UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on November 12, 2012,

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 (the "University")

- AND –

J[redacted] L[redacted] ("JL"), H[redacted] L[redacted] ("HL") and A[redacted] H[redacted] Z[redacted] ("AOZ") (collectively, the "Students")

Hearing Date: July 11, 2014 (Continuation from March 24, 2014)

Panel Members:
Ms. Roslyn M. Tsao, Chair
Professor Markus Bussmann, Faculty Panel Member
Mr. Adel Boulazreg, Student Panel Member

Appearances:
Ms. Lily Harmer, Assistant Discipline Counsel for University, Paliare Roland Barristers
Mr. Samuel Greene, Downtown Legal Services, for the Student JL
Ms. Lucy Gaspini, Manager, Academic Integrity and Affairs, University of Toronto Mississauga
Ms. Catherine Seguin, Senior Lecturer, Management, University of Toronto Mississauga

In Attendance:
Ms. J[redacted] L[redacted] (JL), Student
Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances
Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

Not in Attendance:
Mr. H[redacted] L[redacted] (HL), Student
Ms. A[redacted] H[redacted] Z[redacted] (AOZ), Student
No one appearing for HL and AOZ

CONTINUATION OF HEARING FROM MARCH 24, 2014

1. This Panel's earlier Decision dated May 26, 2014 relating to JL and HL (relating to "use of unauthorized aid" in November 2011 Charges) should be read in conjunction with this decision.

2. The Panel found JL and HL guilty of the November 2011 Charges.

3. The penalty determination for JL and HL for the November 2011 Charges was adjourned until after this Hearing on charges relating to a "personation" allegations against AOZ and JL in December 2011 ("December 2011 Charges").

4. Again, HL and AOZ did not attend at this Hearing although notice of this continuation was served as a courtesy following their previous non-attendance on March 24, 2014.

DECEMBER 2011 CHARGES

Charges Relating to December 2011 Incident

5. JL was charged on November 12, 2012 with the following offences:

   (a) On or about December 5, 2011, JL knowingly had another person, AOZ, personate her at the final examination in HIS 284H5F (the "Course"), contrary to section B.I.1(c) of the *Code;*

   (b) In or about December 2011, JL knowingly forged, altered or falsified an academic record, and did utter, circulate or make use of any such forged, altered or falsified record, namely a T-Card, contrary to section B.I.3(a) of the *Code*; and

   (c) In the alternative, JL knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code* in order to obtain academic credit or other academic advantage of any kind in connection with the final examination in HIS 284H5F, contrary to section B.I.3(b) of the *Code*.

6. AOZ was also charged on November 12, 2012 with the following offences:

(a) On or about December 5, 2011, AOZ knowingly personated another person, JL, at a final examination in HIS 284H5F, contrary to section B.I.1(c) of the *Code*;

(b) In or about December 2011, AOZ knowingly forged, altered or falsified an academic record, and did utter, circulate or make use of any such forged, altered or falsified record, namely a T-Card, contrary to section B.I.3(a) of the *Code;* and

(c) In the alternative, AOZ knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code* in order to obtain academic credit or other academic advantage of any kind in connection with the final examination in HIS 284H5F, contrary to section B.I.3(b) of the *Code*.

Agreed Statement of Facts

7. JL brought a Mandarin Interpreter who was sworn for the Hearing.

8. JL was the only one of the 3 Students who attended at this Hearing on July 11, 2014. JL pleaded guilty to the December 2011 Charges based on an Agreed Statement of Facts ("ASF").

9. The ASF is dated and signed March 24, 2014 (the first date of hearing in these matters). The Panel presumes that it was not tendered at the March 24th hearing based on the procedural Recommendation of the Senior Chair with respect to sequence of the hearing on the Charges.

10. We note that only JL and the University have signed the ASF and AOZ has not. However, with AOZ's absence, the ASF is uncontradicted.

11. The ASF confirms, among other things, that:

(a) JL did not attend the final examination in the Course on December 5, 2011 and had persuaded AOZ, another student at the University, to attend and write on JL's behalf;

(b) AOZ was not enrolled in the Course;

(c) JL agreed with AOZ in advance of the examination that AOZ would present a T-Card which had JL's name but featured a photograph of AOZ;

(d) AOZ presented the doctored T-Card at the examination. AOZ was not recognized by a Teaching Assistant from the Course and AOZ was asked to provide additional identification to verify her identity as JL. AOZ could not provide additional identification at that time and was required to return the next day to do so. AOZ completed a form on the day of the examination with false information;

(e) JL attended at a meeting with the Dean's Designate on March 28, 2012 ("Dean's Meeting") with legal counsel. JL admitted to having asked her "cousin" who was a high school student to write the examination for her;

(f) On September 18, 2012, AOZ attended at a meeting with the Dean's Designate and admitted that she had written the examination for JL at JL's request and that she was, in fact, a University student in the same program as JL and was not JL's cousin;

(g) JL admitted that she had AOZ personate her for the final examination and that they forged and presented a doctored T-Card with the intention of obtaining academic advantage; and

(h) AOZ obtained a grade of 19% on the final examination.

