

Case No.: 1262

**UNIVERSITY OF TORONTO  
UNIVERSITY TRIBUNAL**

**IN THE MATTER OF** charges of academic dishonesty filed on September 20, 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:

**UNIVERSITY OF TORONTO**

and

G [REDACTED] L [REDACTED]

**REASONS FOR DECISION**

**Hearing Date:** January 11, 2022, via Zoom

**Members of the Panel:**

Ms. Alexandra Clark, Chair

Professor Richard Day, Faculty Panel Member

Ms. Alena Zelinka, Student Panel Member

**Appearances:**

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

Mr. William Webb, Co-Counsel, Paliare Roland Rosenberg Rothstein LLP

**Hearing Secretary:**

Ms. Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty Grievances

**Not in Attendance:**

Ms. G [REDACTED] L [REDACTED]

**A. Charges**

1. On January 11, 2022, this panel of the University Tribunal held a hearing to consider the charges brought by the University of Toronto (the “University”) against G [REDACTED] L [REDACTED] (the “Student”) under the *Code of Behaviour on Academic Matters, 1995* (the “Code”).

2. Those charges were set out in a letter to the Student dated September 20, 2021, as follows:

1. On or about June 8, 2020, you knowingly used or possessed an unauthorized aid or obtained unauthorized assistance during assignment #8 in MAT135H1F (20205) (the “Course”), contrary to section B.I.1(b) of the Code.
2. On or about June 8, 2020, you knowingly represented as your own an idea or expression of an idea, and/or the work of another in assignment #8 in the Course contrary to section B.I.1(d) of the Code.
3. In the alternative to each of the above charges, on or about June 8, 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 in assignment #8 in the Course, contrary to section B.I.3(b) of the Code.

3. The conduct in question occurred in a course in the Faculty of Arts and Science at the University of Toronto.

4. The Student did not attend the hearing. She was not represented by counsel. The Tribunal called the hearing to order at the scheduled 5:15 p.m. start time. As the Student was not present, we waited for 30 minutes. The Student did not appear by 5:45 p.m. when we began the hearing, nor did she join at any time before the hearing concluded over two hours later.

**B. Notice and Hearing in the Student’s Absence**

5. At the outset of the hearing, Assistant Discipline Counsel asked the Tribunal to find that the Student had been provided with proper notice of the hearing, and that the hearing should proceed in the Student’s absence.

6. The Provost led evidence that there had been an initial hearing in this matter on December 9, 2021 before a differently constituted panel (the “Initial Hearing”). That panel expressly found that the Student had been properly served with notice of the Initial Hearing, but decided to grant a short adjournment in order to give her one final chance to address the allegations. The panel’s endorsement reads:

[1] Provost’s counsel has properly served the Student with materials. The Student has received proper notice of today’s proceedings, but has not appeared. There is perhaps a record justifying proceeding in the Student’s absence.

[2] It is disappointing that the Student has not attended despite receiving notice. It is in the Student’s interest to engage in this process. Her non-attendance is disrespectful to the Tribunal and all of the people who work hard to ensure a fair process for the Student.

[3] However, the Panel is uncomfortable proceeding in the Student’s absence given that we know virtually nothing about her personal circumstances. That, combined, with the Student’s limited engagement with Mr. Centa on December 6, 2021, gives the Panel sufficient pause about proceeding in the Student’s absence.

[4] Provost’s counsel, in the finest traditions of that office, has agreed that there should be an adjournment to give the Student a final opportunity to respond to these allegations or attempt to resolve this matter.

[5] Accordingly, the Panel grants a short adjournment, with a date to be set on the earliest date available to the parties.

[6] Additionally, the Panel directs Provost’s counsel to communicate the following to the Student:

- a) That although an adjournment was granted today, this will likely be the Student’s final chance to respond to these allegations. If the student fails to attend at the next hearing date without reasonable excuse, the matter is likely to proceed in her absence;
- b) That the Student be given contact information for potential pro bono counsel, including contact information for Downtown Legal Services;
- c) That the Student be asked if there are any dates in 2022 when she is not available, but she should also be advised that if she does not respond with her unavailable dates within 7 days, a date for the hearing will be selected without regard to her schedule.

[7] The matter is adjourned. This Panel is not seized of this matter.

7. In compliance with these directions, on December 10, 2021, Ms. Krista Kennedy, a Hearing Secretary with the Tribunal, sent the Student a copy of the panel's direction set out above together with an information brochure concerning *pro bono* legal assistance. This information was sent to the University email account provided by the Student and registered in the University of Toronto Repository of Student Information (the "ROSI Account").

