

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty filed on August 27, 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 -

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

REASONS FOR DECISION

Hearing Date: September 28, 2020 (via Zoom)

Members of the Panel:

Mr. Douglas F. Harrison, Chair

Professor Julian Lowman, Faculty Panel Member

Ms. Julie Farmer, Student Panel Member

Appearances:

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

Hearing Secretary:

Ms. Krista Kennedy, Hearing Secretary, Office of Appeals, Discipline and Faculty Grievances, University of Toronto

Not in Attendance:

The Student

Charges and Hearing

1. The Trial Division of the Tribunal held a hearing by videoconference on September 28, 2020, to address the following charges brought by the University of Toronto against the Student under the *Code of Behaviour on Academic Matters, 1995* (the “Code”), which were set out in a letter to the Student dated August 27, 2019:
 1. On or about April 25, 2019, you knowingly used or possessed an unauthorized aid or aids or obtained unauthorized assistance in a final exam in IFP100Y1: Themes in World History (the “Course”) in the form of pages of study notes (“Notes”), contrary to section B.I.1(b) of the *Code*.
 2. In the alternative, 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, contrary to section B.I.3(b) of the *Code*, in connection with your use and/or possession of the Notes in the final exam in the Course.

Particulars:

1. At all material times you were a student at the University of Toronto in the Faculty of Arts & Science.
2. In Fall 2018 you were enrolled in the Course.
3. Students in the Course were required to write a final exam on April 25, 2019 worth 20% of the final mark in the Course (“Final Exam”). You wrote the Final Exam to complete this requirement.
4. No aids were allowed in the Final Exam.
5. You knowingly brought the Notes into the Final Exam with you and kept them in your possession during the Final Exam. The Notes were visible to you and you were observed to be looking at them during the Final Exam.
6. You knowingly possessed and/or used the Notes as unauthorized aids in the Final Exam.

Service

2. The Student did not attend the hearing. In order to proceed with the hearing in the Student’s absence, the Tribunal therefore had to determine if reasonable notice was given to the Student, as required by s. 6 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (“SPPA”) and by Rule 13 of *The University Tribunal Rules of Practice and Procedure* (the “Rules”).
3. Counsel for the University presented affidavit evidence from Justine Cox, Nusaiba Khan and Jacqueline Cummins. This evidence, as outlined below, demonstrated that all relevant materials in this matter were delivered to the Student via email to the Student’s contact email address as recorded in the University’s Repository of Student Information (“ROSI”).

4. Delivery by email to a student's email address as recorded in ROSI is permitted and is considered valid service for a hearing before this Tribunal by virtue of Rule 9(c) of the *Rules*. It is not necessary to physically deliver materials to effect valid service and, in fact, as the Tribunal was advised at the hearing, during the present COVID-19 pandemic, the University's Appeals, Discipline and Faculty Grievances Office (the "ADFG Office") is sending materials to students only by email. Students are apprised of the fact that the University and its divisions may use email for delivering official correspondence to them in accordance with the University's Policy on Official Correspondence when they log in to their university email account. This Policy also directs that students are responsible for maintaining and advising the University of their current email address through ROSI. During the hearing, Bruce Russell, the Academic Director of the University's International Foundation Program, testified that students are routinely told by course instructors to keep their email address up to date in ROSI.
5. In the present case, Krista Osbourne of the ADFG Office emailed the Student a copy of a letter to him from Professor Heather Boon, the University's Vice-Provost, Faculty & Academic Life, attaching the charges, on August 28, 2019. Also included as attachments to the email were copies of the *Code* and the *Rules*, and a pamphlet for Downtown Legal Services. Ms. Osbourne sent the email to the Student's email address listed in ROSI. This email address has been listed in ROSI as the Student's contact email since April 29, 2019.
6. Emails were also sent to the Student, to his ROSI contact email, by Jacqueline Cummins, a Law Clerk with Paliare Roland Rosenberg Rothstein LLP, the law firm acting for the University in this matter, as follows:
 - June 22, 2020, enclosing the University's disclosure brief and advising the Student that important documents and correspondence would be sent in future to his contact email address;
 - July 17, 2020, with a link to download the disclosure, and advising the Student that he would be contacted about hearing dates;
 - July 20, 2020, regarding scheduling; and
 - July 23, 2020, again regarding scheduling.
7. Ms. Cummins did not receive any response from the Student, nor did she receive any bounce back messages indicating that her emails were unable to be delivered to the Student.
8. On August 7, 2020, Ms. Cummins sent an email to Mike Wiseman, Associate Director, Information Security and Enterprise Architecture at the University's Information Technology Services, to inquire

whether the Student had accessed his university email account (the contact email in ROSI), and whether the emails that had been sent to that email address were being forwarded to another email address. In his reply email on the same day, Mr. Wiseman advised Ms. Cummins that the last logon to the Student's university email account was on August 5, 2020 (two days earlier) and that there was no forwarding email address.

