

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on January 16, 2018

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 am. S.O. 1978, c. 88

B E T W E E N:

THE UNIVERSITY OF TORONTO

- and -

Q [REDACTED] W [REDACTED]

REASONS FOR DECISION

Hearing Date: August 22, 2018

Members of the Panel:

Ms. Breese Davies, Chair

Professor Ian Crandall, Faculty Panel Member

Ms. Morgan Watkins, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel for the University, Paliare Roland

Ms. Wanda Restivo, Dean's Designate, Office of the Vice-Principal (Academic) and Dean,
University of Toronto Scarborough

In Attendance:

Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Office of Appeals,
Discipline, Faculty Grievances

Mr. Sean Lourim, IT Support, Office of the Governing Council

Not in Attendance:

Mr. Q [REDACTED] W [REDACTED], the Student

A. Charges

1. On August 22, 2018, this panel of the University Tribunal held a hearing in the absence of Q [REDACTED] W [REDACTED] (“the Student”) to consider the charges brought against him by the University of Toronto under the *Code of Behaviour on Academic Matters, 1995* (“the Code”).
2. The charges were detailed in a letter to the Student from Professor Nelson, Vice-Provost, Faculty & Academic Life, dated January 16, 2018, as follows:
 1. On or about April 4, 2016, you did knowingly forge or in any other way alter or falsify an academic record, and/or did utter, circulate or make use of such forged, altered or falsified record, whether the record be in print or electronic form, namely an application for admission to the University (“Application”), contrary to section B.I.3(a) of the *Code*.
 2. On or about April 4, 2016, you did knowingly forge or in any other way alter or falsify an academic record, and/or did utter, circulate or make use of such forged, altered or falsified record, whether the record be in print or electronic form, namely an Official Transcript from Saint Mary’s University submitted with your Application, contrary to section B.I.3(a) of the *Code*.
 3. On or about June 15, 2016, you did knowingly forge or in any other way alter or falsify a document or evidence required by the University, and/or did utter, circulate or make use of such forged, altered or falsified document, namely a letter that you sent to the University to clarify your activities during September 2014-January 2015 for purposes of supporting your Application, contrary to section B.I.1(a) of the *Code*.

4. In the alternative to paragraphs 1 and 2, on or about April 4, 2016, you did knowingly engage 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, contrary to section B.1.3(b) of the *Code*, by submitting:

- (a) the Application falsely claiming that you had attended Saint Mary's University from September 2009 to December 2015; and
- (b) an Official Transcript from Saint Mary's University which was forged, altered or falsified.

5. In the alternative to paragraph 3, on or about June 15, 2016, you did knowingly engage 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 by submitting a letter in support of your Application to the University in which you falsely claimed to have finished your last course at St. Mary's University in December 2015, contrary to section B.1.3(b) of the *Code*.

B. Hearing in the Absence of the Student

- 3. The Student did not attend the hearing and was not represented by counsel. Assistant Discipline Counsel asked that the Tribunal order that the hearing proceed in the absence of the Student pursuant to Rule 17 of the Tribunal's *Rules of Practice and Procedure* ("the *Rules*") and s. 7 of the *Statutory Powers Procedure Act* ("the *Act*").
- 4. Rule 17 allows the Tribunal to proceed in the absence of a party if notice of the hearing

has been given in accordance with the Rules and if the person does not attend.

5. Rule 9 provides a number of alternative means by which a Notice of Hearing may be served on a student. In addition to personal service, Rule 9 permits service by courier or by email. Rule 13 requires that all parties be provided with reasonable notice of a hearing. Rule 14 specifies the information that must be included in the Notice of Hearing, including the date, time, place and purpose of the hearing. Rule 14(c) requires the Notice to contain a statement that if the person notified does not attend at the hearing, the panel may proceed in the person's absence and the person will not be entitled to any further notice of the proceeding.
6. The Student's hearing was originally scheduled to proceed on March 22, 2018 at 9:45 am. A Notice of Hearing was sent to the Student by email on March 2, 2018. The email was sent to the email contained in ROSI as well as two other emails that appear to be associated with the Student. Attached to the email was also a copy of three affidavits the University intended to rely on at the hearing.
7. A copy of the original Notice of Hearing was not provided to the Tribunal so we are unable to determine whether the original Notice complied with the requirements in the *Rules*. Nevertheless, on March 5, 2018, the Student responded to the email to which the Notice of Hearing was attached. He stated that he was in China. He also said he did not understand why the University was charging him and did not know how he should deal with the charges.
8. A case management conference call was held on March 20, 2018 before Co-Chair, Nader Hasan. The Student requested an adjournment of his hearing to allow him to retain counsel. The University consented to the adjournment request. A request was

also made for the hearing to proceed electronically. Mr. Hasan made an order adjourning the hearing. He also ordered that the Student provide Assistant Discipline Counsel with contact information for his lawyer by June 7, 2018 and that a new date for the hearing be selected by June 20, 2018.

