THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on March 13, 2014,

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 -

Z[redacted] T[redacted]

REASONS FOR DECISION

Hearing Dates: December 3, 2014; March 16, 2015, April 6, 2015, and November 6, 2015

Members of the Panel:
Mr. Paul Schabas, Lawyer, Chair
Professor Markus Bussmann, Faculty of Applied Science and Engineering, Faculty Panel Member
Mr. Sean McGowan, Student Panel Member

Appearances:
Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland, Barristers
Dr. Kristi Gourlay, Manager, Office of Student Academic Integrity, Faculty of Arts and Science
Mr. Samuel Greene, Legal Case Worker, Downtown Legal Services
Mr. Zachary Al-Khatib, Legal Case Worker, Downtown Legal Services
Ms. Z[redacted] T[redacted], the Student

In Attendance:
Mr. Christopher Lang, Director, Appeals Discipline and Faculty Grievances
Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances
Mr. Xu Dong Chang, Observer

T[redacted] – Reasons on penalty

[1] This panel reconvened on November 6, 2015 to hear submissions on penalty following the panel's written decision dated June 22, 2015, finding the student guilty of academic misconduct arising from having an individual impersonate her at an exam. At the conclusion of the submissions the panel deliberated and concluded that the appropriate penalty was to direct that the student receive a mark of zero in the course, STA220, and to recommend expulsion. We indicated that reasons would follow. These are our reasons.

[2] The student committed a serious offence, which was planned and calculated. She went ahead with the offence even after she was made aware that the University was concerned about her identity at an earlier exam. She had previously received help and support from her College when she was having academic challenges and knew how to seek help. Following the discovery by the University that someone had impersonated her, the student did not acknowledge her guilt, but instead permitted the University to be misled about her involvement, up to and including the hearing into her conduct.

[3] She has demonstrated no remorse for her conduct, nor did the student lead any evidence of mitigating factors that might have explained, or diminished, her culpability. Although the student attended throughout the hearing, including the submissions on penalty, no evidence was called respecting penalty, and we only heard submissions from counsel.

[4] Counsel for the University directed us to several authorities dealing with personation cases, as well as the Provost's Guidance on Sanctions. We are not bound by the Provost's Guidance, and we recognize that every case is different and imposing a penalty involves consideration of each student's own circumstances. However, we also recognize the importance of relative consistency in meting out punishment for academic offences, and so are influenced by the guidance and prior decisions in coming to our own conclusion on the appropriate penalty for Ms. T[redacted].

[5] As University counsel noted, the Provost's Guidance tells students that, absent exceptional circumstances, expulsion will be sought as the penalty

for impersonation at an exam. Counsel for the University submitted that there were no exceptional circumstances here, and sought expulsion.

[6] She supported her submission by having regard to the factors relevant to punishment set out by John Sopinka in the case of the University of Toronto and Mr. C. (Trial: 1975/76-04) – the leading and well-accepted decision laying out the appropriate factors to consider in determining an appropriate penalty. Consideration of each of the factors does in fact support a penalty at the highest end of the range:

1. Character – In this case, this is an exacerbating factor. The student did something very dishonest, which was planned in advance. She was dishonest when confronted with the conduct including, we found, at the hearing before us. Despite several opportunities to show insight and remorse, she failed to do so. We have nothing before us in terms of good character evidence or even an expression of regret at the penalty hearing that would counterbalance these facts.

2. Likelihood of Repetition – While this is a first offence, because we have no indication that the student appreciates her wrongful conduct we have no comfort that she will not reoffend. At its highest for the student this factor is neutral.

3. Nature of the Offence – Personation is a very serious offence. It can be difficult to catch (but for the anonymous email in this case, Ms. T[redacted]'s actions may never have been exposed), and strikes at the heart of academic integrity by threatening the evaluation process and fairness to other students. The Provost warns students of this in the Guidelines noted above. [See also C[redacted], Case 617, para 23, Aug 25, 2011] In this case, as noted, the planned and deliberate nature of the offence is a serious further aggravating factor, as is the commercial nature of the actions, paying the individual who impersonated her, both before and after the event. [See C[redacted], supra, paras 29-30 regarding the concern over commercialization of cheating and the need for strong denunciation of it.]

