

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on March 28, 2016

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 -

Y [REDACTED] K [REDACTED]

REASONS FOR DECISION

Hearing Date: December 15, 2016

Members of the Panel:

Ms. Sara Zborovski, Barrister and Solicitor, Chair
Professor Ato Quayson, Faculty Panel Member
Mr. Eric Bryce, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland, Barristers
Ms. Kristi Gourlay, Manager & Academic Integrity Officer, Office of Student Academic Integrity
Professor Clare Wiseman, Dalla Lana School of Public Health, University of Toronto

In Attendance:

Mr. Y [REDACTED] K [REDACTED], the Student
Mr. Christopher Lang, Director, Office of the Appeals, Discipline and Faculty Grievances

A. Charges and Hearing

1. This panel of the University Tribunal held a hearing on December 15, 2016 to consider the charges brought by the University of Toronto against Y■■■■■ K■■■ (the “Student”) under the Code of Behaviour on Academic Matters, 1995 (the “Code”).

2. The Charges and Particulars were detailed in a letter dated March 28, 2016, and are set out below:

- i. On or about November 2, 2015, 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 Verification of Student Illness or Injury form dated October 29, 2015, which you submitted in support of your request for academic accommodation or relief in ENV341H1, contrary to Section B.I.1(a) of the Code.
- ii. In the alternative, on or about November 2, 2015, 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 Verification of Student Illness or Injury form dated October 29, 2015, in support of your request for academic accommodation or relief in ENV341H1, contrary to Section B.I.3(b) of the Code.
- iii. On or about December 4, 2015, 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 Verification of Student Illness or Injury form dated December 1, 2015, which you submitted in support of your request for academic accommodation or relief in ENV341H1, contrary to Section B.I.1(a) of the Code.
- iv. In the alternative, on or about December 4, 2015, 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 Verification of Student Illness or Injury form dated December 1, 2015, in support of your request for academic accommodation or relief in ENV341H1, contrary to Section B.I.3(b) of the Code.

A. Particulars

- v. At all material times you were a student at the University of Toronto Faculty of Arts and Science.
- vi. In Fall 2015, you enrolled in ENV341H1 (Environment and Human Health) (the “Course”), which was taught by Professor Clare Wiseman.

October 29 Verification Form

- vii. On October 15, 2015, students in the Course wrote a midterm exam, worth 25%. You did not attend the midterm exam in the Course, and requested to defer the exam.
- viii. Professor Wiseman offered to schedule a makeup midterm exam for you for October 29, 2015. You did not respond to her offer.
- ix. On or about November 2, 2015, you sent Professor Wiseman an email, in which you advised that you were sick on October 29, 2015 (the date of the proposed makeup midterm exam), and attached a Verification of Student Illness or Injury form, purportedly completed and signed by Dr. S. Samapti of Bay College Medical & Lockwood Diagnostics (the “Clinic”) on October 29, 2015 (the “October 29 Verification Form”).
- x. You submitted the October 29 Verification Form to obtain academic accommodation or relief in the Course.

- xi. You did not see Dr. S. Samapti on October 29, 2015. The October 29 Verification Form that you submitted was forged, altered or falsified. In particular, the dates on the form were altered.
- xii. You knowingly submitted the forged, altered or falsified October 29 Verification Form:
 - a) understanding that the University of Toronto 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 rely on it 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.

December 1 Verification Form

- xiii. On November 26, 2015, students in the Course were required to submit a term paper, worth 30%. You did not submit a term paper.
- xiv. On or about November 27, 2015, you sent an email to Professor Wiseman, requesting an extension for your term paper. Professor Wiseman did not accept the documentation that you submitted in support of your request.
- xv. On or about December 4, 2015, you submitted a Verification of Student Illness or Injury form, purportedly completed and signed by Lucia Kim of Complete Visioncare on December 1, 2015 (the "December 1 Verification Form").
- xvi. You submitted the December 1 Verification Form to obtain academic accommodation or relief in the Course.
- xvii. You did not see Ms. Kim on December 1, 2015. The December 1 Verification Form that you submitted was forged, altered or falsified. It was not completed or signed by Ms. Kim.