9. On March 20, 2018, Virginia Fletcher, a law clerk working with Assistant Discipline Counsel, sent an email to the Student and provided him with information about Downtown Legal Services as well as the names of three lawyers who had previously represented students before the Tribunal.
10. On June 8, 2018, Ms. Fletcher sent another email to the Student asking him to advise whether he had retained counsel and reminding the Student that a new date for the hearing needed to be selected by June 20, 2018. The Student responded on June 8, 2018 and advised that he had not retained a lawyer. He also wrote "I will join the hearing by myself by Skype."
11. Ms. Fletcher sent a further email to the Student in which she provided the following five possible dates for the hearing:
 - Monday, July 9, 2018 at 5:45 p.m.
 - Tuesday, July 31, 2018 at 9:45 a.m.
 - Wednesday, August 1, 2018 at 1:45 p.m.
 - Wednesday, August 22, 2018 at 9:45 a.m.
 - Thursday, August 23, 2018 at 5:45 p.m.

Ms. Fletcher asked the Student to advise if he was available to attend the hearing on any of the dates provided. Ms. Fletcher also attached a copy of the four affidavits that the University intended to rely on at the Hearing. Ms. Fletcher also asked the Student

to advise if he wished to cross-examine any of the affiants at the hearing.

12. The Student responded to Ms. Fletcher's by email, writing "August 22 will be good for me, and I think no need to cross-examination."

13. On June 15, 2018, Krista Osbourne, Administrative Clerk & Hearing Secretary, Appeals, Discipline and Faculty Grievances, sent the Student a Notice of Hearing by email. The Notice of Hearing was sent to the email contained in ROSI for the Student as well as to the email address the Student had used to communicate with the University and Assistant Discipline Counsel's office. According to Ms. Osbourne's email and the Notice of Hearing, a copy was also sent by courier to the Student at an address in Markham, Ontario.

14. The content of the Notice of Hearing sent on June 15, 2018 complies with Rule 14. It states that the hearing was scheduled for Wednesday, August 22, 2018 at 9:45 a.m. in room 107 of the McMurrich Building at the University of Toronto. The Notice also states as follows:

You may choose to attend the hearing with or without representation, or not to attend at all. If you do not attend, the hearing may take place without you and you will not be entitled to further notice in the proceedings. If you do not attend you will be notified in writing of the decision.

In the email that accompanied the Notice of Hearing, Ms Osbourne also wrote as follows:

As previously communicated to you, Mr. W■■■■ you are permitted to participate electronically through Skype during your hearing. Please ensure you email me directly, with your Skype username as well as phone number. I will email you separately to set up a date/time to test your Skype connection in advance of the hearing.

15. On June 17, 2018, the Student responded to Ms. Osbourne's email of June 15, 2018

and provided her with his Skype ID. The Student did not provide a phone number as requested.

16. On June 18, 2018, Ms. Osbourne sent an email to the Student proposing a number of dates and times to test his Skype connection in advance of the hearing. She also asked the Student again to provide a phone number.

17. On June 18, 2018, the Student responded to Ms. Osbourne's email and selected one of the dates proposed for the Skype test, writing "August 17 10:30am-noon would be good." The Student also provided Ms. Osbourne with his phone number.

18. On June 18, 2018, Ms. Osbourne sent a further email to the Student confirming the Skype test would proceed on Friday August 17th at 10:30 am.

19. On August 7, 2018 a Revised Notice of Hearing was sent to the Student by email. According to the Notice, it was sent to the email address contained in ROSI for the Student as well as to the email address the Student used on June 18, 2018 to communicate with Ms. Osbourne. A Revised Notice of Hearing was sent because the Faculty and Student members of the Tribunal had changed since the June 15, 2018 Notice of Hearing was sent. In all other respects, the August 7, 2018 Notice of Hearing was the same as the June 15, 2018 Notice of Hearing.

20. On August 16, 2018, Ms. Osbourne sent the Student an email reminding him of the Skype test on August 17, 2018 at 10:30 am. This email was sent to the email address the Student used on June 18, 2018 to communicate with Ms. Osbourne. Ms. Osbourne sent a second email reminder to the Student at 9:50 a.m. on August 17, 2018.

21. On August 17, 2018, several attempts were made to contact the Student by Skype.

The Student did not answer or accept any of the calls made to him through Skype. An email was sent to the Student at 10:47 am on August 17, 2018 advising that several attempts had been made to contact him through Skype.

22. On August 17, 2018 at 11:37 am, Ms. Osbourne sent an email to Assistant Discipline Counsel advising that the Student had failed to participate in the Skype test at the arranged time. Ms. Osbourne's email was copied to two email addresses associated with the Student, including the email address the Student used to select the date and time for the Skype test.

