

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on November 16, 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

BETWEEN:

UNIVERSITY OF TORONTO

- and -

J [REDACTED] L [REDACTED]

REASONS FOR DECISION

Hearing Date: May 3, 2022, via Zoom

Members of the Panel:

Ms. Sabrina A. Bandali, Chair
Professor Alex Koo, Faculty Panel Member
Mr. Branden Cave, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
Mr. William Webb, Co-Counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary:

Ms. Krista Kennedy, Administrative Clerk & Hearings Secretary, Appeals, Discipline & Faculty Grievances

Not in Attendance:

Mr. J [REDACTED] L [REDACTED]

Introduction

1. The Trial Division of the University Tribunal was convened on May 3, 2022 to consider charges brought by the University of Toronto (the "University") against J■■■■ L■■■■ (the "Student") under the *University of Toronto Code of Behaviour on Academic Matters, 1995* (the "Code").

Preliminary Issue: Proceeding in the Absence of the Student

2. The hearing was scheduled to commence at 9:45 a.m. The Panel waited until 10:05 a.m. before commencing the hearing. The Student did not appear.

3. The jurisdiction for proceeding in the absence of the Student is set out in the relevant legislation and procedural rules. Pursuant to sections 6 and 7 of the *Statutory Powers Procedure Act* (the "Act") and Rule 17 of the *University Tribunal Rules of Practice and Procedure* (the "Rules"), a Tribunal may proceed in the absence of a party provided that reasonable notice of an oral hearing has been given to the party in accordance with the Act. Where a party does not attend the hearing and reasonable notice has been given, a party is not entitled to further notice.

4. Pursuant to Rule 9, a Notice of Hearing may be served on the Student by various means, including by: sending a copy of the document by courier to the Student's mailing address contained in the Repository of Student Information ("ROSI") or emailing a copy of the document to the Student's email address in ROSI. The University's *Policy on Official Correspondence with Students* expressly states that students are responsible for maintaining a current and valid postal address and email account on ROSI. Students are expected to monitor and retrieve all mail, including emails, on a frequent and consistent basis.

5. The University requested that the Panel proceed in the absence of the Student. For the reasons that follow, the Panel granted this request.

6. In support of its request, the University filed three affidavits:

- i. The Affidavit of Kimberly Blake, legal assistant at the law firm Paliare Roland Rosenberg Rothstein LLP (the "Blake Affidavit");
- ii. The Affidavit of Samanthe Huang, Administrative Assistant with the Appeals, Discipline and Faculty Grievances Office ("ADFG Office") of the University (the "Huang Affidavit"); and
- iii. The Affidavit of Andrew Wagg, an Incident Report Architect at Information Security, Information Technology Services at the University (the "Wagg Affidavit").

7. The Blake Affidavit confirmed that on January 18, 2021 the Student responded by email to correspondence from Professor Sian Patterson, the instructor for BCH210H1 (Biochemistry I) (the "Course"), about the academic integrity matters at issue, but did not subsequently respond to requests made between June to July 2021 to schedule a meeting between the Student and the Dean's Designate for Academic Integrity to discuss the allegations. Via email correspondence, a meeting was scheduled for July 27, 2021 and then rescheduled for August 18, 2021. The Student did not reply to these emails or attend these meetings. The Student was advised by email on September 2, 2021 that the matter was being forwarded to the Vice-Provost with the recommendation that charges be laid.

8. The Huang Affidavit confirmed that a letter outlining the Charges was served on the Student by email on November 16, 2021, and that the Student was served with a Notice of Electronic Hearing on April 8, 2022. That Notice of Electronic Hearing indicated that a hearing would be scheduled for May 3, 2022 at 9:45 a.m., on the Zoom videoconference platform. The Student was provided with the necessary information to access the videoconference.