8. On the same date Mr. Centa, the Assistant Discipline Counsel with carriage of this matter on behalf of the Provost, sent an email to the Student at the ROSI Account. His message informed her of the outcome of the hearing on December 9 and asked for her availability in the months of January and February for a further hearing date. The message also asked the Student to contact him at the earliest opportunity to discuss the contents of his message and next steps.

9. The Provost also led evidence that, in response to this message and beginning on December 13, 2021, there were exchanges between the Student and Mr. Centa. Mr. Centa summarized these exchanges in a message sent to the Student on January 3, 2022:

You responded to me on December 13, 2021. I responded immediately and asked you to call me. You responded and said that you were at work. You asked if I was available after 5. I responded immediately saying that I was available any time between 5:00 and 11:00 pm. I invited you to call me on my mobile or said that I could send you a Zoom link. You responded saying that you were not in the country and could not call me on my mobile. You stated that you were free at 4:00 pm Toronto time. I sent you a Zoom link for 4:00 Toronto time. You did not join the Zoom call.

I wrote to you at 7:00 pm on December 13. I asked you to commit to a time that you will be available. You did not respond to this message. I wrote to you again on December 15 and 22, 2021. You did not respond to these messages.

10. The University's *Policy on Official Correspondence with Students* requires students enrolled at the University to maintain a current and valid postal address and an address for a University-issued email account, to update their records when this information changes, and to monitor and retrieve their mail and email on a frequent and consistent basis.

11. The Provost led evidence demonstrating that the Student had been provided with notice of and a copy of all of the required documents relating to the Initial Hearing via the ROSI Account, and that she had responded to Mr. Centa using the ROSI Account on December 6, 2021. The notice for the Initial Hearing contained information concerning the time, place and purpose of the Initial Hearing together with an explanation that if she chose not to appear, the Initial Hearing could nevertheless proceed to deal with the charges against her.

12. In addition, as described in paragraphs 7 through 9 above, the Student responded to the more recent emails sent to her on December 10, 2021 via the ROSI Account. These communications from the Hearing Secretary and from Assistant Discipline Counsel contained the required information concerning the revised hearing date and time, and repeated the warning concerning the consequences of non-attendance at the hearing.

13. In light of this evidence, it is reasonable to conclude that the Student is fully aware of timing, subject matter of and evidence to be tendered against her in these proceedings, together with the consequences of non-attendance at the hearing. She appears to have chosen, for whatever reason, not to further participate in the proceedings.

14. The panel therefore found that the University had provided the Student with reasonable notice of the hearing and of the charges made against her in accordance with rules 9, 13 and 14 of the Tribunal's *Rules of Practice and Procedure* (the "Rules") and section 6 of the *Statutory Powers Procedure Act* (the "SPPA"). We ordered that the hearing should proceed in the Student's absence, as permitted by rule 17 of the Rules and section 7 of the SPPA.

**C. Affidavit Evidence**

15. The Provost sought to enter two affidavits into evidence dealing with the substance of the charges against the Student: an affidavit of Payman Eskandari, affirmed November 4, 2021 (the “Eskandari Affidavit”), and an affidavit of Obianuju Umenyi, affirmed December 1, 2021 (the “Umenyi Affidavit”). On reviewing these two affidavits, the panel concluded that this was an appropriate case in which to admit evidence by way of affidavit, as permitted by rule 61 of the Rules. In the Student’s absence, the affiants were not subjected to cross-examination.

16. The panel reviewed evidence showing that the Provost had provided the Student with a copy of the Eskandari Affidavit on November 15, 2021, and a copy of the Umenyi Affidavit on December 1, 2021.

**D. Liability**

17. In the summer term of 2020, Payman Eskandari and Ali Cheragi (together, the “Instructors”) co-taught a Calculus course in the Department of Mathematics, MAT135H1F (the “Course”). The Student was enrolled in this course, as was another student, JC (“Mr. C”).

18. The Course required students to complete 10 assignments, and the two lowest marks were to be discarded with the remaining 8 assignments each being weighted at 12.5% of the final grade. All students in the course were required to submit their assignments electronically using the Crowdmark platform, and all assignments were to be completed and submitted without supervision due to the COVID-19 pandemic.

19. Assignment 8 in the Course was provided to the students on June 1, 2020, and was to be returned by June 8, 2020 (the “Assignment”). On June 4, 2020, the Instructors provided a

specific reminder to the students enrolled in the Course of the requirement to complete the Assignment independently and without external assistance. The reminder read:

It has been brought to our attention that there might have been cases of academic misconduct on our assignments. Note that our assignments are open book; this means you are allowed to use the official course material (i.e. your own lecture and tutorial notes, notes posted by instructors and TAs, and the textbook) while you work on the assignments. Also the use of a basic calculator is allowed. Unless otherwise indicated, other than those aids listed above, no aid (online or offline) is allowed.

