

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on October 21, 2013,

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 -

M [REDACTED] C [REDACTED]

REASONS FOR DECISION

Hearing Date: Thursday July 3, 2014

Members of the Panel:

Ms. Sarah Kraicer, Barrister and Solicitor, Chair

Dr. Joel Kirsh, Faculty of Medicine, Faculty Panel Member

Ms. Susan Mazzatto, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland, Barristers

Ms. Sherylin Biason, Assistant Registrar, University of Toronto Scarborough

In Attendance:

Professor Wayne Dowler, Dean's Designate, University of Toronto Scarborough

Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

1. The Trial Division of the University Tribunal was convened on July 3, 2014 to consider charges brought by the University of Toronto ("the University") against Ms. M [REDACTED] C [REDACTED] ("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 Tribunal waited 10 minutes after the scheduled time to begin the proceeding. Neither the Student nor a representative of the Student appeared.

3. Pursuant to sections 6 and 7 of the *Statutory Powers Procedure Act* ("the Act"), and section 17 of the University Tribunal Rules of Practice and Procedure ("the Rules"), where reasonable notice of an oral hearing has been given to a party in accordance with the Act and the party does not attend at the hearing, the Tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

4. A notice of hearing may be served on a student "by sending a copy of the document by courier to the student's mailing address contained in ROSI" [Repository of Student Information], "by emailing a copy of the document to the student's email address contained in ROSI" or "by other means authorized under the University's Policy on Official Correspondence with Students" (the "Policy") (Rules 9 (b)(c) and (d)).

5. The Policy states that Students are responsible for maintaining on ROSI a current and valid postal address and a University-issued email account. Students are expected to monitor and retrieve their mail, including electronic messaging accounts issued to them by the University, on a frequent and consistent basis.

6. The onus of proof is on the University under the Act and the Rules to establish that it provided the Student with reasonable notice of the hearing in accordance with these provisions. The University requested to proceed with this hearing.

7. The University filed evidence from Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances with the Office of the Governing Council of the University, and from Janice Patterson, legal assistant at Paliare Roland Rosenberg Rothstein, counsel to the

University, relating to the efforts that were made by the University to provide notice of this hearing to the Student.

8. The Student's street address on ROSI is [REDACTED] [REDACTED]. (the "John Street address") The Student's email address in ROSI is [REDACTED]@mail.utoronto.ca. (the "ROSI email address").

9. The Student provided a different email address to the University in the Personal Information section of her Petition for an Exam Deferral dated April 24, 2012: [REDACTED]@hotmail.com. ("the hotmail address").

10. As set out in more detail below, the University and counsel for the University sent the Notice of Hearing to the Student via email and via courier to these three addresses. In addition, the University and counsel for the University made numerous attempts to communicate with the Student about this proceeding by email and phone. While the Student did not respond to any of these communications, the Tribunal is satisfied, on reviewing the evidence outlined below, that she received reasonable notice of this hearing.

11. In May 2012, upon review of the Student's Petition for Deferral, the Assistant Registrar Petitions at the University of Toronto Scarborough, Ms. Sherylin Biason, unsuccessfully attempted to reach the Student by telephone at the number listed on ROSI, and at the hotmail address. On May 29, 2012, Ms. Biason, posted a message to the Student on the Office of the Registrar's eservice website advising that the Petition had been denied, that "the medical document submitted is not adequate to support your request for a deferred exam" and asking the Student to contact the Registrar's Office. The eservice website allows for communication between a student and the Registrar's office, and tracks the time messages are posted and viewed. A student accesses his or her messages on this website by logging in with their unique student ID number. The eservice log indicates that the Student viewed this message on the same day it was posted by Ms. Biason. This message should have alerted the Student that there was an issue with the medical documentation she had submitted and that she should contact the Registrar's Office. Ms. Biason did not receive any response from the Student.

12. From June 2012 to March 2013, the University made further attempts to contact the Student regarding this issue, via correspondence sent to the John Street address and email set to the ROSI email address, to which no response was received. This correspondence was not returned and there was no "bounceback" on the email messages indicating they had not been delivered.

13. The Office of the Vice Provost served the Charges in this matter on the Student on October 21, 2013 via email to the Student's ROSI email address. On October 22, 2013, the University sent further correspondence relating to the Charges to the Student via the ROSI email address and via courier to her John Street address. The courier package was returned the same day to the University because it could not be delivered to that address. On January 8, 2014, Paliare Roland sent further correspondence about the Charges to the Student by email to both the ROSI email address and the hotmail address and by courier to the John Street address. Again, the courier package was returned undelivered and the courier advised that the recipient had moved. No responses or "bounceback" messages were received to the emails.

