

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on February 1, 2024,

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters*, 2019,

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] LJ

REASONS FOR DECISION

Hearing Dates: August 16, November 22, and December 17, 2024, via Zoom

Members of the Panel:

Johanna Braden, Chair
Professor Kevin Wang, Faculty Panel Member
Garrick Burron, Student Panel Member

Appearances:

Tina Lie, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
Chloe Hendrie, Co-Counsel, Paliare Roland Rosenberg Rothstein LLP
Sarah Mackenzie, Student Representative, Downtown Legal Services
Luke Yan, Student Representative, Downtown Legal Services

Hearing Secretary:

Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty Grievances
Samanthe Huang, Quasi-Judicial Coordinator & Hearing Secretary, Office of Appeals, Discipline and Faculty Grievances

In Attendance:

J [REDACTED] LJ

1. A panel of the Trial Division of the University Tribunal (the “Panel”) was convened on August 16, November 22, and December 17, 2024, to consider charges brought by the University of Toronto (the “University”) against J [REDACTED] L [REDACTED] (the “Student”) under the University of Toronto *Code of Behaviour on Academic Matters*, 2019 (the “Code”).
2. The Student attended the hearing and denied that they committed an academic offence. For the reasons explained below, the Panel dismisses all charges against the Student.

The Charges and Particulars

3. The charges and particulars are as follows.
 1. On or about April 27, 2023, you knowingly used or possessed an unauthorized aid, or obtained unauthorized assistance, in the final exam in MGE12H3 (the “Course”), contrary to section B.I.1(b) of the Code.
 2. In the alternative, on or about April 27, 2023, 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 an academic advantage in connection with the final exam in the Course, contrary to section B.I.3(b) of the Code.

Particulars of the offences charged are as follows:

1. At all material times, you were a student enrolled at the University of Toronto Scarborough.
2. In Fall 2022, you enrolled in MGE12H3 (Quantitative Methods in Economics II).
3. Students in the Course were required to complete a final exam worth 35% of their final grades.

4. You deferred your final exam in the Course to Winter 2023.
5. On April 27, 2023, you wrote the final exam in the Course.
6. You attended and wrote the exam.
7. Students were told that they were to turn off and put electronic devices away.
8. At the beginning of the exam, you were found in possession of a smartwatch and notes that were written on your wrist. These were unauthorized aids.
9. You attempted to obtain unauthorized assistance during the exam by having a smartwatch and/or by writing notes on your wrist. You had an intent to commit the offence of obtaining unauthorized assistance in the exam and did or omitted to do something for the purpose of carrying out your intention pursuant to section B.II.2 of the *Code*.
10. By engaging in the foregoing conduct, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain an academic advantage.

The Evidence

4. The evidence included a written Agreed Statement of Facts, as well as testimony from four witnesses, including the Student. While there were some disputed facts, many facts were not controversial.

(a) Background to the Exam

5. The Student was a student at the University of Toronto Scarborough (“UTSC”) at all material times. They had been a student since the fall of 2020, having transferred from Seneca College. The Panel had a copy of the Student’s academic record.

6. In the Fall 2022 term, the Student was enrolled in MGE12: Quantitative Methods in Economics – II (the “Course”), described as the second course in probability and statistics as used in economic analysis. The syllabus for the Course contained the usual warning that academic misconduct would not be tolerated.

7. The final exam for the Course was worth 40% and was a closed-book assessment. The Student wrote their final exam on a deferred basis, meaning the exam written by the Student was actually the final exam used for the Winter 2023 iteration of the Course.

8. The only aid permitted during the exam was a non-programmable calculator. The exam booklet included a Formula Sheet which contained some but not all of the formulas students would be expected to use in solving the exam’s problems.

9. The exam was held in the largest exam room on campus, and over 300 students were present. There was one entry and one exit (other than fire exits).