While, in principle, you may study together (which is difficult to do during this time) and discuss the course contents (i.e. the topics/theory/techniques/tools you learn in the course), **assignments must be done independently**. In particular, sharing solutions (in part or full) or ideas of solutions with each other in any way is not allowed. Needless to say, posting/finding solutions (in full or part) in social media groups (e.g. Facebook, Whatsapp, etc.) is not allowed. The solutions you submit for your assignments must be the result of your work only and no one else's. This is to assure fairness, so that students who work hard are not at a disadvantage.

If we become aware of academic misconduct, we will have no choice but to report those involved/responsible (including those who facilitate cheating for others) to the University. Consequences for violation of the Code of Behaviour on Academic Matters are very serious. On the low end, possible sanctions can be things like 0 on the assignment, 0 on the course, and notation on student's academic record for a certain period of time. On the more severe end, they can result in student's expulsion from the University.

Since each of our assignments is worth more than 10% of the final course grade, the cases will likely go to at least the level of the Dean of the Faculty of Arts and Science. Please don't put us in a situation that we feel obliged to start a procedure that is unpleasant for everyone involved (and may result in serious consequences for the student). If it is not clear to you what may constitute academic misconduct in the course, before you commit it, ask the instructors. Saying "I didn't know that was a violation" is not a legitimate excuse.

20. Both the Student and Mr. C submitted their answers to the Assignment on June 8, 2020.

The Instructors noted that their answers to Question 5 of the Assignment were “virtually identical”. Specifically, as set out in the Eskandari Affidavit:

Both students used the same words and mathematical expressions in their answers; the only difference is that [the Student] used the word “that”, whereas [Mr. C] appears to have used the word “test”. While questions in introductory mathematics courses often have standard solutions, it is extremely unlikely that the presentation of any two solutions (*i.e.* the words and mathematical expressions) would be almost identical in general and for Question 5 in particular. No other student submitted an answer to Question 5 that had the same degree of similarity as between [the Student]’s and [Mr. C]’s answers. Given the number and degree of similarities between the two answers, it was highly unlikely that these similarities were coincidental.

21. The Eskandari Affidavit attaches copies of both the Student's and Mr. C's answers to Question 5 of the Assignment. These copies bear out the similarity of these two answers as described above. In particular, it is notable that both answers contain an explanatory sentence as well as mathematical notations and a small graph. The sentence reads "by horizontal find that the function graph is one-to-one so  $f$  is invertible on its domain". We agree with Mr. Eskandari's observation that, in Mr. C's handwriting, it is unclear whether the word that he has written is "that" or "test".

22. Mr. Eskandari goes on to state that he met with the Student via Zoom on July 3, 2020 to discuss his concern that she had committed academic misconduct in providing her answers to the Assignment. The contents of this meeting were, quite properly, not placed in evidence before us.

23. The Provost also provided the evidence of Obianuju Umenyi, an Academic Integrity Specialist with the Office of Student Academic Integrity in the Faculty of Arts and Science. In her affidavit, Ms. Umenyi explains that she had been assigned to investigate allegations that a number of students had committed academic offences in providing their answers to the Assignment, including both the Student and Mr. C.

24. On March 2, 2021 there was a Zoom meeting, attended by Ms. Umenyi, between Mr. C and Professor Nicholas Rule, the Dean's Designate. In that meeting, Mr. C admitted that he had viewed the answer to Question 5 of the Assignment on a website called Chegg.com, and that he had paid for a Chegg.com account to access the answer. Mr. C also acknowledged that he had collaborated with another student in the Course in preparing his answers to the Assignment but claimed not to remember the identity of the student that he had collaborated with.

25. The Umenyi Affidavit attaches digital images of the answers that Mr. C provided to the Assignment. It also attaches information obtained from the administrators of the Chegg.com website, which show that a question identical to Question 5 of the Assignment had been posted to the website, and that a solution to that question had also been posted on the website (the “Chegg Solution”). Significantly, the answer that Mr. C provided to Question 5 of the Assignment was identical to the Chegg Solution, which included the phrase: “by horizontal find that the function graph is one-to-one so  $f$  is invertible on its domain”.

