THIS EXAMINATION CONSISTS OF 8 PAGES

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

LAW 372

Administrative Law

Section 3

Adjunct Professor Pulleyblank

**TOTAL MARKS**: 100

**TIME ALLOWED:** 3 HOURS 15 MINUTES

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**NOTE:** 1. This is an open book examination, and candidates may refer to any course material, including their text book, cases, and notes.

THIS EXAMINATION CONSISTS OF 1 QUESTION

**LAW 372, Section 3 – Exam**

**QUESTION 1 – 100 Marks**

Relevant statutory provisions are referenced in the exam. Rely only on the fact pattern in this exam question and the course materials to answer the following prompt.

You may assume that I have provided you with all relevant materials. Please use a clear short-form citation when referencing sources (e.g. *Baker*) I have taken some license with the statutory regime, so please do not import any outside knowledge of the statutory scheme at issue.

**Fact Pattern**

You are a lawyer who specializes in administrative law. One day an Allard law student, Mr. Matt Todd, comes to your office. He has recently learned that the President of UBC has accepted a recommendation from the President’s Advisory Committee on Student Discipline (the “Discipline Committee”) and imposed a significant punishment on him for academic misconduct.

Specifically, Mr. Todd had been accused of using “ChatGPT”, an artificial intelligence chatbot, to substantially write his final paper for Law 306, a seminar entitled “Corporate Social Responsibility and the Law”. The Discipline Committee determined, and the President accepted, that Mr. Todd had committed academic misconduct, and specifically plagiarism.

The President imposed the recommended punishment of a mark of zero in Law 306, a suspension from the University for a period of four months, and a permanent ban on using a laptop in any class with a participation component to the final grade.

Mr. Todd adamantly denies using ChatGPT, or any other artificial intelligence service to draft his paper. He says that the paper was entirely his own work. However, he surmised that his paper had been flagged by some ChatGPT detection software.

Mr. Todd had a hearing before the Discipline Committee. Prior to the hearing, Mr. Todd retained a lawyer, Ms. Barbara Ulrich, to assist in his defence. Ms. Ulrich wrote to the Committee chairperson, Mr. Adhish Lal, and demanded to know what ChatGPT detection software had been used. The Chairperson refused to provide this information. Specifically, Mr. Lal responded that:

In order to preserve the effectiveness of UBC’s response to the threat artificial intelligence systems pose to academic integrity, we are unable to share what software is used in detecting cases of suspected plagiarism. We have been made aware by our information technology specialists that there are programs designed to evade detection systems, and sharing what software is used will undermine its effectiveness.

Ms. Ulrich prepared for the hearing before the Discipline Committee. However, in the course of her research for the matter, she learned that a recent amendments to the governing *University Act,* [RSBC 1996] c. 468,had been made forbidding representation. Specifically, s. 62 provides:

**No Representation**

62 No student is entitled to be represented by a lawyer or other legal representative in respect of any discipline matter related to alleged academic misconduct.

Mr. Todd was especially troubled by the inability to be represented at the hearing as he has been diagnosed with a Language Processing Disorder (“LPD”) that makes it difficult for him to process large amounts of spoken language. He has learned to succeed in academic work despite this issue through using advanced note taking software that allows him to take accurate notes of class, which he then studies after class as he has no trouble processing the written word.

Mr. Todd advises that the decision to bar him from using laptops in class is especially devastating, as it will dramatically decrease his ability to succeed in Law School. He cannot imagine having to handwrite his notes. He says prior to the decision he had no idea that such a punishment was even possible, let alone being considered in his case.

Ms. Ulrich was adamant that it was unfair and unconscionable for her to be excluded from the hearing, especially in light of Mr. Todd’s LPD. On the day of the hearing she appeared in the hearing room, but when asked to leave, she did so reluctantly.

At the hearing, Mr. Todd gave oral evidence, as did Mr. Barclay Bulleit, the University’s newly appointed Chief Information Officer for Academic Integrity. Mr. Todd gave brief evidence denying that he had used ChatGPT. Mr. Bulleit, on the other hand, gave long and detailed evidence about his qualifications in detecting plagiarism, and advising that Mr. Todd’s work showed all 10 key indicia of being created using ChatGPT. He refused under brief cross-examination by Mr. Todd to advise what those indicia were, or to say what sort of software was used in detecting plagiarism.