10. Invigilators gave oral instructions about the exam while students waited outside and entered the exam room. The script that invigilators were given to read from included the following:

• **All electronic devices must be turned off before you enter.**
This includes all kinds of cell phones, smart watches, ear pieces, headphones, etc. You can place them either in the clear plastic bag and put them under your seat or place them with your belongings. Place your belongings in the middle of the room before finding a seat. (emphasis in original)

11. As students were being seated, an invigilator made an announcement. The script that the invigilator was given to read from included the following:

Please pay attention to the **screen which outlines aids allowed and not allowed.**

- **Any and all electronic devices:** cell phones, smart watches, ear pieces, headphones **must be turned off** and put your belongings in the middle of the room before you go to your seat. If you require an electronic device for medical purposes, please identify yourself to an invigilator.

- Make sure you have all the items that you need to write your exam before you take your **seat**. Once you take your seat you won't be able to leave to collect anything from your bags/jackets. (emphasis in original)

12. At the front of the exam room was a screen that displayed a graphic that was titled "IMPORTANT: Please read before starting your exam!" It identified smartwatches as one form of "unauthorized aid" and said "Make sure these are turned off before you enter the exam room. You can place them with your belongings in the middle of the room or place them in the re-sealable plastic bag provided and keep it under your seat." Once the exam started, this graphic would be replaced by the exam timer showing how much time was left in the exam.

13. The Panel heard evidence from Naureen Nizam (the Associate Registrar, Director of Systems & Operations at UTSC) who was present at the exam. She testified that "ideally" students would power down all electronic devices before entering the exam room, but students did not always do so and they were allowed to turn off their devices while seated at their desks in the exam room without penalty. She also explained that students had the option of putting unauthorized aids such as smart watches in plastic bags that would be handed out by invigilators. Students who wanted to use plastic bags would have to request one when they were inside the exam room. They would place the plastic bags under their seat before starting the exam.

(b) Discovery of the Unauthorized Aids

14. The Student testified that they entered the exam room, went straight to their preferred seat near the window and put their pencil case on it, then placed their bag in the center of the room, then returned to the desk. In addition to their pencil case, the Student had other belongings at the desk (smart watch, wallet, student cards, car keys). The Student did not want to leave those items in their bag at the center of the room, and knew they could request a plastic bag to keep under their seat.

15. The Student testified that they asked for a plastic bag from an invigilator, and was told to wait and that they would be handed out. The Student could not identify or describe the invigilator. There were a number of them walking around and the Student was not paying particular attention. The Student took their seat and waited for an invigilator to come back with a plastic bag.

16. Adrian Chan was one of the invigilators present for the exam. He is an experienced invigilator. He testified that prior to the start of the exam, he was walking around the room looking for suspicious behaviours and distributing plastic bags. He did not notice the Student raising their hand or otherwise asking for a plastic bag. He noticed the Student, who had not yet received an exam, writing at their desk (presumably the Student was filling out the Candidate Form). The Student was clearly wearing a black Apple smartwatch on their left wrist. Mr. Chan said he saw the screen, which was showing a clock. He approached the Student and told the Student to take the watch off. He said there was an argument, but he could not recall the details other than he remembers the Student saying, "The exam hasn't started yet, so this is not an academic offence."

17. As the Student removed the smartwatch, Mr. Chan noticed something written on the Student's left wrist that looked like equations. Mr. Chan told the Student to roll their sleeves up. The Student did so, Mr. Chan told the Student the notes were not allowed, and the Student (in Mr. Chan's words) "panicked" and started to scratch at their skin to get the notes off. Mr. Chan raised his hand to get the attention of Ms. Nizam (his supervisor).

18. In their evidence, the Student agreed that they panicked when they noticed the writing on their wrist, because they had forgotten it was there and wanted to get rid of it before the exam started.

19. By the time Ms. Nizam arrived at the Student's desk, Mr. Chan was holding the Student's wrist. He continued to hold the Student's wrist while he took photos. Mr. Chan did not ask for the Student's consent before taking their wrist. He said he held the Student's wrist because the Student was trying to "destroy the evidence" by picking at it, and he wanted to get clear photographs. The Student testified that they were shocked and upset at their wrist being grabbed, and at Mr. Chan's general treatment of them.