26. Indeed, Mr. C’s answers appears to be a digital image of the Chegg Solution as printed on plain paper or viewed on a computer screen. This answer contrasted with Mr. C’s answers to the remaining questions of the Assignment, all of which were apparently written on graph paper in a spiral 3 hole notebook. Even without his admission to the Dean’s Designate, it seems clear that Mr. C copied his answer to Question 5 of the Assignment directly from the Chegg.com website.

27. The Umenyi Affidavit goes on to explain that, in addition to the information provided above concerning Mr. C, the University requested that the website administrators for Chegg.com provide any evidence of the use of their website involving the Student’s name or the email address associated with the ROSI Account. No information was received from the website administrators in response to this request.

28. Mr. Centa submitted that this response demonstrates only that the Student did not access the website using her own name or the ROSI Account, but it does not eliminate the possibility that she had accessed the Chegg Solution under another name or using a different email address. We agree that this is a reasonable conclusion that can be drawn from this evidence.

29. The panel deliberated to consider all of the evidence summarized above. We concluded that the Student had either copied her answer to Question 5 of the Assignment directly from the Chegg Solution, or she had obtained and copied her answer from Mr. C's answer (which was, on his own admission, a copy of the Chegg Solution).

30. In our view, the Provost has established on a balance of probabilities that the Student obtained unauthorized assistance with Question 5 of the Assignment, and also knowingly represented the work of another as her own work. We have reached these conclusions without receiving any evidence that definitively establishes whether the Student obtained her answer directly from the website or indirectly from Mr. C.

31. On this issue, Assistant Discipline Counsel pointed to two decisions of this Tribunal, namely the case of the *University of Toronto and S.K.* (Case 595, October 12, 2010) and the case of the *University of Toronto and Ms. B.* (Case No. 2003/04-1, April 7, 2004). In his submission, these two cases demonstrate that the Provost is not required to definitively prove the method by which a student has committed the offences of unauthorized assistance or plagiarism, as long as the required elements of these offences are made out.

32. We found the case of Ms. B particularly helpful on this point. In that case, the accused student was found to have used unauthorized assistance and to have committed plagiarism in an examination by using content copied word for word from a website. The evidence before the Tribunal in that case did not establish whether the content had been brought into the exam room through study notes, or whether the student had found a means of accessing the website directly during the exam. In considering this scenario, the Tribunal wrote:

We are therefore left with the evidence of the website and the notes and the examination. The examination was copied from one or both of the other two. We don't know how Ms. B. accessed

the website or the notes during the period of the test. We do know that she did so as there is no other explanation for how the material was reproduced. We find that the University has provided clear and convincing evidence that Ms. B. violated the Code. We find her guilty of the offences set out in B.I.1(b) and (d) of the Code.

33. In this case, we found that the evidence of the message that the Instructors sent to all of the students in the Course on June 4, 2020, in which they made it clear that the students were to prepare their answers to the Assignment independently, significantly diminishes the likelihood that the Student's actions in obtaining assistance with her answer to Question 5 and passing the answer that she obtained off as her own were inadvertent. Like the Tribunal in the case of Ms. B, this Panel is persuaded that the answer provided by the Student to Question 5 of the Assignment reflects both unauthorized assistance and plagiarism, and for that reason we entered a conviction on both Charge 1 and Charge 2.

34. Before we leave the question of liability, we note that there is one piece of evidence that we determined that we should expressly exclude from our consideration of the Student's guilt. Specifically, one of the exhibits to the Eskandari Affidavit contains a printout of an email exchange between the Student and Mr. Eskandari that took place beginning on June 15, 2020.

35. In the initiating message of that exchange, Mr. Eskandari communicated to the Student that he believed that he had "strong evidence" that she had cheated in providing her responses to the Assignment, and asked her to meet with him to discuss the matter. Subsequent exchanges show attempts to schedule the requested meeting, concluding with Mr. Eskandari asking the Student whether she admitted having committed an academic offence in submitting her answer to Question 5 of the Assignment. In response to this question the Student appears to make certain admissions and provides certain potentially mitigating information.

36. In reviewing this exchange, we were concerned that its contents, and particularly the Student's final response to Mr. Eskandari, might constitute a student's statement made to an instructor in the course of an initial meeting to discuss a potential academic offence. Paragraph 2 of section C.i.(a) of the Code expressly requires that:

Where an instructor has reasonable grounds to believe that an academic offence has been committed by a student, the instructor shall so inform the student immediately after learning of the act or conduct complained of, giving reasons, and invite the student to discuss the matter. Nothing the student says in such a discussion may be used or receivable in evidence against the student.