Additional Evidence

Ms. Catherine Seguin

12. The University re-tendered Professor Seguin, the Dean's Designate at UT – Mississauga, to give evidence about her meeting with AOZ on September 18, 2012. Ms Seguin's Minutes of the meeting were tendered without objection.

13. At the meeting, AOZ confirmed that she was a student at the University and that she had agreed to personate JL at the final examination in the Course with the forged T-Card.

14. AOZ also stated at the meeting that she wanted to show JL sympathy after being told that JL had recently broken up with her boyfriend and stated that she was "naïve" to trust JL.

15. Ms. Seguin's recollection was AOZ told her that she had been asked by JL to personate her about 3 days before the examination.

DECISION OF THE TRIBUNAL

16. Based on the ASF, the evidence of Ms. Seguin, and AOZ not appearing, the Panel finds JL and AOZ guilty of charges (a) and (b) in paragraphs 5 and 6 above, respectively.

17. The University has withdrawn the alternative charge (c) for both students.

PENALTY

Penalty Re: HL

18. The University has recommended a 2 year suspension for HL for his role in the November 2011 Charges, namely, using an unauthorized aid during a test.

19. HL has no academic offence history.

20. The Panel accepts the University's recommended penalty and imposes a 2 year suspension on HL commencing March 24, 2014 with a notation to be placed on HL's academic record for the length of the suspension.

Penalty Re: AOZ

21. AOZ had another academic-related infraction prior to the personation offence. AOZ was disciplined for continuing to write during a test on October 5, 2011 after being told to stop. On December 6, 2011, AOZ received a letter alleging this academic offence and on January 2, 2012, AOZ admitted to the offence and accepted the sanction of a 3 mark reduction from her final grade in the course.

22. The University has recommended expulsion for AOZ's role in the December 2011 Charges, namely, personation of another student at a final examination and forging/using a T-Card.

23. AOZ has not attended or participated at the hearing and was involved in the earlier academic infraction (though she was not sanctioned at the time of commission of the personation offence). It is uncontroverted that AOZ participated in the planning before and after personation of JL in an effort to mislead the University instead of admitting guilt at the earliest opportunity.

24. AOZ appears to have been disengaged from the University for some time since the meeting with the Dean's Designate.

25. In cases of personation, the *Code (Appendix "C")* recommends a sanction of expulsion from the University.

26. AOZ gained no academic advantage for herself and advised at the Dean's Meeting that she was trying to show JL "sympathy" for assisting her. Her ability to assist JL was minimal given that she had not taken the course nor was enrolled in it.

27. Despite the aggravating circumstances and recommendation by the University, the Panel finds that a 5 year suspension of AOZ commencing on the date of this Decision with a notation to be placed on AOZ's academic record for the length of the suspension plus 1 additional year is a sufficient penalty to address general and specific deterrence and the principles of sanctioning.

Penalty Re: JL

28. JL's penalty will address the findings of guilt for JL's roles in the November 2011 Charges (providing unauthorized aid) and in the December 2011 Charges (having another student personate her in a final examination and forging a T-Card).

29. JL testified under oath for the penalty phase of the hearing and her counsel made submissions with respect to mitigating factors, summarized as follows:

    (a) JL's grandmother passed away in China on November 29, 2011 (death certificate was tendered) and this had a profound impact on her as she had been raised by her mother and grandmother;

(b) JL had no family in Toronto at this time;

(c) JL was not aware that she could petition to defer the December 5, 2011 final examination in the Course although there was evidence tendered that JL had, in fact, obtained a medical note on December 6, 2011 and submitted an online request on December 8, 2012 to defer the final examination in another course which she failed to attend on December 6, 2011. JL's explanation was that she only learned about the ability to seek a deferral after the December 5th examination in the Course;

(d) JL admitted her guilt at an early opportunity at the Dean's Meeting in March 2012, but she did not provide AOZ's real name and attempted to mislead by indicating that the person was her cousin, a high school student;

(e) JL's action in asking AOZ to personate her for the final examination occurred only 3 days before the examination and AOZ had not even taken nor was enrolled in the Course. Accordingly, it is submitted to us that JL's request to have AOZ personate her was "not calculated" and AOZ did not have a lot of time to prepare for the examination.

(f) JL does not have any prior academic offence history and the likelihood of her reoffending is small. JL has participated in this two (2) year process and continued to take courses without any further disciplinary incidents.