20. The Panel was provided with the photos Mr. Chan took of the Student's wrist and lower arm and the writing thereon. He is clearly holding on to the Student's wrist in these photos, as Ms. Nizam stands nearby.

21. Unlike Mr. Chan, Ms. Nizam perceived the Student to be compliant and cooperative. By the time she arrived at the Student's desk, the smartwatch was in the Student's hand and the notes were clearly visible on the Student's wrist. The Student's wallet and pencil

case were on the Student's desk. Ms. Nizam asked the Student to turn off the smartwatch and gave the Student a plastic bag for the watch, pencil case and wallet. Ms. Nizam took the Student to the washroom so the Student could wash the notes off their wrist. Upon returning, the Student added their car keys to the plastic bag and placed the bag under their seat. The Student was then given the exam booklet. Ms. Nizam could not recall if the other students were already writing the exam or not.

22. Ms. Nizam recalled the Student telling her that the notes on their wrist were from studying the night before. Ms. Nizam could not recall the particulars of any other conversation between herself, Mr. Chan and the Student.

23. As agreed by the parties, there were three standard function equations or formulas written on the Student's wrist/lower arm. Formula 1 and Formula 3 were not on the Formula Sheet that was provided to students with the exam, and Formula 2 was on the Formula Sheet. The view of the Course's professor was that Formula 1 was a "helpful and important formula" for the exam, as it was an easier way to solve questions (as compared to the formulas provided on the Formula Sheet). It was something that students were expected to memorize for the final exam.

(c) Events Following the Exam

24. For reasons unexplained at the hearing, there was a delay in referring the Student's case to the Academic Integrity office. The Student saw that their grade for the Course was "GWR", and did not understand what that meant. They had never received such a notation before. When the Student discovered that GWR was "a bad thing", they

reached out to the Academic Integrity office and was told there was no record of an allegation against the Student. Later that same week, the Student received an email from the Academic Integrity office saying there was in fact an allegation that the Student had possessed unauthorized aids in an academic examination.

25. Accordingly, approximately four months passed before the Student was formally advised that their conduct at the exam was being referred for investigation. The Student was very upset to hear this. The exam had been an unpleasant experience for the Student, as they felt they had been embarrassed and shamed in front of hundreds of people. The Student believed this had negatively affected their exam performance, and they had worked to put the experience behind them. The Student took steps to ensure they could write exams at the examination center where there were accommodations for students with disability requirements.

26. The Student had two meetings with Professor Lisa Harvey, the Dean's Designate for Academic Integrity at UTSC. The first was on September 29, 2023, and the second was on October 10, 2023. Others were in attendance, including a note-taker, a support person for the Student, and a member of UTSC staff assisting with translation.

27. In both meetings, the Student was emotional, upset and occasionally confrontational. The Student admitted to having the smartwatch and notes on their wrist, but consistently denied committing any academic offence.

Decision of the Tribunal on Charges

28. The onus is on the University to establish on the balance of probabilities, using clear and convincing evidence, that the Student has committed the academic offences as charged.

(a) Knowing Possession of Unauthorized Aid

29. There is no issue that the Student possessed unauthorized aids in the examination room. The Student wore a smartwatch and had formulas written on their arm. The Student knew those were not permitted.

30. There is also no issue that these unauthorized aids were removed before the examination started. The Student was at their desk and exam books were being distributed, but the Student had not received an exam book and the examination had not yet begun. The narrow but important issue for the Panel was whether the Student possessed the unauthorized aids “in” an academic examination.

31. The University submitted that the aids were possessed “in” an academic examination because the Student was sitting at their desk, awaiting their exam paper, unable to leave their desk or the building. The University submitted this was clearly “an examination setting”, and that the words “in an academic examination” should be interpreted as referring to a physical setting rather than a temporal one.