Mr. Todd tried his best to make oral submissions on the law to the Committee. He suggested that it was procedurally unfair for him to not have counsel present, and that denial of representation was a violation of his *Charter* rights. He stressed the difficulties he had with oral evidence and argument. He argued that without disclosure of the program used to detect the alleged plagiarism, or the “indicia” relied on, he could not defend himself. He provided a 2023 peer-reviewed paper entitled “Detecting ChatGPT in Academic Work: False Positives Abound”, by Professor P. Kresamir, which stressed the unreliability of AI detection software at present.

Several days layer, Mr. Todd received the following report from the Discipline Committee:

**REPORT FROM THE PRESIDENT'S ADVISORY COMMITTEE
ON STUDENT DISCIPLINE**

**Mr. Matt TODD
Student # 987654321**

The President's Advisory Committee on Student Discipline (the Discipline Committee) met on April 21, 2023 to consider an allegation of misconduct referred to the Committee on January 10, 2023 by Associate Dean, Academic Affairs, Professor Ryan Kennedy, the delegate of the Dean of the Faculty of Law. Specifically, Mr. Todd was alleged to have substantially plagiarized the paper he submitted in LAW 306, Corporate Responsibility and the Law.

The Committee members present were F. Barnaby, U. Tuck, N. Brisket, R. Millen and the Chair, A. Lal. Mr. Todd was present.

All members concur in this report.

**The Hearing**

Mr. Todd appeared with legal counsel, Ms. Barbara Ulrich. However, pursuant to s. 62 of the *University Act,* it is not open to Mr. Todd to be so represented, and Ms. Ulrich was required to leave.

Mr. Todd advised that he has been diagnosed with a Language Processing Disorder (LPD), which he advises makes it impossible for him to effectively respond without representation in this format of oral hearing. He suggests that proceeding without representation through an oral hearing violates his *Charter* rights protected under s. 15, as it constitutes discrimination on the basis of physical disability. However, the statute is clear that representation is not allowed. Mr. Todd’s complaint lies with the legislature or with the Courts, not with this Committee or with the University’s President.

Mr. Todd denied that he has substantially plagiarized his paper. He stated that he had completed the paper entirely on his own, and had not used ChatGPT or another artificial intelligence service.

Mr. Bulleit, Chief Information Officer for Academic Integrity, gave comprehensive evidence that is consistent with the Committee’s understanding on the reliability of the University’s ability to detect ChatGPT usage in papers. Mr. Bulleit advised that Mr. Todd’s paper showed all 10 key indicia reflecting likely ChatGPT usage.

**Decision**

The Committee finds that it is more likely than not that Mr. Todd used ChatGPT to substantially write his paper for Law 306, and thereby violated the University’s policy on academic integrity. The Committee is of the view that the chances of Mr. Todd’s paper showing all 10 key indicia is vanishingly small. These indicia are robust. Several members of the Committee have recently studied the technology UBC is using to police plagiarism, and have found it to be cutting edge and highly reliable, which is consistent with Mr. Bulleit’s evidence.

**Punishment**

Usage of ChatGPT poses a fundamental danger to academic integrity of the University of British Columbia, and indeed all educational institutions worldwide. It is imperative that its usage be dealt with swiftly and firmly. Consequently, a significant punishment is called for.

We recommend the following to the President:

Mr. Todd will receive a mark of zero in respect of Law 306.

Mr. Todd will be suspended from attending the University of British Columbia for a period of four months.

Mr. Todd will be barred from using a computer of any kind in any class where there is a participation component to the grade.

On the last point, we note the fact is that Mr. Todd has shown a willingness to use ChatGPT to cheat. The Committee is gravely concerned that if he continues to have access to the AI software he will use it to boost his class participation marks. The academic community needs to hear student’s own thoughts, not regurgitations of a language predicting algorithm. Without this condition, we think expulsion would be needed.

We have taken into account the fact that Mr. Todd’s LPD means he relies on his laptop perhaps more than some other students. However, any concern around accommodating his condition is a matter he can take up with a Human Rights Tribunal, as that is their exclusive jurisdiction and not the jurisdiction of this body.

The President of UBC, Frank Ronci, accepted the report and the next day instituted the punishment recommended. Mr. Todd was afforded no opportunity to make submissions with respect to the contents of the Committee’s report prior to Mr. Ronci’s decision. After a request by Mr. Todd for the Present’s own reasons in the matter, he received a short letter stating that the President accepts and adopts the report of the Discipline Committee as his reasons.