9. The Blake Affidavit further described various efforts by Ms. Lie to communicate with the Student by email between January and April 2022, including to introduce herself,

provide disclosure, and schedule a hearing date. Mr. Webb emailed the Student a secure link to a copy of the affidavit of Professor Patterson on April 19, 2022.

10. All of these emails, as well as emails sent by others whose affidavits form part of the University's Book of Notice and Service, were sent to the Student's email address in ROSI, and therefore met the requirements for service pursuant to Rule 9. The Wagg Affidavit confirmed that the last time someone accessed the email account of the Student was on April 25, 2022 at 5:27 p.m., local Toronto time.

11. Finally, the Blake Affidavit also confirmed that Ms. Blake attempted to contact the Student by telephone on April 26, 2022 at the telephone number contained in ROSI, and that a package containing, among other things, copies of the Notice of Electronic Hearing and Charges was couriered to the Student's physical address in ROSI on April 29, 2022.

12. In light of this evidence, the Panel was satisfied that the Student received the Notice of Electronic Hearing advising him that the hearing was scheduled for May 3, 2022, and that reasonable notice had been provided in accordance with the Rules and the Act. The affidavit evidence shows that service of the Disclosure Brief was effected on February 1, 2022; service of the Notice of Electronic Hearing was effected on April 8, 2022; and service of the Affidavit evidence was effected on April 19, 2022. The Panel further noted that someone had accessed the Student's email after the service of these materials, and yet the Student made no effort to follow up or make contact. Given the Student's failure to respond to any communications from counsel for the University despite reasonable notice of the charges and of the Hearing being provided, the Panel determined that there was no reason not to proceed in the absence of the Student in accordance with section 7(3) of the Act. Accordingly, the Panel proceeded to hear the case on its merits in the absence of the Student.

The Charges

13. The charges against the Student (the "Charges") consist of the following six allegations:

- i. On or about November 2, 2020 the Student knowingly represented as his own an idea or expression of an idea or work of another in an assignment (Assignment 2) that he submitted in the Course, contrary to section B.I.1(d) of the *Code*.
- ii. In the alternative, on or about November 2, 2020, the Student knowingly obtained unauthorized assistance in connection with an assignment (Assignment 2) which he submitted in the Course, contrary to section B.I.1(b) of the *Code*.
- iii. In the further alternative, on or about November 2, 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 an assignment (Assignment 2) which he submitted in the Course, contrary to section B.I.3(b) of the *Code*.
- iv. On or about November 28, 2020 the Student knowingly represented as his own an idea or expression of an idea or work of another in an assignment (Assignment 3) that he submitted in the Course, contrary to section B.I.1(d) of the *Code*.
- v. In the alternative, on or about November 28, 2020, the Student knowingly obtained unauthorized assistance in connection with an assignment (Assignment 3) which he submitted in the Course, contrary to section B.I.1(b) of the *Code*.
- vi. In the further alternative, on or about November 28, 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 an assignment (Assignment 3) which he submitted in the Course, contrary to section B.I.3(b) of the *Code*.

14. Counsel for the University advised that if a finding of guilt was made on allegations (i) and (iv), the other allegations would be withdrawn.
15. Detailed particulars in support of the allegations were set out in the Charges.

The Evidence

16. The Tribunal received affidavit evidence from Professor Patterson, Associate Professor, Teaching Stream, in the Department of Biochemistry at the University, which was supplemented by oral evidence.
17. Professor Patterson explained that the Course was a second-year online course that intended to provide students with a fundamental understanding of how proteins, lipids and carbohydrates are essential for cellular structure and function. Among other means of evaluation, students were required to complete three assignments, each worth 15%. These assignments did not require students to do original research but instead required them to interpret and summarize research that has already been done, appropriately citing and referring to the journal articles or other such primary sources upon which the students relied.
18. The syllabus for the Course contained an academic integrity warning, which stated that there was a zero tolerance policy for plagiarism, that all academic work in the Course must adhere to the Code, and that students were required to submit their assignments to Turnitin.com for detection of possible plagiarism. Turnitin is a database used to detect plagiarism by comparing submitted work with documents contained online and in the Turnitin database.
19. The Course also utilized Quercus, the University's online teaching and learning system, as a communications tool on which various resources were posted for students. Among these were links that helped explain the Council of Science Editors (CSE) style that students were required to use for citations.