- xviii. You knowingly submitted the forged, altered or falsified December 1 Verification Form:
- a) understanding that the University of Toronto 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 rely on it 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.
- xix. You knowingly engaged in the foregoing conduct for the purposes of obtaining academic credit and/or other academic advantage.

3. The Student is a student at the University of Toronto Faculty of Arts and Science and in Fall 2015, enrolled in ENV341H1 (Environment and Human Health) (the “Course”). The Course was taught by Clare L.S. Wiseman (“Professor Wiseman”).

B. The Evidence

4. Immediately before the hearing, the Student pled guilty to the charges. Discipline counsel nonetheless led evidence on the record.

The Course – Bases of Evaluation

5. Evaluation in the Course was based on: a term paper proposal, due October 8, 2015 (worth 15%); a midterm exam held on October 15, 2015 (worth 25%); a final exam (worth 30%); and a term paper due November 26, 2015 (worth 30%).

6. The Course syllabus contains the following information:

Late Penalties and Deadline Extensions

Students are expected to complete all assignments on time and submit them in class on the date due, or as arranged with the TA.

Late assignments will be reduced by 3% of the assignment grade per day (including weekends). Extenuating circumstances may arise that impact your ability to complete an assignment on time. Please discuss these issues with your instructors to make alternative arrangements for submission. Students must submit a completed university's official Verification of Illness or Injury Form (former Medical Certificate) to the course instructor for medical-based extension requests. A copy can be found on the web at: <http://www.illnessverification.utoronto.ca/getattachment/index/Verification-of-Illness-or-Injury-form-Jan-22-2013.pdf.aspx>

Late assignments must not be emailed or slipped under office doors. Please note, weak time management skills do not constitute extenuating circumstances.

The Student's Mid-Term Evaluation (held on October 15, 2015)

7. By email dated October 16, 2015, the Student emailed Professor Wiseman as follows:

Hi, My name is [Student] who is taking ENV341. I had serious illness today, I could not attend midterm test. I want to defer the midterm test. I tried to attend today but I want to hospital because of sick. I send to you with my medial notes. If I need anything for you, please let me know. Please concern my situation. Thank you. [sic]

8. The Student provided a Verification of Student Illness or Injury Form dated October 15, 2015 (the "October 15th Illness Form"). The October 15th Illness Form indicates that the Student is "significantly impaired in ability to fulfill academic obligations, e.g. unable to complete an assignment, unable to write a test/examination" with a start date of October 14 and an anticipated end date of October 16. It indicates multiple/ongoing visits (the specific dates of which are illegible on the October 15th Illness Form). Although not legible on the October 15th Illness Form, it was confirmed for the Tribunal that Dr. Zulfikar Kara from the Clinic certified the October 15^h Illness Form.

9. The Student emailed Professor Wiseman again on October 22, 2015:

Hi, I sent this email to you one week ago. What should I do now? I am very worried about that. Please reply as soon as possible. [sic]

10. Professor Wiseman responded to the Student that she had scheduled a make-up test for Wednesday, October 28 at 11:00 am and asked that the Student confirm that he can attend.

11. The Student responded that he is unable to attend the scheduled make-up test because "I have class 10 to 12 am that it has attendance mark and in class quiz".

12. Professor Wiseman asked for details of the conflicting course, and requested that the Student please send her the syllabus and/or anything else showing the participation mark and scheduling of quiz. The Student provided a syllabus for ENV333.

13. Professor Wiseman and the Student corresponded back-and-forth to find a suitable time for the Student to take the make-up test. Professor Wiseman advised the Student that she had arranged for him to take the exam during part of the Course's scheduled class time so the make-up would not "interfere with other courses".

14. The Student did not confirm his availability to take the make-up test, and Professor Wiseman emailed him as follows:

[Student], you will need to confirm by tomorrow regarding your availability for Thursday. The TA can oversee the exam (2-3:00).

15. On October 28, 2015, Professor Wiseman wrote to the Student as follows:

[Student],

Since I have not heard from you, I will assume you have decided to not do the make-up for the mid-term. Considering I have now made several offers to accommodate your schedule, I will be forced to give you a 0 for the mid-term,

unless you can submit a medical note documenting an inability to fulfill the course requirements.