(g) JL has never gone through any prior disciplinary process before the November 2011 Charges and as such, has not had the opportunity of rehabilitation occasioned by any earlier penalty. This is presumed to extend to the submission that JL should have the opportunity to demonstrate that specific deterrence can be achieved by a suspension as opposed to an expulsion.

30. The University's Submissions can be summarized as follows:

(a) JL acknowledged in cross-examination that she did not take advantage of the first opportunity to admit her guilt to the personation offence. In particular, there had

been meetings with the University relating to the November 2011 Charges before her March 28, 2012 Dean's Meeting for the personation offence when she could have admitted her guilt;

(b) JL acknowledged in cross-examination that this Hearing (July 11, 2014) was the first time that JL ever mentioned being affected by the death of her grandmother to anyone at the University;

(c) JL continued to mislead at the March 2012 Dean's Meeting about AOZ's identity;

(d) the T-Card forgery and continued attempt the day after the examination to convince the Registrar that AOZ was JL by providing her Chinese passport to use was evidence of deliberate, pre-meditated and calculated academic dishonesty; and

(e) later, on January 12, 2012, JL obtained a new T-Card and, for her photograph, JL acknowledged in cross-examination that she wore a wig. The University's supposition is that JL did this with the intention to create a greater resemblance between AOZ and JL on her T-Card in case there was future investigation into the matter.

31. The University has recommended the following sanctions for JL for both sets of charges:

(a) expulsion;

(b) a grade of zero in both MGM 101H5F and HIS 284H5;

(c) immediate suspension of 5 years; and

(d) notation to be placed on JL's academic record for the length of the suspension plus 1 additional year.

32. The Student is seeking a 5 year suspension commencing August 31, 2014 with a notation to continue for an extra year. The deferred commencement to the suspension is to allow

the Student to complete courses that she is taking during this summer term (the Panel only had JL's transcript to the Winter 2014 term at March 12, 2014).

Review of Authorities

33. Both the University and the Student provided the Panel with authorities in support of their positions on penalty. The Panel is, of course, mindful of the C[redacted] Decision which sets out governing principles with respect to penalty.

34. The authorities cited by the University relating to the charge of personation include:

(a) *L.Q.* (Case No. 627;June 26, 2012) and *M.B.* (Case No. 623; November 30, 2011): These two cases involved the "impersonator" and the student, respectively. In the separate decisions, each student was sanctioned with a 5 year suspension and the University did not seek expulsion in either case. In the *M.B.* Decision, we note that the Student in question was "offered" the assistance of the impersonator who intended to leave the University anyway. M.B. admitted his guilt at the Dean's Designate meeting but failed to attend at the hearing though duly given notice. In *M.B.*, the University indicated that it was not seeking expulsion because the Student's conduct did not appear to be "unduly premeditated... but merely taking advantage of the opportunity of [Q] leaving the University and offering to do this for the Student".

(b) *M.W.* (Case No. 585; September 1, 2010): The facts in this case resemble the within case. The student had another student attend to write her examination but when that student was unable to provide a T-Card, suspicion was raised. The deception was later discovered and M.W. was called in to a meeting with the Professor. M.W. with her mother, admitted that she had arranged for another student to write the examination in her place. The Student "panicked and asked her friend to impersonate her". The Student had no prior disciplinary record. The Student did not attend the Hearing and the University was put to the task of proving its case. Upon a finding of guilt, the University sought a 5 year suspension with a recommendation of expulsion.

The University submitted that M.W.'s failure to attend the Hearing should be considered an exacerbating factor. The Panel questioned this proposition as the Notice of Hearing does not warn that, if a student fails to attend the hearing, the penalty may be more severe than would have been imposed if the student had attended (paragraph 23).

Nevertheless, the Panel found the unexplained absence of M.W. as an exacerbating factor and indicated that *had they heard from her, they might have arrived at a less serious sanction than the recommendation of expulsion and 5 year suspension that they ultimately made.*

(c) *F.C.* (Case No. 531; April 20, 2009): This decision was referred to by both the University and JL. The facts in *F.C.* are similar to JL's case. FC had another person sit in for him on a final examination and engaged in another incident of academic dishonesty in close proximity in time. The personation offence occurred in the second course. F.C. attended at the examination, signed an examination list, presented his student card and then submitted an examination booklet in a fictitious name after having arranged for another individual to attend and submit an examination booklet in his name. F.C. pleaded guilty at the hearing and then testified on his own behalf for the purposes of the penalty as to extenuating circumstances. F.C. expressed remorse and requested a 5 year suspension and not to be expelled.

In *F.C.,* the Panel reviewed a number of authorities and concluded, which we echo, that the various authorities differ in the various combinations of mitigating and aggravating factors. Ultimately, that Panel did not expel the F.C. given the mitigating circumstances and was not persuaded that he should be "given the life sentence" of expulsion.