20. Assignment #2 was due on November 2, 2020. The assignment instructions also contained an academic integrity warning that reminded students that (i) they must complete the assignment independently, (ii) they are responsible for maintaining academic integrity in the Course, (iii) they must reference any primary sources of information using the required CSE citation style, and (iv) all submissions will be screened using Turnitin.com.

21. The Student submitted his Assignment #2 on November 2, 2020. It was submitted to Turnitin.com, which indicated a 38% similarity between the text of the assignment and other sources. Professor Patterson confirmed that there were passages in the assignment that were taken verbatim or nearly verbatim from sources, including articles and websites, without proper attribution. These included the following articles:

- i. Ou et al. (2021). Characterization of spike glycoprotein of SARS-CoV-2 on virus entry and its immune cross-reactivity with SARS-CoV. *Nature Communications*, 11.
- ii. Prabakaran et al. (2004). A model of the ACE2 structure and function as a SARS-CoV receptor. *Biochem Biophys Res Commun*, 314(1):235-241.
- iii. Sun et al. (2020). Mass Spectrometry Analysis of Newly Emerging Coronavirus HCoV-19 Spike Protein and Human ACE2 Reveals Camouflaging Glycans and Unique Post-Translational Modifications. *Engineering (Beijing)*, 7(10), 1441-1451.
- iv. UniProtKB. (2003). P25192 (SPIKE_CVBLY). Available online: <https://www.uniprot.org/uniprot/P25192>.

22. Professor Patterson detailed the concerns she had about the Student's use and/or non-attribution of content from each of these sources in Assignment #2, including the use of verbatim or nearly verbatim passages without proper attribution or indication of

quotations (e.g., a lack of quotation marks around the copied text), and a failure to attribute ideas through accurate in-text citations. The affidavit included a detailed comparison chart identifying the impugned passages from Assignment #2 and the alleged source of the idea or text copied verbatim or nearly verbatim.

23. On November 16, 2020, Professor Patterson emailed the Student asking for him to meet with her to discuss some concerns related to Assignment #2. The Student did not respond.

24. Assignment #3 was due on November 30, 2020. The instructions for the assignment contained the same academic integrity warning as Assignment #2.

25. The Student submitted his Assignment #3 on November 28, 2020. It was submitted to Turnitin.com, which indicated a 45% similarity between the text of the assignment and other sources. Professor Patterson confirmed that there were passages in the assignment that were taken verbatim or nearly verbatim from sources, including articles and websites, without proper attribution. These included the following articles:

- i. PubChem. L-Arginine biosynthesis I (via L-ornithine). Available online:
https://pubchem.ncbi.nlm.nih.gov/pathway/PlantCyc:RMULTIFLORA_ARGSYN-PWY).
- ii. PubChem. Arginine. Available online:
<https://pubchem.ncbi.nlm.nih.gov/compound/Arginine>.
- iii. McGee et al. (2013). The ornithine effect in peptide cation dissociation". *J Mass Spectrom*, 48(7): 856–861.
- iv. Miyake et al., (2014). Randomised controlled trial of the effects of L-ornithine on stress markers and sleep quality in healthy workers. *Nutr J.*, 13: 53.

- v. University of Arizona, Department of Biochemistry and Molecular Biophysics. Arginine R (Arg). Available online: http://www.biology.arizona.edu/biochemistry/problem_sets/aa/Arginine.html.

