

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on September 23, 2020,

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 am. S.O. 1978, c. 88*

B E T W E E N:

THE UNIVERSITY OF TORONTO (the “University”)

- and -

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

REASONS FOR DECISION

Hearing Dates: January 15, 2021 and February 17, 2021, via Zoom

Members of the Panel:

Ms. Dena Varah, Chair

Professor Pierre Desrochers, Faculty Member

Ms. Arlinda Ruco, Student Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
Hans Kunov, Professor and Dean’s Designate, The Faculty of Applied Sciences, University of Toronto

Hearing Secretary:

Ms. Carmelle Salomon-Labbé, Appeals, Discipline and Faculty Grievances

Not In Attendance:

The Student

REASONS FOR DECISION

1. The Trial Division of the University of Toronto Tribunal was originally convened on January 15, 2021 (the “Original Hearing Date”). It ultimately proceeded on February 17, 2021.

PART 1 - CHARGES

2. The Student is charged with three offences under the *Code*;

1. On or about April 20, 2020, you knowingly represented as your own idea or expression of an idea or work of another in a final exam in APS105H1 (the “Course”), contrary to section B.I.1(d) of the Code (“Charge 1”);
2. In the alternative, on or about April 20, 2020 you knowingly obtained unauthorized assistance in connection with the final exam in the Course, contrary to section B.I.1(b) of the Code (“Charge 2”); and
3. In the further alternative, on or about April 20, 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 the final exam in the Course, contrary to section B.I.3(b) of the Code (“Charge 3”).

3. Assistant Discipline Counsel advised that Charges 1 and 2 are in the alternative. That is, if the Student is found guilty of either Charge 1 or Charge 2 the other will be withdrawn. Charge 3 will be withdrawn if the Student is found guilty of either Charges 1 or 2.

PART 2 - PROCEEDING IN THE ABSENCE OF THE STUDENT

4. Assistant Discipline Counsel attended on the Original Hearing Date and the Student did not. At that date, Assistant Discipline Counsel advised that the Student had reached out to University members that morning asking about the Tribunal hearing. Counsel called Pamela Kennedy, an accreditations and academic integrity coordinator at the School of Applied Sciences, to testify as to this correspondence and to admit the emails into evidence.

5. As a result of this evidence, the Panel adjourned the matter to February 17, 2021 at 9:45 a.m. to permit the Student to participate should he decide to do so. The date was ordered to be peremptory on the Student.

6. Subsequent to the adjournment, the Student did not answer any further correspondence from the University. Assistant Discipline Counsel provided an updated Book of Documents on Service. The affidavit evidence contained therein indicated that there had been several emails to the Student to advise of the change of date and to invite him to participate.

7. The Student did not attend at the hearing of February 17, 2021 and did not advise that he required any further adjournments or there was any bar to his participation.

8. The Student was given ample notice of the hearing and chose not to communicate with the University or participate in the hearing. The Panel was therefore satisfied that it may proceed in his absence.

PART 3 - THE FACTS UNDERLYING THE CHARGES

9. The Student was enrolled at the University of Toronto, Faculty of Applied Science & Engineering commencing in the Fall Term 2019.

10. The University filed the Affidavit of Phillip Anderson, Associate Professor in the Department of Electrical and Computer Engineering, Faculty of Applied Science & Engineering at the University.

11. The Panel was satisfied that the facts contained in and documents attached to Professor Anderson's Affidavit were admissible for the truth of their contents.

12. In Winter 2020, Professor Anderson was the course coordinator for the Course. There were three other course instructors. The Student was a student in the Course.

13. Professor Anderson attached to his Affidavit the course syllabus, which provided students with expectations relating to academic integrity, and specifically, that they were not permitted to work together or share their solutions with one another on assignments. The syllabus informs students that the Course instructors would use software to detect potential plagiarism amongst student submissions that is "quite sophisticated and so is difficult to defeat."

14. The final examination in the Course, worth 35% of the final grade of the students, was administered online over a 12-hour period on April 20, 2020. The exam was open book, which meant that students were permitted to refer to their course notes and course materials. Students were not permitted to work together or collaborate with one another.

15. The instructors of the Course randomly assigned students to one of six groups with each group receiving a slightly different version of the exam. Students were provided with a "starter Code" for them to use to enter the exam questions which also included slight variations depending on the group in which the Student was assigned. The fact that there were different versions of the exam was not shared with the students.

16. The course instructors advised the students that their answers would be submitted to a “code checker” to determine if there were textual similarities between different exams. According to Professor Anderson each code could contain a number of unique features, including the language and logic, variables names, and comments. Professor Anderson indicated that there are “innumerable ways” that students can write code.

17. The Student was assigned to group three.

18. On question one of the final exam the students were required to verify that they “will not cheat” and had to pledge upon their “honour” that they would not violate the Code.