14. From November 2013 to June 2014 Paliare Roland made numerous efforts to contact the Student by phone at the phone number she had provided in ROSI, but the cellular number was either not assigned or was later assigned to a different person. During this period, the firm also sent numerous emails to the Student regarding the charges and the hearing at both the ROSI email address and the hotmail address. They received no response to these emails. Paliare Roland undertook online searches of "M [REDACTED] O [REDACTED]" but did not find any further address information for the Student.

15. On June 4, 2014, the University served the Student with a copy of the Notice of Hearing for Thursday July 3, 2014 at 5:45 p.m. by email to the ROSI email address, by email to the hotmail address, and by courier to the John Street address. The courier package was not returned. The person indicated as having taken delivery of the courier package was named "Meelad". There is no evidence to indicate who this person is. No bounceback messages were received from the emails.

16. The Tribunal has considered the evidence before it and the submissions of counsel for the University and has concluded that the Student has been given reasonable notice of the

hearing in compliance with the notice requirements of the Act and the Rules. The content of the Notice of Hearing complies with the requirements of the Act and the Rules. The Notice of Hearing was sent to the Student via email to the ROSI address and via courier to the John street address in ROSI, as authorized by the Rules. The Student is responsible for ensuring that the contact information in ROSI is up to date. In addition, the Notice of Hearing was sent to the Student via the hotmail address she had provided to the University in her Petition documentation. No "bounceback" was received to the emails. While the Student did not likely receive the couriered Notices sent to the John Street address, which were either returned to counsel for the University or delivered to an unknown person, the Student was responsible for updating her mailing address in ROSI and had failed to do so, and the University had no other street address for her, despite making online searches.

17. The Student would have been aware from accessing the eservice website message on May 29, 2012 that there was an issue with the medical documentation accompanying her petition, and that the University sought to communicate with her about it. In addition to the Notice of Hearing itself, the University and counsel made numerous attempts to communicate with the Student and left messages via telephone, email and mail with information about the allegations, the charges and this hearing. The University advised the Student that it would be using the Student's ROSI contact information and the hotmail address for urgent communications, and asked that she provide any updated contact information. Despite these efforts by the University, no response was ever received from the Student.

18. The Tribunal determined that the University provided reasonable notice of this hearing to the Student, and it would proceed to hear the case on its merits.

The Charges

19. The Charges and Particulars are as follows:

- 1) On or about April 26, 2012, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of such forged, altered or falsified document, namely a University of Toronto Medical Certificate dated April 23, 2012, which you submitted in support of your request for academic accommodation or relief in MATA37H3, contrary to Section B.I.1(a) of the Code.

- 2) In the alternative, on or about April 26, 2012, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by submitting a forged, altered or falsified document, namely a University of Toronto Medical Certificate dated April 23, 2012, in support of your request for academic accommodation or relief in MATA37H3, contrary to Section B.I.3(b) of the Code.

A. Particulars

- 3) At all material times you were a student at the University of Toronto Scarborough.
- 4) On April 23, 2012, you were scheduled to attend the final examination in MATA37H3 (the "Course"), which was taught by Leo Goldmakher. You did not attend the final examination.
- 5) On April 26, 2012, you submitted a petition to defer the final examination in the Course. In support of your petition, you submitted a University of Toronto Medical Certificate dated April 23, 2012, purportedly prepared and signed by a physician from The Scarborough Hospital General Campus (the "Medical Certificate"). You submitted the Medical Certificate to obtain academic accommodation or relief in the Course, namely, to defer the final examination in the Course.
- 6) The Medical Certificate that you submitted contained false information and was not prepared or signed by a physician from The Scarborough Hospital General Campus.
- 7) You knowingly submitted the forged, altered or falsified Medical Certificate:
 - (a) understanding that the University of Toronto Scarborough required legitimate medical documentation and evidence to be presented in order to obtain the academic accommodation or relief you sought;
 - (b) with the intention that the University of Toronto Scarborough rely on the Medical Certificate in considering whether or not to provide you with the academic accommodation or relief you requested; and
 - (c) in an attempt to obtain an academic advantage.

20. At the outset of its submissions, counsel for the University stated that if the Tribunal were to find the Student guilty of Charge 1, it would withdraw Charge 2.