(d) *J.O.* (Case No. 617; August 25, 2011): J.O. attended at the Hearing and admitted to having had another person personate him at a term test. The University sought expulsion which was resisted by J.O. The facts in *J.O.* are quite different from the within case as J.O. placed ads on the internet seeking someone to help write 3

tests and the final of his Math course and offered monetary compensation. The University had learned of these advertisements early in the term and questioned J.O. about them. J.O. denied that he was looking for someone to personate him at written tests, rather, he was looking for a tutor. The Department accepted his explanation and the matter was concluded.

J.O., in fact, did retain an individual to write his term test and then was discovered. J.O. admitted guilt at the Hearing and gave sworn evidence on penalty. The Student expressed remorse and provided some extenuating circumstances. Nevertheless, the Panel recommended expulsion because they considered J.O.'s offence to have been committed even though he had the benefit of a first chance vis-à-vis the initial meeting when he was merely questioned before he committed the act. At paragraph 26, the Panel states,

> *"Although this is a "first offence", Mr. O. on these facts, has already been given another chance. Rather than taking advantage of that second chance, Mr. O. lied, rejected any opportunity to find another means of passing or withdrawing from the course, and, in effect, flaunted the benefit of doubt he was given at this first stage of the academic process. It is difficult to conceive of a more egregious way to engage in this offence. Mr. O.'s conduct showed a total disregard for the academic process and the need for honesty in order to preserve the integrity of that process."*

35. The Panel views this passage to support the consideration that a lesser penalty might be warranted if the offence is a "first offence" and the student might benefit from a second chance.

36. Although JL was found guilty of the earlier offence relating to her allowing another student copy her test (see companion decision dated May 26, 2014), it is our view that that conviction cannot be considered a "prior" offence given the timing of charges and hearing.

37. With respect to the premeditation and calculation that the University highlights in the commission of personation offences, the evidence was that JL engaged AOZ on her behalf only 3 days before the examination which was after the death of her grandmother,

AOZ had never taken the course and was not enrolled in the course and AOZ would have been of minimal assistance even if the personation had gone undetected.

38. The Panel is concerned about the delay in providing the "new" information, raised for the first time at the Hearing, about JL's grandmother's death. Nevertheless, we find that the prospect of individual deterrence is a significant consideration in this case and JL has continued to take courses at the University since 2012 while this disciplinary action has been processed without further disciplinary incidents.

39. Although JL did not admit guilt to the earlier offence ("unauthorized aid"), JL did, in contrast, admit guilt at the Dean's meeting in March, 2012 for the personation charge. JL signed the ASF relating to the personation charges on March 24, 2014, the date of the first Hearing of these offences. JL has also participated in this disciplinary process for two years which has likely had an emotional toll and deterrent effect.

40. JL's counsel submitted that JL has not had the "benefit" of a penalty less serious than expulsion to reflect and rehabilitate. We are prepared to treat the two offences as a "first offence" given the proximity in time of the incident and that the Student has pleaded guilty at an early opportunity to the personation offence. Even though JL pursued a trial of the other offence and was found guilty, we do not find that this negates her remorse and cooperation with respect to the personation offence.

41. With respect to general deterrence, the Panel is of the view that the over 2 years that it has taken JL to see this matter dealt with to its finality, the fact that JL has had to participate throughout this process and will be subject to a 5 year suspension is sufficient to effect general deterrence while balancing the considerations of individual deterrence and rehabilitation.

42. Accordingly, we impose the following penalty for JL:

(a) a final grade of zero in MGM 101H5F;

(b) a final grade of zero in HIS 284H5F;

(c) a suspension of 5 years commencing August 31, 2014 (the commencement of the suspension has been deferred to permit JL to complete the courses she is currently enrolled in for the Summer 2014 term); and

(d) a notation be placed on JL's academic record and transcript from the date of the Order until August 31, 2020.

43. The Tribunal shall report this decision to the Provost for publication of a Notice of the within decisions and sanctions in the University newspaper, with the Students' names withheld.

Dated at Toronto, this 11th day of August, 2014.

ROSLYN M. TSAO
Co-Chair

ADDENDUM

1. It has been brought to my attention by Ms. Harmer for the University that the Panel did not address all of the recommended sanctions against HL. In particular, the University sought a grade of zero for HL in MGM101H5F for the 2011 fall term.

2. The Panel acknowledges its oversight in neglecting to include the above-noted sanction relating to HL and, accordingly, Paragraph 20 of the original Decision should be amended to include:

   "The Panel also accepts the University's recommendation and imposes a final grade of zero in MGM101H5F."

3. Ms. Harmer also sought clarification regarding the request to report HL's decision to the Provost for publication with the Student's name withheld. I note that Paragraph 43 of the Decision directs the reporting of the decision to the Provost for publication with respect to all of the Students, including HL.

Dated at Toronto, this 23rd day of September, 2014.

ROSLYN M. TSAO
Co-Chair