9. On August 31, 2020, in response to an email request from the University's counsel (copied to the Student) to schedule an electronic hearing of this matter for September 28, 2020, the Chair of this Tribunal issued a Direction that if the Student wished to make submissions as to why this hearing should proceed in person and not electronically using Zoom, he should deliver such submissions by 10:00 a.m. on September 8, 2020. This Direction was sent by email to the Student by Nusaiba Khan, the Administrative Assistant with the ADFG Office, on August 31, 2020.
10. Having heard nothing from the Student by the deadline, the Chair made a further Direction that the hearing proceed electronically, as permitted by Rule 47 of the *Rules* and by the provisions of the *SPPA*, on September 28, 2020, at 1:45 p.m.
11. On September 9, 2020, Ms. Khan served the Student with the Notice of Electronic Hearing (the "Notice") by sending him a copy by email to his email address listed in ROSI. Ms. Khan did not receive any communication from the Student in response and did not receive any bounce back messages indicating that any of her emails to him could not be delivered.
12. The Tribunal convened at 1:45 p.m. on September 28, 2020, in accordance with the Notice. The Tribunal then waited 15 minutes to allow the Student or a representative of the Student to appear. By 2:00 p.m., neither the Student nor a representative appeared. At that point, the Tribunal concluded that the Student had received reasonable notice of the hearing and of the charges, and ordered that the hearing proceed in his absence, as permitted by s. 7(3) of the *SPPA* and Rule 17 of the *Rules*.

Facts

13. In support of the charges, Counsel for the University tendered affidavits from Antimo Graziano, Nazmus Saadat, Bruce Russell and Bonnie McElhinney, the contents of which are described below. These affidavits were all emailed to the Student by Ms. Cummins on September 16 and 17, 2020. In her emails, Ms. Cummins invited the Student to advise whether he wished to cross-examine any of the affiants. Ms. Cummins did not receive any communication from the Student in response and did not receive any bounce back messages indicating that any of her emails to him could not be delivered. All four affiants were in attendance during the hearing and addressed questions from the Tribunal.
14. The Student was enrolled in the International Foundation Program ("IFP") at the University of Toronto, New College, in the 2018-19 academic year. The IFP is designed for international students who are academically qualified to attend the University but who need to improve their language skills

to meet the University's admission requirement for language. IFP students must complete all courses, including the degree credit course, the discipline specific course and the language and academic development courses. Successful completion of the IFP guarantees admission to the Faculty of Arts & Science, the Faculty of Applied Science & Engineering, the Faculty of Architecture, Landscape & Design or the Faculty of Music. An IFP student who does not successfully complete all IFP courses will have their offer of admission withdrawn.

15. One of the IFP courses taken by the Student was IFP100Y: Themes in World History, The Origins of Globalization in the University's Faculty of Arts & Science (the "IFP Course"), taught by Dr. Alexandra Guerson.
16. On April 25, 2019, the Student attended to write the final exam in the IFP Course. It was a three-hour exam, beginning at 7:00 p.m., held in a large room with about 200 students. It was a closed-book exam.
17. The syllabus for the IFP Course had included an extensive section entitled, "What is plagiarism and academic integrity?" That section said, among other things, that "potential offences" included the use or possession of unauthorized aids on tests and exams. Academic dishonesty had also been covered in the IFP University Skills and Strategies course (IFP030Y1), which the Student had taken and received credit for.
18. One of the Chief Presiding Officers ("CPO") invigilating the IFP Course final exam that evening was Antimo Graziano, who at the time was a graduate student in the Department of Forestry. He had invigilated exams since December 2016. Another CPO that evening was Nazmus Saadat, also a graduate student, and who had invigilated 50 to 60 exams at the University over the previous three years. Dr. Guerson was also present, as were a few teaching assistants ("TAs").
19. Before the students were let into the room, Mr. Saadat and the others present set up the exam, making sure that all the desks were free of any papers and then placing the exam question booklet and an exam answer booklet on each desk.
20. Each official exam answer booklet used for the exam displayed "FINAL K" in large capital letters on the front cover.
21. The front page of the exam question booklet set out in large font, "Aids Allowed: None", and a reminder warning that a student found in possession of an unauthorized aid may be charged with an academic offence. In addition, the front of the exam question booklet had several other "Exam Reminders" listed, including "place all ... unauthorized study materials in your bag under your desk" and "Do not collect your bag ... before your exam is handed in."