Several days after the decision, Ms. Ulrich attended a lecture event put on by the Advocate’s Society at the Vancouver Club in Downtown Vancouver. At the event, Mr. Lal, the Chairperson of the Discipline Committee, gave a speech where he spoke of ChatGPT as the single biggest threat universities face. He suggested that the only way to prevent an existential threat to academia was to come down exceptionally hard on anyone suspected of using the technology to cheat. There was alcohol served at the event, and while people were milling around after the lecture Ms. Ulrich overheard Mr. Lal make a troubling statement. Specifically, he said that in his view the risk from artificial intelligence was so high that it would be worth it if a few innocent people were mistakenly punished if it meant that the rest of the school community was adequately frightened away from using ChatGPT.

Ms. Ulrich, who was not drinking, took detailed notes, as she could not believe what she had heard. She told Mr. Todd that she is prepared to file an affidavit detailing Mr. Lal’s speech and his comments afterwards.

Mr. Todd was recommended to you by Ms. Ulrich. She is of the view that she could not represent Mr. Todd on a judicial review application arising from the Discipline Committee process as she may instead have to act as a witness and provide evidence as to what she overheard.

She is however looking into the possibility of receiving relief from the Human Rights Tribunal, and therefore Mr. Todd does not need you to look into that point. Ms. Ulrich does advise however that it appears that the Committee was mistaken to suggest that the Human Rights Tribunal’s jurisdiction over discrimination in schooling would be exclusive, as the Supreme Court of Canada in a case called *Tranchemontagne* conclusively determined that other tribunals have concurrent jurisdiction with the human rights tribunals to address human rights concerns.

After meeting with Mr. Todd, you did some research on the relevant legislation. The *University Act,* a provincial law, governs each of UBC, UVIC, SFU and UNBC. It contemplates that for each University there will an individual occupying the office of the “president”. The powers of the President of each university include:

**Discipline Powers**

**61**   (1)The president has power to suspend a student and to deal summarily with any matter of student discipline.

(2) The president has the discretion to impose such punishment as they deem appropriate in the circumstances in any case of academic misconduct.

You learn in the course of your research that the amendment to preclude legal representation, the new s. 62 (referenced above), is not the only recent change to the *University Act.*

Rather, while the *University Act* had previously contemplated an appeal procedure whereby anyone found to have committed academic misconduct by the Discipline Committee could appeal to the Senate Committee on Student Appeals, this internal appeal option has now been revoked. Now, by virtue of the recent amendments, the legislation includes a privative clause that reads:

60. President’s Determinations Final

The President has exclusive jurisdiction to resolve any question of law or fact that comes before it in respect of student discipline, and any decision of the President on student discipline is final and binding and not open to question or review in any court.

Pursuant to s. 59(1), the President also has the power to establish “the committees the president may consider necessary or advisable”.

As noted above, s. 62 forbids representation in respect of a discipline decision.

There is no statutory right of appeal to the Courts from a decision of the Discipline Committee, nor (as a result of the amendments) is there any right to a rehearing, reconsideration, or any other form of appeal or review.

There are no regulations which apply to this dispute or to the Discipline Committee’s practice or procedure. However, while not a regulation, the President has published online the “Guide to the Discipline Process” (the “Guide”), which was updated shortly before the events at issue. The Guide sets out (among other things not relevant here):

**Notice in Writing**

2. Before imposing any punishment the President shall provide written notice of the nature and form of punishment contemplated, and the facts alleged to support that punishment.

**Form of Hearing**

3. A hearing of the Committee may proceed orally or on the basis of written material.

**Rules of Evidence**

4. The strict rules of evidence do not apply to the Discipline Committee, and the Committee may at its discretion accept evidence that would otherwise be hearsay or inadmissible opinion evidence in a court of law.

No provisions of the *Administrative Tribunals Act* are invoked by the *University Act,* or otherwise apply.

Please prepare a memo analyzing Mr. Todd’s potential arguments on judicial review, and the likelihood of success. For the purposes of this memo you can assume that Ms. Ulrich was correct in her advice about the jurisdiction of the Human Rights Tribunal based on *Tranchemontagne.* Further, as Ms. Ulrich is looking into possible remedies from the Human Rights Tribunal, you do not have to consider this tribunal in your answer. Please note any further information you need to formulate a complete answer.

**END OF EXAMINATION**