4. Extenuating circumstances – As noted, there is no evidence of any extenuating circumstances.

5. Detriment to the University – See comments above relating to the serious nature of the offence of personation.

6. Deterrence - There is no question that such conduct cannot be tolerated and it is important that this message be conveyed to others, especially because of the difficulty in detecting the offence.

[7] Counsel for the University reviewed with us a number of cases involving impersonation, many of which, like this case, involved a first time offender, but where expulsion was nevertheless ordered. Those cases were *G[redacted] and S[redacted]* (Case 734 and 735 2014), *W[redacted]* (Case 585, 2010), *B[redacted]* (Case 623, 2011), *Q[redacted]* (Case 627, 2012), *C[redacted]* (Case 617 2011), *N[redacted]* (Case 663, 2013), *W[redacted] and L[redacted]* (Case 583 with Case 578, 2010), *N[redacted]* (Case 465, 2008), and *C[redacted]* (Case 531, 2009). Of those nine cases, expulsion was recommended in six. For the three in which a suspension was ordered, there were mitigating factors absent here – including a lack of premeditation (*B[redacted]*), or a plea of guilty and demonstration of remorse (*Q[redacted]*, *N[redacted]*), or compelling personal circumstances (*C[redacted]*).

[8] The submissions on behalf of the student, very ably put to us by Mr. Greene, were to the effect that a lengthy suspension was an appropriate and strong enough denunciation of his client's conduct. He argued that this was a first offence, that Ms. T[redacted] was relatively young at the time, and that her mother was ill – a fact not contested by the University. He noted that some cases had recognized and mitigated penalties due to personal pressures faced by students and urged the same here. However, the evidence does not take us that far. Ms. T[redacted] had time, the opportunity, and the knowledge of how to deal with missing an exam when the opportunity arose to fly home to visit her mother. She had interacted with her College on academic issues previously, and could have acted differently. There is no evidence that she was under such pressure, or emotional stress, that she was compelled to do what she did. Such evidence simply isn't before us.

[9] Mr Greene submitted that the "elephant in the room" was Ms. T[redacted]'s failure to plead guilty, and that this should not be an aggravating factor, citing Ruby on Sentencing (8th ed.), at para 6.1. We agree with his proposition, and do not regard the failure to plead guilty as an aggravating factor; a plea of not guilty and contesting an offence, however, is not an indication of remorse, which can be a mitigating factor.

[10] It was also urged on us that an important factor in determining penalty is the prospect of rehabilitation, and that expulsion should only be recommended where there is no such prospect. While we agree that Ms. T[redacted]'s prospects of rehabilitation should be considered, we have nothing on which to conclude that there is some prospect of rehabilitation. As noted, we have no expression of remorse or sign of insight by her into her conduct, no evidence that this was an isolated uncharacteristic act caused by some overwhelming external factors or personal stress that would explain such conduct, or that she is taking steps to acknowledge her wrongdoing.

[11] Accordingly, we concluded that the appropriate sanctions in this case should be:

(a) a final grade of zero in the course STA220H1;

(b) Ms. T[redacted] be immediately suspended from the University of Toronto for a period of up to 5 years from the date of this order or until Governing Council makes its decision on expulsion, whichever comes first, and that a corresponding notation be placed on her academic record and transcript; and

(c) the Tribunal recommends to the President of the University that he recommend to the Governing Council that Ms. T[redacted] be expelled from the University; and

(d) that this case be reported to the Provost, with Ms. T[redacted]'s name withheld, for publication of a notice of the decision of the Tribunal and the sanctions imposed.

Dated at Toronto, this 4th day of December, 2015

Mr. Paul Schabas, Chair