26. Professor Patterson detailed the concerns she had about the Student's use and/or non-attribution of content from each of these sources in Assignment #3, including the use of verbatim or nearly verbatim passages without proper attribution or indication of quotations (e.g., a lack of quotation marks around the copied text), and a failure to attribute ideas through accurate in-text citations or the list of references. The affidavit included a detailed comparison chart identifying the impugned passages from Assignment #3 and the alleged source of the idea or text copied verbatim or nearly verbatim. In one case, Professor Patterson observed that certain ideas may also have been misattributed to a different source.

27. On December 7, 2020, Professor Patterson emailed the Student asking for him to meet with her to discuss some concerns related to Assignment #3 and referencing the Student's lack of response to her email about her concerns related to Assignment #2. Professor Patterson sent a follow up email to the Student on December 9, 2020 in which she warned that if the Student did not respond by December 11, 2020, she would "forward on" the case based on the requirements of the Code. The Student did not respond to this email.

28. On January 18, 2021, the Student emailed Professor Patterson from his email address contained in ROSI stating:

Unfortunately, I did not check my mailles [sic] for a while and did not expect to receive such an important email as well. However, I realized my score for BCHM210 was displayed as NGA. I searched the mailbox for a clue and just saw your important email asking me to meet you over zoom regarding an issue about my Assignment #3!

I really appreciate your email and sorry for the delay for the email review.

I am pleased to have an interview with you about the assignment.

I am following the email response from you!

29. Professor Patterson advised the Student by reply email that the case had already been forwarded to the Student Academic Integrity ("SAI") office. She advised the Student that the SAI office would contact him and that he should therefore make sure he checks his email regularly and reply to the SAI promptly.

30. The record did not disclose any further correspondence from the Student.

31. The Student did not attend the hearing but was deemed to deny the Charges.

Decision of the Tribunal on the Charges

32. The Panel deliberated to consider the evidence summarized above.

33. The onus is on the University to establish on the balance of probabilities, using clear and convincing evidence, that the academic offence charged has been committed by the Student. In the present case, the academic offence charged requires the University to show that the Student "knowingly" represented as his own an idea or expression of an idea and/or the work of another. The requirement that the Student act "knowingly" is made out if the Student ought to reasonably have known that he represented as his own an idea or expression of an idea and/or the work of another.

34. In the instant case, the Panel found that the course materials clearly articulated the academic integrity expectations for the assignments in question. The assignments did not require students to conduct original research but instead required them to review and refer as appropriate to the sources of information upon which they relied. The nature of the assignments underscores the centrality of academic integrity and proper citation use.

35. The Panel accepted Professor Patterson's evidence that her concerns were not only based on the highlighting of similar content in the Turnitin.com report but were based on her own review of the Student's work and the relevant sources. The Panel reviewed the two assignments submitted by the Student, the alleged source articles, and Professor Patterson's comparison charts.

36. Following deliberation and based on the oral and affidavit evidence, including the documents in the University's Book of Documents (re: Finding of Offence), the Panel concluded there was clear and convincing evidence, on a balance of probabilities, that the Student knowingly represented as his own an idea or expression of an idea or work of another in both Assignments #2 and #3 that he submitted in the Course, contrary to section BI.1(d) of the Code. On a balance of probabilities, the Student knew or reasonably ought to have known that the verbatim or nearly verbatim copying of passages, without the use of quotation marks as appropriate, and without accurate in-text citation and inclusion of the sources in each assignment's list of references, was plagiarism.

37. As the Panel found the Student guilty of charges (i) and (iv), the University withdrew the other charges.

Penalty

38. The University sought the following penalties:

- i. a final grade of zero in BCH210H1;
- ii. a suspension from the University from the date of the Tribunal's order until August 31, 2024; and
- iii. a notation of the offence on the Student's academic record and transcript from the date of the Tribunal's order until August 31, 2025.

39. The University also requested 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.

40. The University introduced no additional evidence in support of the sanctions it sought. Counsel for the University made a number of submissions and provided a summary of relevant cases.