22. Before the commencement of the exam, Mr. Graziano announced, several times, that no aids were allowed in the exam, a fact confirmed by Mr. Saadat.
23. At approximately 9:30 p.m., half an hour before the end of the exam, the Student asked to go to the washroom. Mr. Saadat escorted the Student to the washroom and both returned to the exam room about five minutes later. During the hearing, Mr. Saadat testified that the Student seemed overly thankful of Mr. Saadat having escorted him to and from the washroom.
24. About 10 minutes after escorting the Student back from the washroom, Mr. Saadat observed the Student copying something from under his exam answer booklet. Mr. Saadat then told Mr. Graziano that he had suspicions about the Student's behaviour and asked Mr. Graziano to keep an eye on the Student. Mr. Graziano then watched the Student for about two minutes. Mr. Graziano saw that the Student was in turn watching him and Mr. Saadat.
25. After a few minutes of this, the Student called Mr. Graziano over. The Student said that he had a question for one of the TAs. Mr. Graziano then approached one of the TAs, told him the Student had a question and asked him to attend to the Student. Mr. Graziano also told the TA that he and Mr. Saadat had suspicions about the Student copying something, and asked the TA to see whether he could determine if that was the case.
26. Mr. Graziano watched as the TA went to the Student and heard the TA ask the Student if he had anything under the exam booklets that were on his desk. Mr. Graziano saw the Student use his right hand to slip an exam booklet from underneath the other booklets and move it underneath his desk. Mr. Graziano saw the Student hold his right hand pushing up against the bottom of the desk while the TA was attending to him. Mr. Saadat also saw the Student try to hide something under the desk while the TA was approaching the Student. After the TA walked away, Mr. Graziano immediately walked over to the Student and asked the Student to show Mr. Graziano what he had underneath the desk. Without hesitating, the Student showed Mr. Graziano an exam answer booklet with the word "TERM" printed on its front in the place where the final exam answer booklets had "FINAL K" (the "Term Answer Booklet"). The Student told Mr. Graziano that the Term Answer Booklet was on his desk when he entered the exam room. Mr. Graziano confiscated the Term Answer Booklet from the Student. At that time, Mr. Graziano saw that the Student had three official final exam answer booklets on his desk, two labelled 1 of 2 and 2 of 2, respectively, and a third that contained crossed-out handwriting. The Student was permitted to finish the exam and he handed in those three final exam answer booklets.
27. The Term Answer Booklet (Exhibit "B" to Mr. Graziano's affidavit) contained four pages of dense, handwritten notes. On the front of this booklet was printed, among other things, in capital, bold letters, "THIS BOOK MUST NOT BE TAKEN FROM THE EXAMINATION ROOM". Mr. Graziano showed the confiscated Term Answer Booklet to Dr. Guerson, who confirmed to him that

the handwritten content in it was relevant to the final exam (at the hearing, Mr. Russell said that the students had been told in advance of the final exam what topics would be covered on it).

