

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on January 18, 2021,

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:

THE UNIVERSITY OF TORONTO (the “University”)

- and -

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

REASONS FOR DECISION

Hearing Date: September 14, 2021, via Zoom

Members of the Panel:

Ms. Dena Varah, Chair

Professor Michael Saini, Faculty Panel Member

Ms. Samantha Chang, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary:

Ms. Nadia Bruno, Special Projects Officer, Appeals, Discipline and Faculty Grievances

Not In Attendance:

The Student

REASONS FOR DECISION

1. The trial division of the University was convened on September 14, 2021 (the “Hearing Date”).

PART 1 - THE CHARGES

2. The Student was charged with the following offences under the *Code of Behaviour on Academic Matters* (the “Code”).

- 1) On or about April 9, 2020, the Student knowingly represented an expression of an idea or work of another in the final exam MAT136H1 (the “Course”), contrary to s. B.I.1(d) of the Code.
- 2) On or about April 9, 2020, the Student knowingly obtained unauthorized assistance in connection with the final exam in the Course, contrary to s. B.I.1(b) of the Code.
- 3) In the further alternative, on or about April 9, 2020, the Student 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 s. B.I.3(b) of the Code.

3. Assistant Discipline Counsel advised that Charges 1 and 2 are in the alternative. That is, if the Student is found guilty of Charge 1, then Charge 2 will be withdrawn and vice-versa. Charge 3 will be withdrawn if the Student is found guilty of either Charges 1 or 2.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. The Student did not attend the Hearing Date.
5. In advance of the Hearing Date, the Student did not respond to any correspondence from the University regarding charges they were advancing under the Code.
6. Assistant Discipline Counsel advised that the Student had not responded to any attempts by the University or by her office to advise of the charges and of the Hearing Date. She relied on the Affidavit of the Samanthe Huang, an Administrative Assistant with the Appeals, Discipline and Faculty Grievance Office (“ADFG Office”). Ms. Huang served the Student with a Notice of Electronic Hearing for a hearing via email on August 20th and 24th, 2020 to the email address that the Student provided in ROSI.
7. Assistant Discipline Counsel also relied on the Affidavit of Kimberly Blake, Legal Assistant at Paliare Roland Rosenberg Rothstein LLP. Ms. Blake outlined that Assistant Discipline Counsel had emailed the Student on August 6th and 17th, 2021 to advise of the Hearing Date. Assistant Discipline Counsel further emailed additional documents on September 2nd and 7th, 2021. The Student did not respond to these emails.
8. Ms. Blake also telephoned the Student at the number provided in ROSI, but the Student did not pick up and as the voicemail was automated, it did not indicate the person to whom the voice mailbox belonged. Ms. Blake left a detailed message. This was followed by a courier package delivered to the Student’s address as found in ROSI which was signed for by “Glen” on August 30th, 2021.
9. Ms. Blake also outlined various attempts by the University to contact the Student from

May 4th, 2020 through to October 14th, 2020.

10. Although it does not appear that the Student accessed his email address, the Panel was satisfied that pursuant to the *Statutory Powers and Procedures Act* and the University Tribunal's *Rules of Practice and Procedure*, that the Student received reasonable notice of the Hearing Date.

11. The *Rules of Practice and Procedure* provide that service is effected by sending a copy of the document to the Student's mailing address contained in ROSI or by emailing a copy to the email address. Numerous steps were taken above and beyond the requirements of the *Rules of Practice and Procedure* and the *Statutory Powers and Procedures Act*. The Panel was therefore satisfied to proceed with the hearing in the absence of the Student.

PART 3 - THE FACTS UNDERLYING THE CHARGE

12. The Student was enrolled at the University of Toronto Faculty of Arts and Sciences commencing in the 2019 Fall term.

13. In Winter 2020, the Student was enrolled in MAT1361H1 (Calculus 1(B)) (the "Course").

14. The University filed the Affidavit of Dror Bar-Natan a Professor in the Department of Mathematics at the University. The Panel was satisfied that the facts contained therein and documents attached in Professor Bar-Natan's Affidavit were admissible for the truth of their contents. The Panel did not require that Professor Bar-Natan to provide *viva voce* evidence.