16. By email dated November 2, 2015, the Student emailed Professor Wiseman as follows:

Hi, I'm so sorry about late replying. After I finished the other test on Wednesday, I studied about the one midterm of other course for Thursday. However, I was sick again from Tuesday and I went to see the doctor on Thursday. In these day, My health is becoming worse seriously. I don't want to make deferred midterm and extension of my work. I tried to do my best, but my health was not following my situation. Here is my medical note for this Thursday. I'm really sorry to make sure about make-up for this time. I will wait your reply. Thank you. [sic]

17. The Student provided a Verification of Student Illness or Injury Form dated October 29, 2015 (the "October 29th Illness Form"). The October 29th Illness Form indicates that the Student is "significantly impaired in ability to fulfill academic obligations, e.g. unable to complete an assignment, unable to write a test/examination" with a start date of October 15 and an anticipated end date of October 29. It indicates multiple/ongoing visits on October 15 and October 29. S. Samapti from the Clinic certified the October 29th Illness Form.

18. On November 5, 2015, Professor Wiseman responded to the Student:

Given the associated difficulties with this situation, [Student], I think it is best that I now redistribute your mark from the mid-term to the final exam and paper. In the absence of a mid-term mark, I would suggest that we shift the 25% as follows: --15% to the final exam (which will now be worth 45% instead of 30%) --10% to the final paper (which will now be worth 40% instead of 30%). Are you in agreement with this?

The Student's Final Term Paper (due on November 26, 2015)

19. On November 28, 2015, the Student emailed Professor Wiseman as follows:

Hi, my name is [Student]. This is emergency for essay.

I got LASEK surgery 3 years ago for my eyes. During 3 years, my eyes were fine. However, my eyes started having problem from Monday. My sight of

vision was going bad suddenly and I had different sight in each day. I went to see doctor who relates with my hospital of LASEK surgery on Monday and Thursday. Doctors told to me it is LASEK affereffect [sic] and I need to take a rest for eyes to next week. Also, doctor said I need to meet specialist for eyes and I made appointment for next Monday.

From Monday, I cannot see computer well and focus anything because I did not have good sights. So, I really want to get extension because I want to finish my work. I tried to finish it, but I had really hard time to see and study. I sent my certification of surgery and medical notes.

Please concern my situation and reply as soon as possible. I will wait for you.
Thank you. [sic]

20. The Student attached a “Medical Certificate” dated November 27th, 2015 from the EYEMEDI LASER Center in Seoul, Korea and a Verification of Student Illness or Injury Form dated November 26, 2015 (the “November 26th Illness Form”). The November 26th Illness Form indicates that the Student is “significantly impaired in ability to fulfill academic obligations, e.g. unable to complete an assignment, unable to write a test/examination” with a start date of November 26 and an anticipated end date of December 3. It indicates multiple/ongoing visits on November 23 and November 26. Bon Sok K from the Royal Oriental Clinic certified the November 26th Illness Form.

21. On November 27th, Professor Wiseman emailed the Student requesting a new Verification of Student Illness or Injury Form as the November 26th Illness Form:

As part of UofTs regulations on medical notes it stipulates that a “Physician, Surgeon, Nurse Practitioner, Registered Phycologist, or Dentist” needs to complete this note (with a business stamp). The [November 26th Illness form] is from an acupuncture/massage clinic. It would be best if you have a new form filled out by your eye doctor when you see him/her. This time I will require that you submit the original directly to me, as I will no longer consider medical notes submitted electronically via email. Please follow up with me next week once you have the appropriate medical documentation.

22. On December 4, 2016 The Student provided a Verification of Student Illness or Injury Form dated December 1, 2015 (the “December 1st Illness Form”). The December 1st Illness Form indicates that the Student is “completely unable to function at any academic level e.g. unable to attend classes, or fulfill any academic obligations” with a start date of December 1

and an anticipated end date of December 8. It indicates a once-only visit on December 1, 2015. Lucia Kim from Complete Visioncare certified the December 1st Illness Form

23. Professor Wiseman subsequently asked the Student to come to her office to discuss the final term paper and to discuss some concerns she had regarding the provided medical documentation. She also requested that the Student bring originals of the medical notes previously submitted by email, i.e. the October 15th, October 29th and November 26th Illness Forms.