19. The Student was provided a starter code in answer to question four. The fourth element in the fifth row was 0.928597252. This number was unique to the group in which the Student was assigned. Each other group had a different number for the fourth element in the fifth row on question four.

20. The Student submitted the final exam on April 20, 2020. As with all the other students, the Student’s exam was submitted through the code checker. The code checker identified two issues:

- a) It revealed similarities between the Student’s submission and the code of another student, Y■■■ L■ for questions seven and nine. Professor Anderson’s Affidavit attached the report generated by the code checker that showed that there was significant identical code between the two submissions, as well as code that was effectively identical.
- b) The Student’s answer to question four used 0.92829752 as the fourth number

of the fifth row, rather than the number that was provided to him as part of his exam, which was 0.928597252.

21. Professor Anderson determined that Mr. L█ the other student, was in group five and that the starter code for him included 0.928297252 as the fourth element in the fifth row for question four.

22. Professor Anderson sent two emails to the Student about the final exam, including one that attached the code checker report.

23. Hans Kunov, Professor Emeritus in the Department of Electrical and Computer Engineering, Faculty of Applied Science & Engineering at the University of Toronto also provided an Affidavit. Professor Kunov acts as the Dean's Designate for Academic Integrity for the Faculty of Applied Science & Engineering. He meets with students in the faculty who are alleged to have violated the Code.

24. The Panel is satisfied that Professor Kunov's Affidavit is admissible for the truth of its contents.

25. Professor Kunov indicated that he wrote to the Student on various occasions and did not receive a response. He never met with the Student.

26. Professor Kunov did meet with Mr. L█, the other student, with whom it is alleged that the Student either collaborated with or plagiarized from. Mr. L█ admitted to the offence of receiving or offering unauthorized assistance.

PART 4 - FINDINGS ON LIABILITY

27. The Panel is satisfied that the evidence supports that the Student committed the offence contained in Charge 1. As a result of this finding Charges 2 and 3 are withdrawn. The Panel makes no finding with respect to these charges.

28. The Panel considered specifically whether it was more likely than not that the Student represented another's ideas as his own (Charge 1) rather than knowingly obtaining unauthorized assistance (Charge 2). The Panel relied on the following evidence in support of the charges:

- a) The Student used incorrect starter code from a different group; and
- b) Similarities between the Student's submissions and the code of another student for questions 7 and 9 were significantly identical, which could not be a result of chance;
- c) The starter code used by the Student was the starter code provided to the group in which the other student was assigned.

29. We note that Mr. L also admitted to the offence of collaborating and either receiving or offering unauthorized assistance. Although this fact is relevant, it is not on its own dispositive of the issue. There are various reasons that a student may decide to admit to an offence, and we do not have enough information to determine those reasons. It is simply another fact that supports the charge. It is the similarities between the two exams that is the most persuasive evidence.

30. The evidence is clear that, at least, the Student and Mr. L, the other student, collaborated on the exam, which is in breach of the specific instruction provided in the Course and on this exam. The collaboration is a breach of the Code and could support a finding on either Charge 1 or Charge

2.

31. The Panel had to determine the likelihood that the Student committed the offence underlying Charges 1 rather than Charge 2, the Panel was satisfied that the Student's use of the starter code of Mr. L's group makes it more likely that he was relying on Mr. L's work and ideas rather than the other way around. It is certainly possible that they collaborated, but on a balance of probabilities, it is more likely that the assistance was flowing from Mr. L to the Student.

32. We note that even if we are wrong about grounding the finding of liability in Charge 1 rather than Charge 2, it would not affect penalty, which we set out below.

PART 5 - SUBMISSIONS ON PENALTY

33. Assistant Discipline Counsel submitted that the appropriate penalty in this case is:

- a) a final grade of 0 in the Course;
- b) A suspension from the University immediately until December 31, 2022;
- c) A notation of the sanction on the Student's academic record and transcripts immediately until December 31, 2023; and
- d) That the case be reported to the Provost for publication of a notice of the Decision of the Tribunal and sanction imposed with the Student's name withheld.

34. Assistant Discipline Counsel relied on the caselaw to outline the factors that the Panel should consider in determining the appropriate penalty:

- a) The character of the person charged;
- b) The likelihood of repetition of the offense;
- c) The nature of the offense committed;
- d) Any extenuating circumstances surrounding the commission of the offense;
- e) The detriment to the University occasioned by the offense; and
- f) The need to deter others from committing a similar offense.

(University of Toronto v. Mr. C. Case No. 1976/77-3, November 5, 1976 at p. 15)

35. Assistant Discipline Counsel also noted that the Code provides a guide for penalty on the first offense of representing another's ideas as one's own. Although this guide is not binding on the Panel, it demonstrates the expectations that have been communicated to students in the event they violate the Code.