15. In Winter 2020, Professor Bar-Natan assisted with the administration of the final exam in the Course. As a result of the COVID-19 pandemic, the final examination was administered online on April 9th, 2020 from 2:00 p.m. to 5:00 p.m. There were approximately 1600 students who wrote the final examination.

16. Professor Bar-Natan was not the instructor of the Course but assisted with the administration of the final examination. The final examination had two parts: twenty multiple choice questions and six problems that required students to provide their solutions through an online grading software used by the Department of Mathematics.

17. Although the final examination was open book, students were only permitted to use their course work, but not any other aids or to collaborate with one another in providing their answers. The final examination material indicated that it would be a potential offence to search for answers online, look for someone else's answers or work together to answer questions.

18. The Student submitted his answers to the final examination on April 9th, 2020. The portion of the final examination at issue were the solutions to questions 21 – 26, submitted to Crowdmark, the online grading software described above.

19. In his Affidavit, Professor Bar-Natan indicated that Chegg.com is a subscription-based website that allows students to post problems which are answered by “experts” on the site. There is a subscription cost of \$14.95 per month and subscribers are able to receive answers in as little as thirty minutes. Instructors and teaching assistants in the Course found several problems from the final examination posted on Chegg.com during the time period that students had to complete the final examination.

20. At the time of marking the Student's answer to question 24, the instructors determined that there were significant similarities between the Student's answers and the answer to question 24 that they had seen posted on Chegg.com. Professor Bar-Natan was asked to review the similarities between the Student's answer to question 24 and the answer posted on Chegg.com.

21. According to Professor Bar-Natan, in examining the answer he considered the similarities to be suspicious because the answers were virtually identical and, most importantly, the answer contained significant errors. In Professor Bar-Natan's view, it was "highly unlikely" that a student would make the same logical error as the Chegg.com answer and take the same steps in this erroneous analysis.

22. In particular, Professor Bar-Natan noted that the variable "r" was used in lines one and two to represent a single value and in line two to represent numerous values. Both of these were mistakes, and, according to Professor Bar-Natan, it is "hard to imagine these two mistakes repeated in two different solutions (Chegg's and a student's) in an independent manner".

23. Professor Bar-Natan forwarded the matter to the Student Academic Integrity Office of the Faculty of Arts and Science (the "Office"). As a result, the Office sent an email with the allegations to the Student.

24. The University relied on the Affidavit of Obianuju Umenyi, an Academic Integrity Specialist with the Office. The Panel relied on the Affidavit of Ms. Umenyi and did not require that she provide *viva voce* evidence.

25. Ms. Umenyi noted that the Office sent the Student an email regarding the allegations of academic misconduct on May 4th, 2020. On May 7th, 2020 the Student sent an email advising that he wished to schedule a meeting with the Dean's Designate.

26. Ms. Umenyi met with the Student virtually along with Professor Francois Pitt, Dean's Designate for Academic Integrity, to discuss the allegations of academic misconduct. In that meeting on October 13th, 2020, Professor Pitt gave the Student a warning that is required to be

given under the Code.

27. In the discussion regarding academic misconduct, the Student denied any knowledge of Chegg.com, instead indicating that he had a “private tutor” who he had hired from a Korean website. The Student stated that the tutor had previously given him several questions and answers from previous exams including question 24. Although the Student could not recall how far in advance of the examination he received this question, he held firm that that question and answer had been provided by the tutor with instructions to memorize the answer.

28. On October 15th, 2020, Professor Pitt emailed the Student advising that the matter would be forwarded to the Vice-Provost for review.

29. The University relied on the Affidavit of Sarah Mayes-Tang, an Associate Professor in the Department of Mathematics at the University. The Panel deemed the Affidavit of Professor Mayes-Tang to be admissible with no requirement for *viva voce* evidence.

30. Professor Mayes-Tang’s evidence is that she created the problem at question 24 and did so directly before the final examination in the matter. She indicates that it was entirely unique and based on a story that she had come across relating to the COVID-19 pandemic and the resulting stay-at-home orders. The only people who had access to the examination questions before the final examination were instructors for the Course.

PART 4 - FINDINGS ON LIABILITY

31. The Panel was satisfied that the evidence supports the Student did commit the offence contained in Charge 1. As a result of this finding, Charges 2 and 3 are withdrawn. The Panel makes

no findings with respect to these Charges.