32. The Student submitted that “in an academic examination” should be interpreted as “during” an exam, and refers to the time between the commencement and end of the exam. This charge should be dismissed because the exam had not yet started when the Student’s unauthorized aids were detected and removed. The Student argued that the

University's interpretation of "in an academic examination" was impermissibly vague and subjective. For example, how does the standard of "sitting in your seat, waiting for an exam booklet" apply to exams written at home?

33. The Panel was not presented with any case directly on point. The case closest on the facts was *University of Toronto and G.Z.*, (Case No. 1004, February 26, 2020) ("G.Z."), where a student arrived at an exam seven minutes after the exam had already started. When the invigilator walked over to explain the exam instructions, she noticed handwriting on the student's palm that turned out to be "very helpful information" that students were not allowed to possess in written form. The student in G.Z. did not attend the hearing or make submissions, and the reasons for decision give no indication that the panel was asked to consider whether the student was "in" an exam when he was found in possession of an unauthorized aid. The heart of the decision is at paragraph 20 and reads:

The Tribunal considered all the evidence in the hearing and concluded that, on the balance of probabilities, the Student was in possession of an unauthorized aid **during the April 12, 2017 final exam** (emphasis added).

34. Accordingly, the G.Z. decision does not assist the Panel in deciding the issue of whether the Student possessed unauthorized aids "in" an academic examination given that the exam the Student was writing was not yet in progress.

35. Neither party's interpretation of the Code is perfect. The Student's interpretation ignores that the Code does not prohibit unauthorized aids "during" an exam, it prohibits them "in" an exam. On the other hand, the University's interpretation lacks the bright line that ensures the law is as clear and consistent as possible.

36. On balance, the Panel finds that the interpretation urged by the Student is the more reasonable one on these facts. Hundreds of students were writing an exam. They all walked into the room with a variety of unauthorized aids (phones, watches, calculators, notes), and once they were in that room they were given multiple options to ensure those aids were put away in an acceptable manner (a plastic bag at their desk, in a pile of belongings toward the center of the room). Students would be milling about, finding desks, putting away their belongings, obtaining plastic bags, waiting for their exam booklets to be distributed, perhaps even cramming up until the last allowable second. There should be a clear, understandable, enforceable and uniform standard for when unauthorized aids must be put away. The line is not necessarily crossed when a student simply sits down at their seat – this is clear from the evidence of Ms. Nizam and Mr. Chan, both of whom agreed that students sitting in their seats could properly request a plastic bag prior to the commencement of the exam and use it for their belongings.

37. Although students sat down at different times, received plastic bags at different times, and received their examination booklets at different times, the examination began and ended for all students at the same time. The official start of the examination represents an unambiguous and rational point for being “in an academic examination”. The Panel finds on the facts of this case that the Student did not possess unauthorized aids “in an academic examination” because the aids were removed prior to the commencement of the exam, and even prior to the Student receiving their exam booklet.

38. The University submitted that this interpretation was unreasonable in that it would incentivize invigilators to not point out unauthorized aids before exam booklets were handed out. The Panel rejects this submission. Invigilators are present to deter, prevent

and detect academic misconduct. An invigilator who ensures that unauthorized aids are removed prior to the start of an exam has done their job. Nothing in this decision should discourage invigilators from performing their duties before and during exams. Further, as explained below, in many cases students who are caught with unauthorized aids just before the start of an exam may be charged with attempting to possess an unauthorized aid.

(b) Attempting to Possess Unauthorized Aid

39. Section B.ii.2 of the Code provides that “every member who, having an intent to commit an offence under this Code, does or omits to do anything for the purpose of carrying out that intention (other than mere preparation to commit the offence) is guilty of an attempt to commit the offence and liable upon conviction to the same sanctions as if he or she had committed the offence.”

