

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on May 2, 2011 (revised December 13, 2011),

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:

THE UNIVERSITY OF TORONTO

-AND-

Y [REDACTED] Z [REDACTED]

Dates of Hearing: March 28, 2012 & April 5, 2012

Members of the Panel:

Ms. Rodica David, Q.C. Barrister and Solicitor, Chair
Professor Graeme Hirst, Department of Computer Science
Susan Mazzatto, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Barristers
Mr. Y [REDACTED] Z [REDACTED], in person, unrepresented
Mr. Michael Nicholson, Associate Registrar, University College
Dr. Kristi Gourlay, Office of Student Academic Integrity, Faculty of Arts and Science
Professor Don Dewees, Dean's Designate, Faculty of Arts and Science

In Attendance:

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

REASONS FOR DECISION

THE CHARGES

1. Mr. Z [REDACTED] was charged with 6 offences under the *University of Toronto Code of Behaviour on Academic Matters*, 1995, ("Code") all arising out of a petition he submitted to the University to defer an examination in course number PHY132H1S ("physics course").
2. The University withdrew all alternative charges and proceeded on the main charges which are as follows:
 - "1. On or about January 7, 2011, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated and made use of any such forged, altered or falsified document, namely a University of Toronto Medical Certificate which you submitted in support of a petition for a deferred exam in PHY132H1S, contrary to section B.I.1.(a) of the Code.
 3. On or about January 7, 2011, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated and made use of any such forged, altered or falsified document, namely a letter purporting to be from a physician which you submitted in support of a petition for a deferred exam in PHY132H1S, contrary to section B.I.1.(a) of the Code.
 5. On or about January 27, 2011, you knowingly falsified evidence, and/or aided or assisted another person and/or abetted, counseled, procured or conspired with another person to falsify evidence required by the University of Toronto, namely a voice mail message left on Michael Nicholson's telephone answering machine purporting to be from a physician's office which you submitted in support of a petition for a deferred exam in PHY132H1S, contrary to section B.I.1(a) of the Code."
3. The student pleaded guilty to charges 1 and 3 and pleaded not guilty to charge 5.

PROCEDURAL MATTERS

4. Counsel for the University made an opening statement and then called as witnesses Mr. Michael Nicholson, Associate Registrar at University College, Professor Donald Dewees, the Dean's Designate in the Faculty of Arts and Science and Dr. Kristy Gourlay, Manager of the Office of Student Integrity. The student was given the opportunity to cross-examine each of the witnesses but chose to cross-examine only Dr. Gourlay.
5. The student was given an opportunity to present evidence but chose not to do so. Accordingly, Ms. Harmer on behalf of University presented closing argument.
6. The student was then given an opportunity to present closing argument but he attempted in his closing argument to give evidence. After some discussion, the Tribunal gave the student an opportunity to give evidence even though it was at an unusual stage in the proceeding. There was no objection from the University. The student thereupon gave evidence on the circumstances that prompted him to tender false documents in support of his deferral petition. This evidence was probably more relevant to the penalty phase of the hearing than to the hearing on the charges.

THE NUMBER OF CHARGES

7. In the student's closing argument, he raised for the first time that charges 1 and 3 related to the same petition in the same transaction and, although each of these charges related to a separate document, they should have been the subject matter of only one charge.
8. There is no question that charges 1 and 3 arose out of the same transaction. The student was scheduled to write an examination in his physics course on December 15, 2010. On January 7, 2011, the student submitted to the University a petition to defer this examination in support of which he provided a false

University of Toronto Student Medical Certificate dated December 15, 2010 and a false letter from an individual identified as Dr. Yeang-Sheng Tsai, (**Exhibits 7, 8 & 9**). There is no question that there was only one petition but that two separate supporting documents were tendered in support of the petition.

9. The University chose not to lay a charge relating to the petition itself (Exhibit 7). On the evidence it is in fact not clear that the petition is false as it simply states that the reason for the petition was illness and the student testified that he was in fact ill on the date scheduled for the examination.
10. If the three documents could only form the subject of one charge, then the argument is left that the student cannot be found guilty since the main petition was not false. This would lead to an absurd result.
11. Section B.i.1 (a) of the *Code* refers to "any document". This must be interpreted to mean that each document can be the subject of a separate charge.
12. Counsel for the university referred us to a number of case authorities, none of which were on point. However the case of *R v. B.D.* is of some assistance. In that case the accused was convicted of incest and 46 counts of forgery arising from her attempts to get false birth certificates for 7 fictitious children; clearly more than one document was filed in support of each birth certificate application, but she was convicted for the forgery of each and every document submitted.
13. It must be noted that the student pleaded guilty to both charges 1 and 3 without objection until after all the evidence had been tendered and he was giving his closing argument.
14. In our view, while the University may have chosen to lay one charge, the more appropriate procedure was to lay two charges as it did in this case.