24. Following this request, the Student responded:

I did LWD [late withdrawal] for this course because my portion of works are too risky to get good grade. I knew this situation was from my health problem. During this semester, my health was very bad and I had only choice for deferring. I am so thankful to you about concerning my situation in this semester. I tried to do my best but I thought I cannot make good grade in this course. I am very careful status in school now, so this is my decision. Thank you everything for helping me. [sic]

25. Professor Wiseman advised that a late withdrawal could not be considered for the course given the circumstances. She advised it would be in the Student's best interest to meet with her at the arranged time.

Investigation into the Illness Forms

26. On December 15th, Kristi Gourlay, Manager, Office of Student Academic Integrity at the University of Toronto faxed four medical notes dated December 9, 2014, April 29, 2015, October 15, 2015 and October 29, 2015 to the the Clinic and requested confirmation in writing whether the Student was seen at the Clinic on the noted dates.

27. The Clinic responded that the Student was seen by doctors at the Clinic on December 9, 2014, April 29, 2015, October 15, 2015 and October 20, 2015, but not on October 29, 2015. The Clinic provided copies of the Verification of Student Illness or Injury Forms relating to those dates. The Form associated with the October 20, 2015 visit is the same as the October

29th Illness Form, except that reference in the October 20th Form to October 20 appear to have been changed to October 29.

28. The University presented the affidavit evidence of Lucio Mariani, sworn October 18, 2016 (the “Mariani Affidavit”). At all times, Mr. Mariani was President of the Clinic. In the Mariana Affidavit, Mr. Mariani affirmed the following:

- i. He reviewed the Student’s file and confirmed that the Student was seen at the Clinic on December 9, 2014, April 29, 2015 and October 15, 2015;
- ii. He also confirmed that the Student’s file does not contain any record of the Student visiting the Clinic on October 29, 2015.
- iii. Instead, the Student’s file indicates he visited the Clinic on October 20, 2015, was seen by Dr. Samapti Samapti and received a Verification of Student Illness or Injury form on that date.

29. On December 16, 2015, Kristi Gourlay, Manager, Office of Student Academic Integrity at the University of Toronto faxed the December 1st Illness Form to Dr. Lucia Kim at Complete Vision Care and requested confirmation whether the Form was provided to the Student by anyone at the Clinic.

30. Dr. Kim responded on January 11, 2016 “this letter is not from Dr. Lucia Kim”. By letter dated January 12, 2016, Dr. Kim advised Ms. Gourlay:

This is a letter to confirm that I did not provide the note to [the Student] nor is any staff person here authorized to do so without my consent. I have not examined [the Student] since August 27, 2013 nor have I provided any documentation to him. There is no record of this letter.

31. The University presented the affidavit evidence of Dr. Lucia Kim, sworn October 14, 2016 (the “Kim Affidavit”). At all times, Dr. Kim was a registered optometrist with a practice known as Complete Vision Care. In the Kim Affidavit, Dr. Kim affirmed the following:

- i. The Student has been a patient of hers in the past, however Dr. Kim had not seen or examined the Student since August 27, 2013.
- ii. Ms. Gourlay faxed Dr. Kim a copy of the December 1st Illness Form.
- iii. Dr. Kim did not complete the Form. The handwriting and signature on the Form are not hers. She has not filled out any Verification of Student Illness or Injury forms, or any other documentation, for the Student.
- iv. There is no record of the Form in the Student's file at Dr. Kim's office and no record of the Student visiting Dr. Kim's practice on December 1, 2015. The first time Dr. Kim saw the Form is when it was provided by Ms. Gourlay's fax of January 11, 2016.
- v. None of Dr. Kim's staff is authorized to provide any Verification of Student Illness or Injury forms, or any other documentation, to patients without Dr. Kim's consent. At no point did Dr. Kim consent to providing the Student with the Form.