40. Common sense suggests that in many cases this section will apply to a student caught possessing an unauthorized aid in an examination room in the moments before the exam begins. However, as the University acknowledged, this section requires that the Panel be satisfied on the balance of probabilities that the Student had the intent to commit an offence. On the specific facts of this case, the Panel is not persuaded that the Student had the necessary intent.

41. The only direct evidence of the Student’s intent was the Student’s testimony. The University asked the Panel to find the Student’s evidence not credible. In assessing the Student’s credibility, the Panel considered the internal consistency of the Student’s evidence, the effect of any prior inconsistent statements given by the Student, the extent

to which the Student's evidence was consistent with other facts accepted by the Panel, and the inherent logic or plausibility of the evidence. The Panel is aware that the Student has a strong and obvious interest in the outcome of this case. That interest is not necessarily a motive to lie. The Student's undeniable desire to be found not guilty is only a motive to lie if the Student is, in fact, guilty. Innocent students have the same interest in the outcome of the case as guilty ones.

i. The Smartwatch

42. As to the smartwatch, the Panel accepts the Student's evidence that they intended to put the smartwatch in a plastic bag under their seat prior to the start of the exam. The University argued this evidence was not credible, largely because they say that the Student has given two different accounts of their efforts to obtain a plastic bag: one at the Dean's Designate meetings (where the Student claimed to have raised their hand to get the attention of an invigilator) and one at the hearing (when they claimed to have asked an unnamed invigilator for a plastic bag prior to being approached by Mr. Chan). They say the Student invented the second version of events after hearing Mr. Chan's unequivocal testimony that he did not see the Student raise their hand to request a plastic bag prior to the start of the exam, and that the reason he approached the Student was not because he saw the Student's raised hand but because he saw the smartwatch as the Student was writing. The University says the Student's willingness to fabricate this evidence undermines the Student's credibility, and there is no reliable evidence that the Student ever tried or intended to get a plastic bag for their smartwatch.

43. The Panel carefully reviewed the notes from the two Dean's Designate meetings, and does not find any material inconsistency on this point that would damage the Student's credibility. The notes taken at the first Dean's Designate meeting document the following exchange (DD refers to Professor Harvey, the Dean's Designate).

DD: -- so the reason the invigilator came was because you had your hand up?

Student: *pauses* Probably, I can't remember. Lots of students have their hand up because they need aid, I needed something to put it in [referring to devices and plastic bag]. There was another person who was helping. But the peer student came, or maybe someone else came, I don't remember. When they asked me to put off my watch, of course I was going to take off my watch. So when I did that, I pull it up, my sleeve, and I saw. And before even reacting, he grabbed my arm, I didn't consent, and he said *raises voice, holding arm up* YES HERE IS A CHEATER, and I feel so ashamed ... And he didn't even know what is going on. ... And the peer student was walking around asking for plastic bag –

DD: So when invigilator gave you a plastic bag, others were getting a plastic bag too? Or were they already finished –

Student: I'm not sure, lots of people were running around, It was kind of chaos.

44. Later in that same meeting, the Student said: "But if I'm really trying to do something why would I put up my hand with my watch here?" The Student repeated that idea at the second Dean's Designate meeting, saying, "It was not my intention to hide anything, because everyone can see I had my hand up with my smartwatch."

45. In their prior statements, the Student does not clearly indicate that the invigilator who saw their raised hand was someone other than Mr. Chan. But neither did the Student clearly say that it was Mr. Chan. The Student describes the moments before the exam began as a chaotic scene with multiple students trying to get assistance and multiple invigilators there to assist.

46. It is apparent from the notes that the two Dean's Designate meetings were tense, confrontational and emotional. The Student was upset about allegations being made months after the exam, was still angry about how they were treated during the exam, and was suspicious of the process. We do not find that the Student's credibility at this hearing is undermined by the somewhat confusing and disjointed way their statements were given at the two Dean's Designate meetings.