41. In support of the proposed penalties, Counsel for the University referred the Panel to the Provost's Guidance on Sanction, contained in Appendix C to the Code ("Sanctions Guidance"). While not binding, students' expectations of what sanctions to expect are informed by the Sanctions Guidance, which contemplates a suspension of two years for any offence involving academic dishonesty where a student has not committed a prior offence, but three or more years where the student has committed a prior offence.

42. Here, while the Student had committed no prior offences, he was found to have committed two offences, thereby justifying, in the University's submission, a suspension of more than two years. Counsel for the University noted, however, that the suspension proposed was less than two years and four months, which would allow the Student to register for classes in Fall 2024. The proposed notation of the offence reflected the minimum proposed in the Sanctions Guidance, namely one year longer than the proposed period of suspension.

Decision of the Tribunal on Penalty

43. In determining the appropriate penalties to impose, the Panel considered the factors and principles relevant to sanction set out by this Tribunal in *University of Toronto and Mr. C* (Case No. 1976/77-3, November 5, 1976), namely the character of the Student, the likelihood of repetition of the offence, the nature of the offence committed, any extenuating circumstances surrounding the commission of the offence, the detriment to the University occasioned by the offence, and the need to deter others from committing similar offences (page 12).

44. In the present case, little character evidence was available to the Panel, and therefore this was on the whole neither an aggravating nor mitigating factor. The Panel noted, however, that the Student made no effort to engage with the discipline process.

45. Although two offences occurred, given the close proximity in time of the first to the second offence, the Panel considered these to be more akin to concurring offences rather than indicative that repetition of the offences was likely.

46. The nature of the offence was serious; students enrolled in the Course were made reasonably aware of the Code in a number of ways, and the nature of the assignments focused on the skill of proper academic citation and the importance of academic integrity.

47. There was no evidence of extenuating circumstances.

48. The Panel considered the serious nature of the offence, and the need for general deterrence, the latter of which is particularly significant in the context of plagiarism offences and online courses.

49. The determination of an appropriate penalty depends on the assessment of the principles and factors in light of the individual circumstances in this case. There should also be a general consistency in the approach of a Panel to sanction, so that students are treated fairly and equitably. Accordingly, the Panel carefully considered the reasonable range of penalty dispositions as set out in the various authorities put before it by the University.

50. The Panel reviewed eleven cases involving plagiarism. In all cases where there was no prior offence, the sanctions included receiving zero in the course, suspensions of *at least* two years, and a notation of *at least* three years. The Panel noted in particular that although this case concerned two offences, and there was evidence that Professor Patterson reached out to the Student prior to the second offence, there was no evidence that the Student in fact reviewed this correspondence.

51. Having regard to the above and based on its review of similar cases presented by counsel, the Panel agreed that the sanctions proposed by the University are appropriate in the circumstances.

Order

52. At the conclusion of the hearing, the Panel made the following order:

- i. **THAT** the hearing may proceed in the absence of the Student;
- ii. **THAT** the Student is guilty of knowingly representing as his own an idea or expression of an idea or work of another in an assignment (Assignment 2) that he submitted in BCH210H1, contrary to section B.I.1(d) of the *Code*;
- iii. **THAT** the Student is guilty of knowingly representing as his own an idea or expression of an idea or work of another in an assignment (Assignment 3) that he submitted in BCH210H1, contrary to section B.I.1(d) of the *Code*;
- iv. **THAT** the following sanctions be imposed on the Student:
 - (i) a final grade of zero in BCH210H1;
 - (ii) a suspension from the University from the date of the Tribunal's order until August 31, 2024;
 - (iii) a notation of the offence on the Student's academic record and transcript from the date of the Tribunal's order until August 31, 2025.
- v. **THAT** this case shall be reported to the Provost for publication of a notice of the Tribunal's decision and the sanction imposed, with the Student's name withheld.

Dated at Toronto, this 4th day of August, 2022,

Original signed by: _____

Ms. Sabrina A. Bandali, Chair

On behalf of the Panel