28. Immediately following the final exam, Mr. Graziano and Mr. Saadat wrote up an Alleged Academic Misconduct Form of this incident (Exhibit "F" to Mr. Graziano's affidavit).
29. As Academic Director of the IFP, Mr. Russell is very familiar with the content of the IFP Course and its evaluation process, including the final exam. He reviewed the Term Answer Booklet that had been confiscated from the Student and confirmed that it was an answer booklet used in mid-term tests at the University.
30. Following his receipt of the Alleged Academic Misconduct Form prepared by Mr. Graziano and Mr. Saadat, Mr. Russell reviewed the Student's final exam question booklet, final exam answer booklets and the confiscated Term Answer Booklet and concluded that the notes in the Term Answer Booklet contained (a) "information that was highly relevant to the IFP Course" and (b) "very similar words, ideas and phrases to the answers given" by the Student to five questions in the IFP Course final exam.
31. On May 24, 2019, Mr. Russell met with the Student to discuss the allegation that the Student was in possession of an unauthorized aid during the IFP Course final exam.
32. During that meeting, Mr. Russell imposed a mark of zero in the IFP Course, which would result in the Student losing his offer of admission to the University.
33. On June 7, 2019, the Student met with Professor Bonnie McElhinney, Principal of New College, to appeal his mark in the IFP Course. At the time, Professor McElhinney was a Dean's Designate at the University. The Student admitted to her that he had possessed an unauthorized aid during the IFP Course final exam, but he did not admit to using it during the exam. When Professor McElhinney asked the Student why he brought the Term Answer Booklet into the final exam room, he said it was "so that no one would notice that he was studying up to the last minute." He told her that when the exam started, he did not know what to do with the booklet and "so he hid it to avoid being caught possessing an unauthorized aid". He told her he was not copying from the Term Answer Booklet during the exam, but was copying from another official final exam answer booklet. When asked to explain the close textual similarities between the notes in the Term Answer Booklet and his official final exam booklets (which include some identical spelling and grammatical errors), the Student said this "was due to his ability to memorize details, especially so close to the start" of the exam.
34. Professor McElhinney concluded, from reviewing the Student's exam materials (in particular, the textual similarities), the invigilators' notes and her conversation with the Student, that he had possessed and made use of an unauthorized aid during the IFP Course final exam. As the Student did not admit to having used an unauthorized aid, she sent the case to the Vice-Provost for review

with the recommendation that charges be laid under the *Code* and the case be heard by the University Tribunal. Professor McElhinney set out her conclusions and recommendations in a letter to the Student dated June 26, 2019 (Exhibit “D” to her affidavit), which her office emailed to the Student.

Finding on Charges

35. The Student was charged under s. B.I.1(b) of the *Code*, by which it is an offence to be in possession of an unauthorized aid in a final exam. A finding of possession of an unauthorized aid does not require any evidence that the unauthorized aid was used during the final exam.
36. In this instance, the Student admitted to Professor McElhinney that he was in possession of an unauthorized aid in the IFP Course final exam. Professor McElhinney found the Student’s explanation for why he was in possession of the booklet unconvincing, as does this Tribunal. The Student did not appear at the hearing to provide the Tribunal with an explanation of what happened at the IFP Course final exam. While the admission to Professor McElhinney of possession is sufficient to meet the requirements of the offence, the Tribunal in any event finds the evidence presented by the University sufficiently demonstrates that the Student possessed an unauthorized aid in the final exam, and that he had no justification for doing so.
37. In addition, the Tribunal reviewed the Student’s official final exam answer booklet labeled 1 of 2 and the Term Answer Booklet, in both of which the similar words and phrases were highlighted in yellow (Exhibits “B” and “C” to Mr. Russell’s affidavit, respectively). The Tribunal agrees with Mr. Russell’s conclusion that the Student copied a significant amount of material from the Term Answer Booklet into his final exam booklet. The Student’s statement that this was because he had memorized the content of the Term Answer Booklet before the final exam began is not credible. The Student both possessed and used an unauthorized aid in a final exam.
38. Therefore, the Tribunal finds that the Student did commit the offence of knowingly using or possessing an unauthorized aid in a final exam, contrary to s. B.I.1(b) of the *Code*.
39. Upon this finding, Counsel for the University advised that the University was withdrawing the second, alternative charge.

Sanction

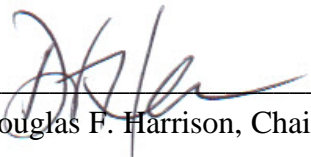
40. Section C.ii.(b) of the *Code* sets out that the Tribunal may impose a range of sanctions on a student who has been convicted under the *Code*, ranging from an oral reprimand to a five-year suspension or, more severely, a recommendation to the President of expulsion or to Governing Council of cancellation 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 (without identifying the student by name).