47. The Student's direct evidence at this hearing is consistent with and supported by the surrounding circumstances. The smartwatch was clearly visible to Mr. Chan, and the Student made no effort to conceal it at any point. The Student had other belongings at their desk to put away (pencil case, car keys, wallet), and did in fact put all those belongings away in a plastic bag once the Student received one from Ms. Nizam. This suggests the Student was waiting for a plastic bag when Mr. Chan approached.

48. Mr. Chan recalled the Student "tried to argue with me" when he approached the Student about the smartwatch, but he could not recall details. Mr. Chan perceived that the Student "was angry". This would be consistent with the Student feeling that they were being treated unfairly by Mr. Chan when they were only waiting for a plastic bag for their belongings prior to the start of the examination.

49. On a balance of probabilities, the Panel finds it is more likely than not that the Student did not intend to possess the smartwatch during the exam but rather was waiting for a plastic bag for their various belongings (including the smartwatch).

ii. The Notes

50. The Student testified that they stayed up all night before the exam to study. They did not go to bed. They did not recall if they brushed their teeth and they did not think that they showered. They did not change their clothes. The Student lived alone and the Student studied alone. The Student was experiencing tremendous stress and went to the exam forgetting to remove the formulas they had written on their arm.

51. As to why the Student wrote formulas on their arm, the Student explained this was a coping mechanism they had devised in response to their mental health challenges. The Student vividly and specifically described what they were feeling at the time, and why writing formulas on their arm (as opposed to sheets of paper) was helpful to them. The Student's evidence was detailed, personal and had its own internal logic.

52. The University submitted the Student's evidence was not credible, as their evidence was not corroborated and did not "hang together" in a plausible way. The Panel disagrees.

53. It is true that the Student had no corroborating medical evidence from the relevant time. The Student testified that they had successfully requested a deferral for the final exam for the Course because they were in "a low period". They were unable to access mental health supports from the University in the time leading up to the exam because of the demand for such services. However, on September 8, 2023 (after the exam but before the official investigation into the Student's conduct), the Student attended the University's Health and Wellness Center for psychiatric care.

54. Over the University's objection, the Panel admitted into evidence a letter from Dr. Caitlin McKeever dated August 2, 2024 (the "Medical Letter"). Dr. McKeever has been a

psychiatrist and fellow of the Royal College of Physicians and Surgeons of Canada since 2014. She met the Student for the first time through the University's Health and Wellness Center on August 2, 2024 (more than a year after the exam). The Medical Letter described the Student's "most recent diagnoses" as of August 2, 2024, and explained that symptoms of those disorders can include difficulty regulating emotions, difficulty controlling anger and with interpersonal conflict, and difficulty coping with stressful circumstances that can cause certain physiological responses.

55. The Medical Letter was of limited use. It did not establish what disorders or symptoms (if any) the Student experienced at the time of the exam. It did not connect the events surrounding the exam to the Student's mental health at the time. The Panel admitted this letter as evidence that the Student sought and obtained medical care after the exam, and that the Student's current diagnoses are consistent with the symptoms the Student described having at the relevant time.

56. The best person to give evidence about their mental state at the time of the exam was the Student. The Student gave that evidence in a sincere, detailed, credible way. The Student's insight into their condition allowed the Panel to understand that there could be a benign explanation for what would otherwise be a highly suspicious act (writing formulas on your arm the night before an exam).

57. In light of the Student's evidence, the Panel finds the University did not prove on a balance of probabilities that the Student intended to possess the unauthorized aid of notes on their arm during the exam.

(c) Other Academic Misconduct or Fraud

58. Charge 2 is an alternative charge, alleging that “on or about April 27, 2023, 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 an academic advantage in connection with the final exam in the Course, contrary to section B.I.3(b) of the Code.”

59. Given the Panel’s findings, Charge 2 was not proven by the University on a balance of probabilities.

60. Accordingly, the Tribunal orders that the charges filed against the Student be dismissed.

DATED at Toronto on this 25th date of June 2025

A handwritten signature in black ink, appearing to be 'JH' followed by a series of loops and a final upward stroke.

Johanna Braden, Chair
On behalf of the Panel