The Evidence

21. The Tribunal heard the evidence of Ms. Sherylin Bason, Assistant Registrar at the University of Toronto Scarborough. She is responsible for overseeing the review of the approximately 400 – 500 petitions received each semester at the University from students seeking accommodations, deferrals of tests and examinations, and other requested measures. She is very experienced in this role.

22. The petition process requires students to submit petitions online through the eservice website. The petition online form requires a student to provide contact information, a statement of what they seek, and a description of supporting information. Supporting documentation must be submitted in person and receipt of documentation is logged on to the eservice website by Registrar staff.

23. On April 26, 2012 the Student submitted a petition seeking to “Write deferred exam” in Course MATA37H3 in the 2012 Winter Term. Her statement was “I missed the final exam of the above listed course due to illness and this petition for an exam deferral”. She indicated that her supporting documentation was “UTSC Medical Certificate completed by my physician”. The Student submitted a University of Toronto Student Medical Certificate in person to the Registrar’s office on May 1, 2013.

24. Ms. Bason reviewed the Student’s petition and verified that the Student had not in fact written the final exam. Ms. Bason also reviewed the Medical Certificate the Student submitted and noted that neither the name of the physician nor the physician registration number was clearly written on the certificate. Nor did she recognize the physician’s name as one of the physicians who commonly treat University of Toronto Scarborough students. She searched the College of Physicians and Surgeons (“CPSO”) website for the physician number listed on the Certificate, trying all of the possible numbers she could decipher from the handwritten document (62655, 62455 and 62955), and none of them matched to a physician in Scarborough with a name beginning in “Ch”. She also searched the CPSO website for all physicians named “Chu” and “Chan” (the possible names that she could decipher from the physician signature on the certificate) and found that none of them had both a physician number that resembled the number on the Certificate and were at the Scarborough Hospital.

25. On May 29, 2012 Ms. Bason attempted to reach the Student by phone and email and by leaving a message for the Student on the eservice website indicating that the petition had

been denied and the medical documentation was not sufficient as set out above at paragraph 11. The eservice log indicated that the Student viewed this message on the same day it was posted.

26. The University also relied on the affidavit of Pam Marshall, Executive Director of Patient Relations and Legal Affairs at the Scarborough Hospital since 2011. Ms. Marshall reviewed the Certificate submitted by the Student. Her evidence was that there are several physicians with the last name “Chu” who have worked at the Hospital, but she was unable to identify any physician on the Hospital’s list of physicians whose name matches what appears to be the full name and CPSO registration number of the physician on the Certificate. Ms. Marshall also showed the Certificate to Dr. Tom Chan, the Chief of Staff of the Hospital who was Chief of Emergency Medicine from 2004 to 2012, and who has worked at the Hospital since 1996. He advised her that he has never heard of any physician with a name resembling what appears to be the full name of the physician listed on the Certificate.

27. The stamp on the Certificate is not, and has never been, a stamp of the Hospital. The Certificate has a blue ink stamp on the lower right corner that purports to be of “the Scarborough Hospital General campus”. In Ms. Marshall’s experience, the Hospital has never used a “General Campus” stamp like the one on the Certificate. She also noted that the stamp on the Certificate contains a typographical error in the address: “3050 Lawrence Aveneue [sic] East”. It is her belief that the Hospital would not use a stamp that contained such a typographical error. Yvonne Ragnitz, the Corporate Executive Assistant at the Hospital, who has been with the Hospital for 18 years, also reviewed the Certificate and advised Ms. Marshall that she does not recognize the stamp on the Certificate.

28. Physicians who fill out documentation for a patient typically include their own direct contact information, or departmental contact information, not the general contact information for the Hospital. Ms. Marshall does not recall any physicians at the hospital using the Hospital’s general contact information for documentation of this nature.

Decision of the Tribunal on the Charges

29. Charge 1 under Section B.I.1(a) of the Code includes both knowingly forging, altering or falsifying a document, or knowingly circulating or making use of a forged, altered or falsified

document. The Code provides that “knowingly” includes where a person ought reasonably to have known.