BACKGROUND TO THE OFFENCE

15. The student's ROSI Record (**Exhibit 3**) indicates that he was enrolled in the Faculty of Arts and Sciences since the fall of 2007. He had successfully completed 20 credits. He had good marks in many subjects.
16. In the Winter of 2010 he was enrolled in the physics course. The examination was scheduled to take place on April 14, 2010. On the same date the student filed a petition to defer the examination by reason of illness (**Exhibit 5**). This was not the petition that gave rise to the charges. This petition was granted and the student was permitted to write the examination in this course during the December examination period, December 10 – 21, 2010.

CIRCUMSTANCES GIVING RISE TO THE OFFENCE

17. On January 7, 2011, the student again filed a petition (**Exhibit 7**) for the deferral of the same examination in the same course. The examination had been scheduled for December 16, 2010, shortly before the commencement of the Christmas break. In support of this petition the student tendered the following documents:
 - (a) **Exhibit 8** – a document that purported to be a Student Medical Certificate from Dr. Yeang-Sheng Tsai dated December 15, 2010;
 - (b) **Exhibit 9** – a letter from Dr. Tsai on the letterhead of the Scarborough Hospital dated December 15, 2010 relating to an alleged medical consultation on December 15, 2010.

The student admitted that both of these documents were false and that he had obtained them through an internet service that provided false medical documents to students for such purposes.

(c) A personal statement – **Exhibit 10**.

18. The petition came to the attention of Michael Nicholson who, having had some concerns about this petition, sent an email to the student at his University of Toronto email address– **Exhibit 11**.
19. Mr. Nicholson made efforts to do his own investigation by attempting to contact the Scarborough Hospital. However, the results of this investigation were inconclusive as, without an OHIP number, the hospital was not able to confirm with certainty that the student had either attended or not attended at that hospital.
20. On the evening of January 27, 2011, when it must have been obvious that Mr. Nicholson would not be at work, a voice mail was received from a person who identified himself as Kevin, assistant to Dr. Stan??? [name not clear on tape] that the student had visited the doctor on December 5, 2010 and that the student was suffering from influenza which was contagious and he should not attend school (CD containing voice mail message and transcription – **Exhibit 13**).
21. The following day the student, from a different email, a hotmail address, (**Exhibit 12**) sent an email to Mr. Nicholson that stated as follows:

"Dear Michael:

This is y [REDACTED] I tried to contact the doctor these days and cannot reach him but his assistant, I told him the record things and forward them your email, and they said they will contact you on Friday.

I am sorry for the inconvenience.

Thank you very much."

Although in argument, prior to giving evidence, the student claimed that he had not sent this email, he failed to repeat this statement when he was under oath giving evidence, even when prompted by the Tribunal to do so. This would lead

one to believe that the student was trying to mislead the Tribunal in his submissions but perhaps was not willing to lie under oath.

22. Mr. Nicholson did speak to Dr. Tsai's assistant who confirmed that Dr. Tsai had never seen a patient matching the description of the student.
23. As a result of these investigations, the student was summoned to a Dean's meeting which took place shortly after March 7, 2011. Present at the meeting was Professor Dewees, Dr. Gourlay and the student. After being given the appropriate warning and after some discussion, the student admitted that he had purchased at a cost of \$120 the Medical Certificate and the doctor's letter by responding to an advertisement that he had found.
24. The student also admitted that when questions were raised concerning the validity of his petition he contacted a person at the service who assured him that "*he would take care of it*". The student denied that he had any knowledge that that person would leave a voice mail for Mr. Nicholson. On this basis the student took the position that he had not knowingly falsified evidence or aided or abetted the person who left the voice mail on Mr. Nicholson's answering machine.
25. In our view it was immaterial whether the student knew the exact method by which the person providing the service would "*take care of it*". It is clear that the student knew or ought to have known that the person would be taking some action to confirm the authenticity of the false medical evidence that he had submitted in support of his petition.
26. Moreover, the email from the student, **Exhibit 12**, confirmed that at least the day after the voice mail was left on Mr. Nicholson's answering machine, the student was well aware that someone that would identify himself as the doctor's assistant would be contacting Mr. Nicholson. This is an indication that the student actually knew that a phone call would be made to try to confirm the authenticity of the false medical documents.

27. After the University had completed its submissions, Mr. Z [REDACTED] was allowed to give evidence (as set out above). He purported to try to give an explanation for why he had provided false medical evidence in support of his petition. He testified that he started feeling sick on December 15, 2010, one day before he was scheduled to write the examination. He telephoned his family doctor, Dr. Ho, the following morning but found that he was not able to get an appointment until December 23, 2010, just before the beginning of the Christmas holidays.
28. He understood, from having presented the previous petition, that the medical evidence that he had to tender in support of his petition must contain a diagnosis of his condition relating to the same date as the date that he was to sit the examination. Since he was not able to obtain an appointment with his family physician until a number of days later, he was concerned that evidence from his family physician would not be sufficient to ensure that his petition would be granted. It is for this reason that he purchased false medical evidence relating to the date when he was to sit the examination. **Exhibit 18** was a Student Medical Certificate which he says was legitimately provided by his family doctor dated December 23, 2010. **Exhibit 19** was a Requisition from his family doctor dated December 23, 2010 for a stool culture. Both of these documents related to a diarrhea, a medical condition different from the one in the false certificate and letter that he had filed with his petition. It is telling that the student made no effort to get an earlier medical appointment at a walk-in clinic nor did he call Dr. Lai because he was located at Bay & College while the student lived in North York.