32. On Charge 1, the Panel finds that the evidence supports on a balance of probabilities that the answer to question 24 provided by the Student was in whole or in part the work of another, namely by those supporting the Chegg.com website. In coming to this conclusion, the Panel specifically relies on the following facts:

- 1) The evidence that this question and answer were posted on Chegg.com;
- 2) Professor Bar-Natan's evidence the type of errors and reasoning provided that are almost entirely identical between the Chegg.com website and the Student's paper are "highly unlikely" to be the result of chance;
- 3) The evidence of Professor Mayes-Tang that the problem she had created was unique and completed directly before the examination; and
- 4) That the Student's explanation was therefore unlikely in that context. He would not have had this question before the examination as it was not repeated from previous examinations. We also note that the Student was relatively vague about who his tutor was and when he had been instructed to memorize the answers.
- 5) There was no credible explanation for the similarities between the Student's answer and the answer on Chegg.com other than the Student representing the Chegg.com answers as his own.

33. We note that explanation of the Student would have been unlikely even if the question had

not been unique or recently created. The explanation relies on an unknown tutor having access to past exam questions, telling the Student to memorize an answer, rather than learn how to solve the problem (itself highly problematic), and providing an answer that was incorrect in the exact way as it was in the answer listed on Chegg.com.

PART 5 - DECISION ON PENALTY

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

- 1) a final grade of 0 in the Course;
- 2) A suspension from the University immediately for 2 years ending on September 13, 2023;
- 3) A notation of the sanction on the Student's academic record and transcripts immediately for a period of 3 years, ending on September 13, 2024; and
- 4) 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.

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

- 1) The character of the person charged;
- 2) The likelihood of repetition of the offence;
- 3) The nature of the offence committed;

- 4) Any extenuating circumstances surrounding the commission of the offence;
- 5) The detriment to the University occasioned by the offence; and
- 6) The need to deter others from committing a similar offence.

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

36. Assistant Discipline Counsel also noted that the Code provides a guide for penalty on the first offence 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. In the Code, the guide provides for a two-year suspension for a first offence of plagiarism.

37. Assistant Discipline Counsel submitted that the nature of the offence is serious and that the detriment to the University occasioned by the offence and the need to strongly deter others is of central importance. Plagiarism that has been planned has rightly been described as "one that strikes at the heart of academic integrity" (*University of Toronto v. D.K* (Case No. 1119, July 21, 2021))

38. Assistant Discipline Counsel did note that the cases consider plagiarism involving a commercial aspect to be more serious than those without one. Introducing a commercial aspect to the academic environment, one built on individual effort and hard work, has been described as "among the most egregious offences a student can commit". (*University of Toronto v J.W* (Case No. 1082, August 23, 2019)). Assistant Discipline Counsel fairly acknowledged that the commercial aspect of this offence cannot be proven – it is unknown whether the Student was a subscriber to Chegg.com or was provided the answer by another student who subscribed to the service. In the absence of evidence that the Student transacted for this answer, Assistant Discipline

Counsel did not seek a finding that this was an aggravating factor.

39. 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 a first offence. There was not enough evidence to determine whether an offence was likely to be repeated or whether there were other aggravating or mitigating factors.

40. Assistant Discipline Counsel relied on several precedents in which students had committed similar offences. In the cases relied on by Assistant Discipline Counsel, a two-year suspension was the minimal penalty imposed for this type of offence. Although these precedents do not bind the Panel, this is the sanction that has been imposed on students in similar circumstances, and it is important to have general consistency at the Tribunal. The penalty is appropriate given the serious nature of the offence and the need for general deterrence.

PART 6 - THE ORDER

41. The University Tribunal orders as follows:

THAT the hearing may proceed in the Student's absence;

THAT the Student is guilty of one count of knowingly representing an idea or expression of an idea or work of another as their own, contrary to section B.I.1.(d) of the *Code*;

THAT the following sanctions shall be imposed on the Student:

(a) a final grade of zero in the course MAT136H1 in Winter 2020;

(b) a suspension from the University of Toronto from the date of this order for a period of 2 years, ending on September 13, 2023; and

(c) a notation of the sanction on her academic record and transcript from the date of this order for a period of 3 years, ending on September 13, 2024; and

THAT 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 30th day of November, 2021

Original signed by: _____

Dena Varah, Chair
On behalf of the Panel