32. The Student met with Professor Pamela Klassen, Dean's Designate for Academic Integrity on February 8, 2016 to discuss the allegation that the Student submitted medical documentation that appeared to be forged, altered or falsified and made statements which included false or misleading information in support of the Student's request for special consideration in the Course. At that meeting, the Student admitted that the Student had:

- i. Written to Professor Wiseman in early November to explain that the Student had missed a make-up term test due to an illness which proved to be fabricated.
- ii. Provided a University of Toronto Verification of Student illness or Injury form that had been altered to support the Student's assertion that the Student had seen the physician on the date of the mid-term test. The Student maintained that the Student did not alter the note, and could not explain how it was altered.
- iii. Written to Professor Wiseman in late November to request an extension on an assignment due to eye ailments which proved to be fabricated.

- iv. Paid a friend to impersonate the Student and obtain from the Student's optometrist a University of Toronto Verification of Student Illness or Injury form to document eye ailments. The Student indicated that without the Student's knowledge, the friend did not obtain the note from the optometrist but instead fabricated it himself.
- v. Submitted the fraudulent form on December 1, 2015 to Professor Wiseman as documentation to support the Student's reason for needing an extension.

33. At that meeting the Student offered no explanation for the Student's behaviour. The Student also acknowledged that the Student had committed two prior offences.

34. The Student did not lead any evidence or make any comments during the hearing, despite the Tribunal providing many opportunities for the Student to do so.

C. Tribunal's Conclusion on the Evidence

35. The Tribunal considered the evidence submitted at the hearing, including the Student's admission.

36. Upon the basis of all the evidence, the Tribunal concluded that it was appropriate to register a conviction in respect of counts 1 and 3.

D. Tribunal's Conclusion on Penalty

37. The matter continued with a hearing on the appropriate sanction. The University sought the most serious penalty, a recommendation for expulsion of the Student.

38. The panel reviewed a number of Tribunal decisions presented by the University. These cases set out the well-known considerations for sentencing set out by Mr. Sopinka, QC, in the *Mr. C.* case (Case No. 1976/77-3; November 5, 1976) :

- i. The character of the person charged;

- ii. The likelihood of the repetition of the offence;
- iii. The nature of the offence committed;
- iv. Any extenuating circumstances surrounding the commission of the offence;
- v. The detriment to the University occasioned by the offence; and
- vi. The need to deter others from committing a similar offence.

39. The Tribunal also considered cases submitted by University Counsel dealing with forgery of medical documents. It is clear that this type of forgery is treated as one of the most serious offences, and in most cases (especially where there is also evidence of prior academic misconduct) results in a recommendation for expulsion.

40. The Tribunal deliberated and concluded that a recommendation for expulsion was the appropriate sanction for the Student in the present circumstances.

41. The Student's conduct was premediated and egregious. He falsified, and/or caused the falsification of a medical document which fraudulently used the names of physicians.

42. The Tribunal also considered that the Student made no submissions at the hearing itself, and as a result there were no mitigating circumstances for consideration.

43. The Student engaged in past instances of academic misconduct, specifically, plagiarism, in respect of which the Student admitted guilt and following which the Student was warned that all further academic work must be conducted in accordance with the rules and regulations of the University, with which the Student is expected to be familiar. The Student was also subjected to a three-year academic suspension for failure to meet the Faculty of Arts and Science's standard for academic performance.

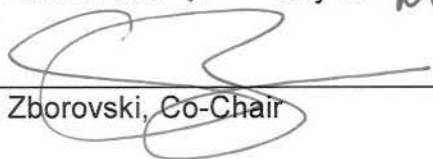
44. Under the circumstances, the Tribunal concluded it was appropriate to make a recommendation of expulsion.

E. Conclusion

45. The Tribunal recommends the following sanctions:

- i. a zero in the course ENV341H1;
- ii. a suspension from the University of Toronto for a period of up to 5 years from December 15, 2016 or until Governing Council makes its decision on expulsion, whichever comes first, and that a corresponding notation be placed on his academic record and transcript; and
- iii. the Tribunal recommends to the President of the University that he recommend to Governing Council that the Student be expelled from the University
- iv. That this case be reported to the Provost, with the Student's name withheld, for publication of a notice of the decision of the Tribunal and the sanctions imposed.

Dated at Toronto this 10th day of March 2017



Ms. Sara Zborovski, Co-Chair