30. The Tribunal is of the view that the evidence establishes that the Student submitted a falsified Medical Certificate in support of her Petition for a deferred final examination. There was no physician working at the Scarborough Hospital at the relevant time with a full name and registration number that resembled that found on the Certificate [the full physician name appears to be “Kerry Chu”]. The stamp applied to the Certificate was never one used by the Hospital and was not recognized by long term Hospital employees with access to patient documentation. Further, the stamp contains a typographical error, and it is unlikely that the Hospital would use a stamp with such an error. Moreover, use of the stamp on a medical certificate is inconsistent with physician practice at the Hospital, as physicians typically provide their own direct contact information or departmental contact information on such patient documentation. The Student submitted this Certificate to the Registrar’s Office in person, and knew or reasonably ought to have known that it was false and contained a forged signature and a falsified Hospital stamp. The evidence is cogent and compelling and has met the University’s burden of proof with respect to Charge 1

31. The Tribunal finds that the Student is guilty of Charge 1.

32. Charge 2 was withdrawn by the University.

Decision of the Tribunal on Penalty

33. The University sought the following sanction:

- A mark of 0 in the course MATA37H3
- 2 years suspension from the University from the date the Tribunal makes its order
- Notation of the sanction on the Student’s transcript for 3 years from the date of the Order

- Reporting of the decision to the Provost, with the Student's name withheld, for publication of a notice of the decision and the sanction

34. The University did not lead any additional evidence with respect to the sanction.

35. The Tribunal has considered the principles and factors relevant to sanction set out in *University of Toronto and Mr. C* (Case No. 1976/77-3; November 5, 1976). For the reasons set out below, the Tribunal has determined that the University's proposed penalty is appropriate.

36. The nature of offence committed by the Student is very serious. She submitted a falsified Medical Certificate in an attempt to excuse her non-attendance at a final examination. Her submission of the document in person, and the use of a false Hospital stamp to add authenticity to the Certificate are strong indications of planning and deliberation, which elevates its seriousness. Providing a false medical excuse for a missed final exam undermines the integrity of the University's evaluation process and its process for accommodation of a student's legitimate medical circumstances. Forging of a medical certificate additionally implicates the integrity of medical professionals and medical institutions, and makes it more difficult for the University to rely on the authenticity of those documents in its petition process which relies on self-reporting by students (see *University of Toronto and S.P.*, Case No. 702; March 5, 2013). The volume of petitions received by the Registrar's Office is high, and falsification is difficult to detect, so the need for general deterrence is an important consideration.

37. The Student has not participated in the discipline process and has not responded to any communications from the Registrar, Dean's Office or counsel to the University regarding these allegations of misconduct. There is accordingly no evidence before us of mitigating circumstances, good character, remorse or insight.

38. On the other hand, there is no indication that there is a likelihood that the Student will repeat the offence. This is her first offence and there is no evidence of any prior discipline concerns. The offence consisted of a single Certificate and Petition arising from one event. There is no pattern of conduct that would suggest that she will repeat the offence.

39. The proposed two year suspension is in our view generally consistent with other decisions of this Tribunal. A first offence of plagiarism (also a serious offence) has generally received a sanction of approximately two years (See *University of Toronto and B.S* (Case No. 697; January 17, 2014), *University of Toronto and M.H.H.* (Case No. 521; January 12, 2009). Cases dealing with multiple instances of forged documents, or multiple prior offences, have given rise to longer periods of suspension (*University of Toronto and S.P.* (Case No. 702; March 5, 2013), *University of Toronto and K.C.Y* (Case No. 646; February 20, 2013) *University of Toronto and S.M.* (Case No. 696; August 19, 2013).

40. The University has also asked for a 3 year period of notation of the sanction. The Student presently only has 8 credits. Should the Student resume her studies at the University following the period of suspension, this notation will remain on her record for the first year after she returns, but will in all likelihood not remain all the way to graduation. This reflects the fact that this is the Student's first offence.

41. In all of the circumstances, the Tribunal is satisfied that the University's proposed penalty is fair and appropriate.

Order of the Tribunal

42. The Tribunal issued the following Order on July 3, 2014:

1. **THAT** Ms. C ■ is guilty of one count of knowingly forging or in any other way altering or falsifying a document or evidence required by the University of Toronto, or uttering, circulating or making use of such forged, altered or falsified document, contrary to section B.I.1.(a) of the *Code*;
2. **THAT** the following sanctions shall be imposed on Ms. C ■:
 - (a) a final grade of zero in the course MATA37H3;
 - (b) a suspension from the University of Toronto from the date of this order for a period of two years, ending on July 2, 2016; and

- (c) a notation of the sanction on her academic record and transcript from the date of this order for a period of three years, ending on July 2, 2017.
- 3. **THAT** this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with Ms. C [REDACTED]'s name withheld.

Dated at Toronto this 11 day of September, 2014



Ms. Sarah Kraicer, Co-Chair