37. In considering this email exchange, we decided that it did contain a student's statement within the meaning of this provision. Given the state of the COVID-19 pandemic at the time, the Assignment was administered online and students were likely not easily able to meet with the Instructors in person. Communications that might normally have occurred in face-to-face meetings were therefore shifted, in whole or in part, into other forms of online communication, including into email messages.

38. In our view, this provision of the Code is intended to afford a zone of privacy to initial meetings between students and instructors where concerns are outlined by the instructor and the student provides an initial response to those concerns. This zone of privacy is, we believe, provided by the Code in order to encourage student candour as well as the early and informal resolution of academic integrity concerns. On the facts of this case, and in particular in light of Mr. Eskandari's pointed question to the Student regarding whether she had committed an academic offence in providing her answer to Question 5 of the Assignment, we find that this email exchange formed part of the required initial dialogue, which later continued in the meeting held over Zoom on July 3, 2020.

39. For that reason, we have expressly excluded the contents of this email exchange from our consideration of the Student's guilt. In our view, the Provost's remaining evidence establishes, to the required standard of proof, that the Student is guilty of both Charge 1 and Charge 2.

40. In light of our findings on the first and second charges, the Provost withdrew the third charge.

#### **E. Sanction**

41. The Provost sought an order imposing the following sanctions on the Student:

- (a) a final grade of zero in MAT135H1F (20205);
- (b) a suspension from the University for two years from the date of the order; and
- (c) a notation of the sanction on her academic record and transcript for three years from the date of the order.

42. Assistant Discipline Counsel submitted a book of authorities, including a chart summarizing the sanctions imposed in the cases submitted. We found that these authorities provided a helpful summary of the range of sanctions that are normally imposed by the Tribunal in cases involving unauthorized assistance and plagiarism.

43. We are conscious that the Tribunal, in determining the appropriate sanction in a given case, should generally consider the factors set out in the decision of the *University of Toronto v. Mr. C.* (Case No. 1976/77-3, November 5, 1976), namely (a) the character of the person charged; (b) the likelihood of a repetition of the offence; (c) the nature of the offence committed; (d) any extenuating circumstances surrounding the commission of the offence; (e) the detriment to the University occasioned by the offence; and (f) the need to deter others from committing a similar offence.

44. As we discussed earlier in these reasons, however, the Student did not attend the hearing or seek to tender any evidence in the discipline process. There was thus no evidence before us of the Student's character, any possible explanation for the offences or any mitigating circumstances that might exist. There was no evidence before us as to whether the Student had any prior record of academic offences, and so we proceeded on the assumption that these were the Student's first offences.

45. Cases such as the *University of Toronto and G.Z* (Case No. 1004, February 26, 2020), the *University of Toronto and Y.Y* (Case No. 851, March 1, 2017 (Sanction)) and the *University of Toronto and Q.J. L* (Case No. 914, February 18, 2018) show that for students with no prior offences, a conviction for unauthorized assistance and/or plagiarism invariably results in a mark of 0 in the affected course. The cases tendered by Assistant Discipline Counsel likewise show that a suspension of 2 to 3 years, and a notation for 3 to 4 years are generally imposed in addition to the mark of 0. We were therefore satisfied that the sanctions proposed by the Provost were proportional to those that have been awarded in similar cases.

46. We were not provided with the details of the sanctions that Mr. C received for these same offences. Assistant Discipline Counsel submitted that Mr. C's case had been dealt with entirely through the more informal procedures set out in section C.i.(a) of the Code, referred to as the "Divisional Procedures". The Code expressly provides that offences that are addressed under the Divisional Procedures are subject to distinct and generally less severe sanctions as set out in section C.i.(b) of the Code, titled "Divisional Sanctions". We accepted this submission and based our decision on sanction purely on the Tribunal precedents that were provided to us.

47. We did, however, modify one aspect of the requested sanctions as we were concerned that, given the timing of this hearing, a full two-year suspension would prohibit the Student from enrolling in courses for both the first and the second term of the 2023-2024 academic year. That aspect of the sanction therefore had the potential to have a harsher effect than we intended, particularly given that the Initial Hearing was held in December of 2021. We decided that the Student's suspension should end on December 31, 2023.

48. At the conclusion of the hearing, and for the reasons outlined above, we signed an order imposing the following sanctions on the Student:

- a) a final grade of zero in MAT135H1F (20205);
- b) a suspension from the University from the date of the order to December 31, 2023;
- c) a notation of the sanction on her academic record and transcript for three years from the date of the order; and
- d) 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.

Dated at Toronto, this 22<sup>nd</sup> day of February, 2022.

Original signed by: \_\_\_\_\_

Ms. Alexandra Clark, Chair  
On behalf of the Panel