THE VERDICT

29. There is little doubt that the student is guilty of all 3 charges. He pleaded guilty to charges 1 & 3. He clearly made use of two falsified documents in support of his petition for deferral.

30. With respect to the charge under B.I.1.(a) of the *University of Toronto Code of Behaviour on Academic Matters*, aiding and abetting, relating to the false voice mail (**Exhibit 13**) the student pleaded not guilty.
31. Pursuant to Section C.II.(a) 9 of the *Code* the onus of proof is on the University to prove the offence on "*clear and convincing evidence*". We are unanimously of the view that the University has met this burden.
32. The student knew or ought to have known that the person from whom he had purchased these false medical documents would be taking some proactive step, probably a phone call, in an attempt to authenticate the false documents, when he was told that "*he would take care of it*".
33. We are unanimous in our finding that the student is guilty of all three charges.

PENALTY

34. The student's conduct was premeditated and egregious. He not only purchased false documents, but used the name of a real doctor fraudulently, and then took additional steps to bolster the authenticity of the forged documents that he had submitted.
35. His actions required the University to devote considerable time and effort to investigate the authenticity of the documents he submitted in support of his petition.
36. The student was clearly aware of the University's procedure. In fact he had previously submitted a Petition according to that procedure, which, in any event is clearly defined by the University and easily accessible.
37. The student attempted to justify his conduct by blaming the University's procedure that he understood required a medical certificate to be dated at the

same approximate time as the examination was scheduled. He claimed that he was ill at the relevant time, but instead of using his efforts to obtain a medical certificate in a timely fashion or to discuss his problem with a University staff member, he chose to purchase false documents.

38. The University's procedure is established for the benefit of the student as well as the University and to ensure that Petitions are legitimately submitted. There can be no possible excuse for submitting false documents for this or any other requirement of the University.
39. The student had a period of approximately 3 weeks from the date of the scheduled examination until he submitted the petition to consider what legitimate options were available to him.
40. The evidence of the student was that he was actually ill at the time scheduled for the examination, namely December 16, 2010. However, **Exhibit 18** does not corroborate the date of his illness, but merely confirms what the student told the doctor. **Exhibit 19** is simply a requisition and gives no indication of any diagnosis. Neither of these exhibits was tendered by the student at any time prior to the hearing before the Tribunal.
41. The University prides itself on its reputation of honesty and integrity. It is imperative that this be maintained. This can only be accomplished by ensuring that its procedures are enforced and breaches are suitably sanctioned.
42. It appears that there are commercial enterprises, easily accessible through the internet, to accommodate students who do not wish to follow the University's established procedures. It is important to discourage such commercial predators. It is equally important to deter any other students who wish to avail themselves of such unlawful services.

43. The Discipline Appeals Board of the University Tribunal in the case of The University of Toronto and S [REDACTED] C [REDACTED] et al. October 24, 2011 states at paragraph 104:

As previous decisions of this Board make clear, purchasing academic work for a fee and then submitting that work with a view to securing academic credit, has always been considered among the very most, to use the majority's description, "egregious" offences a student can commit in the University environment. There are a number of reasons for this. First, in taking these steps, there is clear evidence of intention, deliberation and knowing deception, both in the planning, managing and completion of the offence, all of which occurs over a period of time, as in this case. As well, the act of paying for the services of another in this context, introduces a commercial element into the relationship of a student with the University, a factor very distant from the core values of an academic institution, where individual effort, intellectual thought and hard work are the hallmarks.

44. These principles should also apply to the purchase of forged documents, as in this case.
45. The student did not express any remorse for his conduct; in fact it was the opposite: he tried to excuse it.
46. There are however the following mitigating factors:
- a. The student pleaded guilty to two of the charges.
 - b. He has no previous convictions;
 - c. The University failed to establish that he was not actually ill;
 - d. All three offences related to the one transaction.

47. The University requested the following penalty:
- a. A mark of zero in the course
 - b. Suspension for 5 years
 - c. The sanction be recorded on the student's academic record and transcript for 6 years.
 - d. Publication of the decision and sanction with the name of the student withheld.
48. The student had completed all the courses necessary to graduate at the time that the offences were committed in December 2010. As a result of the charges, the student's ability to graduate has already been deferred for almost one and one-half years.
49. Because of the mitigating factors above the Tribunal unanimously imposes the following sanctions:
- a. A mark of zero in the course
 - b. Suspension for 4 years from April 5, 2012
 - c. The sanction be recorded on the student's academic record and transcript for 4 years from April 5, 2012.
 - d. Publication of the decision and sanction with the name of the student withheld.

Dated at Toronto, this 23rd day of May, 2012

A handwritten signature in blue ink, appearing to read "Rodica David", is written over a horizontal line.

Ms. Rodica David, Chair