41. In this instance, the University sought an Order that the Student receive a final grade of zero in the IFP Course and a two-year suspension, along with a notation on the Student's record and transcript for three years and a report to the Provost for publication.
42. This request was in part based on sanctions handed down by the Tribunal in previous cases involving the use of an unauthorized aid in an exam and also on the factors laid down by this Tribunal in *University of Toronto and Mr. C* (Case No. 1976/77-3, November 5, 1976).
43. For example, in *University of Toronto v. M.S.D.* (Case No. 1047, July 21, 2020 (Sanction)), the Tribunal ordered a final grade of zero, a two-year suspension, a notation for four years and a report to the Provost for publication. In that instance, the student, who had had two prior academic offences (of plagiarism and possession of an unauthorized aid (a cell phone) during an exam), was found to have brought an unauthorized aid sheet into a final exam. However, it is reasonable to conclude from the decision that the suspension would likely have been set at three years had there not been a seven-month delay between the finding and the penalty hearing, resulting initially from the student's desire to obtain representation for the penalty hearing and later from the onset of the COVID-19 pandemic.
44. In *University of Toronto v. G.Z.* (Case No. 1004, February 26, 2020), the student had been discovered with handwritten formulae on his palm during a closed-book calculus exam but there was no evidence the student had made use of them. The Tribunal imposed a penalty of a zero grade, a two-year suspension and a three-year notation. In *University of Toronto v. H.L.* (Case No. 886, March 16, 2017), the Tribunal imposed a penalty of a zero grade, a two-year suspension and a 3-1/2-year notation where the student had been found to be in possession of an unauthorized aid (a cell phone) during an algebra exam. Again, there was no evidence of use of the aid. The Tribunal imposed a similar penalty in *University of Toronto v. S.M.* (Case No. 865, February 22, 2017), where it was found that the student had brought four pages of notes related to the course material into a closed-book geography exam. In an earlier case, *University of Toronto v. S.K.* (Case No. 595, October 12, 2020), the student was found to have brought notes written in a term exam booklet into a closed-book final exam and to have made use of those notes, similar to the present case. In that case the Tribunal imposed a three-year suspension and four-year notation.
45. In the present case, the Student was not caught momentarily glancing over to another student's exam book to check an answer. This was also not a situation of being found in the exam room with a mathematical formula written on his hand or with a cell phone, but there not being any evidence that the formula or the cell phone was actually used, or being found with a few pages of notes.
46. Here, the Student knew that no aids were allowed in the final exam, yet he not only brought extensive notes into the final exam but also had disguised those notes by handwriting them in a term exam answer booklet that could easily be mistaken for a final exam answer booklet and might therefore go

unnoticed by the invigilators. This was a calculated, pre-meditated effort to cheat on the exam, in flagrant disregard of the instruction that no aids were permitted, of the warning on the cover of the mid-term answer booklet that it was not to be removed from the exam room (and therefore should not have been in the Student's possession at all), and of the admonitions given against academic dishonest throughout the program and in the exam room. In addition, it is clear the notes in the Term Answer Booklet were used, given the high degree of similarity between the notes and the Student's answers in the exam. He hid the notes from others in the exam room until he was confronted and then initially lied about their origin. No mitigating circumstances were presented by the Student.

47. Academic honesty is a fundamental tenet of the University (if not of every educational institutional). Grades that are obtained through dishonest means not only allow the perpetrator to deceive others but also to debase the University itself. Rigorous efforts and rules are in place to ward off dishonest acts, and students are repeatedly warned of the prohibitions and the sanctions that may befall those who cheat. When someone flouts these rules, and indeed takes active steps to try to circumvent them, the University and this Tribunal must take a strong stand, to sanction the wrongdoer and to send a strong message that such actions will not be tolerated and will have significant consequences.
48. The Student's actions demonstrate a lack of academic integrity, which the Tribunal felt warranted a more severe sanction than that requested by the University.
49. Therefore, the Tribunal makes the following order:
 - (a) The Student shall receive a final grade of zero in IFP100Y, academic year 2018-19;
 - (b) The Student shall be suspended from the University for a period of three years, commencing on September 28, 2020, and ending on September 28, 2023;
 - (c) The sanction shall be recorded on the Student's academic record and transcript for a period of four years, commencing on September 28, 2020, and ending on September 28, 2024; and
 - (d) The case shall 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.

Dated at Toronto, this 15th day of December, 2020.


Douglas F. Harrison, Chair