36. Assistant Discipline Counsel noted that the proposed suspension in this case was slightly under two years as the Student would have to withdraw from this semester's courses. If the suspension went for two full years it would actually require that the Student not be enrolled in the University for longer than two years so fairness dictated a slightly shorter suspension in this case.

37. Assistant Discipline Counsel submitted that the nature of the offense is serious and that the detriment to the University occasioned by the offense and the need to deter others is important. Although the failure of the Student to participate in the process, including failing to respond to Professor Kunov's emails, could be considered an aggravating factor, Assistant Discipline Counsel did not seek to add to the penalty on that basis.

38. The Student obviously did not provide any submissions. As a result, there was no evidence before the Panel of the character of the Student or other mitigating factors on penalty. Assistant Discipline Counsel acknowledged that this was first offense, but also noted that the Student had only been enrolled at the University for one semester prior to this offense. Although this is true, this was still a first offence and had to be treated as such. There was not enough evidence to determine whether an offence was likely to be repeated, but for the timing of it, which is an imprecise measure.

39. Assistant Discipline Counsel relied on several precedents in which students had committed similar offenses. Assistant Discipline Counsel noted that the precedents did not readily distinguish between plagiarism or unauthorized assistance, as the offense is considered similar under the factors that dictate the penalty. In the cases relied on by Assistant Discipline Counsel, a two-year suspension was the minimal penalty imposed for this type of offence.

PART 6 - DECISION ON PENALTY

40. The Panel carefully considered the facts of the case, the factors to consider on penalty and the facts of this case. The Panel is aware that the prior Tribunal decisions are not binding on it, but that they do offer guidance for the Panel on penalties imposed on other students in similar circumstances.

41. As noted in *The University of Toronto and B.S* (Case No. 697, Aug 8, 2013 (Finding) and Jan 17, 2014 (Sanction)), there is no minimum penalty for any type of offense. The Panel accepted that this is the case, but as that Panel also noted, it is important that students are treated fairly with respect to similar types of offenses. This is even more applicable where there is no evidence in the student on any other factors that the Panel should consider on penalty.

42. In this case, the Panel agreed that the appropriate penalty is the one sought by Assistant Discipline Counsel. It is fair that the penalty be just under two years as the Student will not be able to obtain credit from the University for two years. He will be able to enrol again for Winter Semester 2023.

43. As there is no evidence of any mitigating factors in this case or the character of the Student, the most important factors must be the nature of the offense, the detriment to the University occasioned by the offense and the need for general deterrence. These three factors require that the penalty be significant. It cannot be overstated how serious the offence of plagiarism is in an academic setting. It undermines the very foundation of academic integrity. It allows students to obtain credit for work that is not their own. It is grossly unfair to students who work hard to earn their credit. If left unchecked, it can undermine the credibility of the institution.

44. Students are informed at every turn – from the Code to course syllabi – that it will not be tolerated. The expectations could not be clearer. In this case, the Student even had to acknowledge on the exam at issue that he would not cheat.

45. In *The University of Toronto and O.E.R* (Case No. 981, March 4, 2019), the Student was found guilty of knowingly representing an idea or work of another in an essay submitted in a course. Just as in this case, the student did not participate in the proceeding. In that case, the Panel imposed virtually identical sanctions to the one imposed in this case on the same basis for the need for general deterrence, especially as there was no evidence before that Panel about the Student's approach to the matter.

46. The offence in *The University of Toronto and J.H.C* (Case No. 741, March 20, 2014) was strikingly similar to the one in this case. Two students collaborated on answers for a midterm

examination. One of the students participated in the Dean's meeting and admitted guilt earlier in the process. The student before the Tribunal did not participate in the process. The main difference with that case is that the student had a prior minor offence. The Tribunal imposed a suspension of two years and five months along with a grade of zero in the Course and a notation.

47. There is no basis in this case for a different penalty than the one outlined by the Code and imposed in numerous precedents. The offence is no more or less serious than those in the cases relied by Assistant Discipline Counsel. There are no significant aggravating factors. There are no mitigating factors. There is no justification to depart from the expected penalty occasioned by this type of offence. Given the notice provided by the Code, Student himself could expect no different penalty in the circumstances.

48. The appropriate length of suspension in this case is just under two years.

PART 7 - THE ORDER

49. The University Tribunal orders that:

- 1) the hearing may proceed in [the Student's] absence;
- 2) [The Student] is guilty of one count of knowingly representing an idea or expression of an idea or work of another as his own, contrary to section B.I.1.(d) of the Code;
- 3) The following sanctions shall be imposed on [the Student]:
 - (a) a final grade of zero in the course APS105H1 in Winter 2020;
 - (b) a suspension from the University of Toronto from the date of this order until December 31, 2022; and

- (c) a notation of the sanction on his academic record and transcript from the date of this order until December 31, 2023; and
- 4) 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.

Dated at Toronto this 23rd day of April, 2021



Dena Varah, Chair
On behalf of the Panel