the same disposition was imposed. That length of suspension addresses the serious nature of the offence and the impact that academic misconduct, particularly misconduct that involves cheating, has on the University and the students that attend the institution. These factors are relevant to the sanction, and support, in the Panel's view, the usual three-year suspension. Based on the cases and the relevant factors, Mr. Centa urged on the Panel that the length of suspension is appropriate and that the highly unique circumstances justify the modifications to the timing of service of that suspension as reflected in the proposed Order.

13. Mr. Lee, on behalf of the Student, concurred. In addition to the cases, Mr. Lee emphasized certain mitigating factors, including the Student's respect for the proceedings as evidenced by his participation, his cooperation throughout, and his remorse. Though the other cases in which a

three-year suspension was granted typically arose in cases of an agreed statement of facts and not following a contested hearing, Mr. Lee agreed with Mr. Centa that the fact that the Student insisted on a hearing was not an aggravating factor. The absence of that mitigating factor is offset by the number of other mitigating factors present in this case.

14. The Student has had the benefit of an additional year of education at the University which, but for the intervening events described above, he would not have received. In the view of the Panel, it was generous of the Provost to credit this year to the Student in the calculation of the three-year suspension. However, the Panel is mindful that a joint submission on penalty ought not to be disturbed unless to do so would bring the administration of justice into disrepute or be contrary to the values of the University. Given the very unusual circumstances of a global pandemic, the implications on the Student's life and the presence of mitigating factors, the threshold to reject a joint submission has not been met. However, the Panel wishes to make clear that they are very much the extraordinary circumstances of the pandemic that have resulted in its acceptance of this Joint Submission on Penalty which results in a suspension, which while intended to be three years, in practical effect is substantially less.

15. Accordingly, the Panel accepted the Joint Submission on Penalty, and executed an Order to that effect on June 24, 2020.

DATED at Toronto, this 21st day of July, 2020



Cynthia B. Kuehl, Chair