23. The Student did not respond to either of the emails sent on August 17, 2018.

24. The Tribunal convened the hearing at 9:45 am on August 22, 2018 as scheduled.

Three unsuccessful attempts were made to reach the Student by Skype. The Tribunal then recessed the proceedings briefly. During the adjournment, a message was sent to the Student through Skype. Assistant Discipline Counsel also sent an email to the Student at 9:59 am asking him to contact the Tribunal through Skype or to accept the Skype call to him. The Tribunal re-convened at 10:05 am. At that time, three further attempts were made to reach the Student by Skype, all of which were unsuccessful. The Tribunal also attempted to reach the Student by telephone using the number he provided in his June 18, 2018 email to Ms. Osbourne but there was no answer.

25. The Tribunal found that the Student had notice of the hearing and the charges against him. He participated in a case management call on March 20, 2018 at which time he requested, and was granted, an adjournment of the original hearing date. In June 2018, he communicated that he did not intend to retain counsel but would attend the hearing by Skype. He participated in selecting the date and time for the hearing. He

responded to the June 16, 2018 email to which the Notice of Hearing confirming the August 22, 2018 date was attached and provided his Skype ID. He selected the date and time to test his Skype connection to ensure he could participate in the hearing electronically.

26. The Tribunal is satisfied that the University complied with the *Rules* and the *Act*. The Student was given reasonable notice of the hearing and did not attend. The Tribunal, therefore, ordered that the hearing should proceed in the Student's absence.

C. Affidavit Evidence

27. The Provost sought to adduce three affidavits in evidence: an affidavit of Lynda Onorati affirmed February 27, 2018, a supplementary affidavit of Lynda Onorati affirmed March 16, 2018, an affidavit of Carol Farquhar sworn March 16, 2018 and an affidavit of Nisha Panchal affirmed March 6, 2018. As set out above, all of these affidavits were provided to the Student.

28. The Tribunal concluded that this was an appropriate case in which to admit evidence by way of affidavit pursuant to Rule 61 of the *Rules*. In the absence of the Student, the affiants would not be subject to cross-examination even if they were called to testify. We note that the Student had previously advised Assistant Discipline Counsel that he did not intend to cross-examine the affiants at the hearing.

29. We did advise Assistant Discipline Counsel that if the panel had questions after reviewing the affidavits, we might revisit our ruling that the hearing could proceed by affidavit evidence only, but that did not prove necessary.

D. Finding of Liability

30. In April 2016, the Student applied for admission to University of Toronto Scarborough Campus (UTSC) as a transfer undergraduate student through the Ontario University Application Centre. In his application, the Student indicated that he attended St. Mary's University ("SMU") in Halifax from March 2009 to May 2012. In support of his application, the Student submitted what purported to be an official transcript from St. Mary's University. The Student was required to provide an official transcript to the University from SMU as part of the application process.
31. The transcript submitted by the Student has no credits earned between April 2014 and January 2015. The transcript also shows that the last credits earned by the Students were during the fall term in 2015. The Student was asked to provide a signed and dated letter indicating what he was doing between September 2014 and January 2015 and since December 2015.
32. On or about June 7, 2016, the Student uploaded an unsigned letter dated June 2, 2016 which said that between September 2014 and December 2015 he was sick and returned home to China to seek medical attention. In terms of what he had been doing since December 2015, the letter states: "After I finished my last course at St. Mary [sic] which was on December 2015, I decided to start my application to U of T, I was studying English at home and collecting document [sic] for my application." The University asked the Student to send a signed copy of his letter.
33. On or about June 16, 2016, the Student uploaded a signed letter dated June 15, 2016. The content of the signed letter was the same as the unsigned letter dated June 2, 2016.

34. On the strength of his application, the Student was admitted to UTSC in the Honours Bachelor of Arts program with a Major Program in Mathematics, and a Minor Program in Economics for Management Studies. He accepted the offer of admission on June 29, 2016 and enrolled in courses for the Fall 2016 semester.
35. On July 11, 2016, Enrolment Services sent out an automated email to all applicants for whom the University had not received official transcripts as required as a condition of their offer of admission. Follow up emails were sent to the Student requesting an official transcript on August 25, 2016 and October 26, 2016. The Student never provided the University with an official transcript from SMU.
36. On October 18, 2016, the Student requested a transfer credit application and paid the fee to have his credits from SMU assessed. On October 19, 2016, Carol Farquhar, Admissions and Transfer Credit Assessor at UTSC, sent the Student a letter via email advising him that his request for transfer credits would be finalized once the University received detailed course outlines for specific courses he purportedly completed at SMU and an official transcript from SMU. In response to Ms. Farquhar's email, the Student sent another copy of the same SMU transcript submitted with his application. The transcript was sent from a scanner at UTSC. The Student never provided an official transcript or course outlines.
37. The Student attended UTSC for one semester from September to December 2016. He registered for three courses. He passed one course and 0.5 academic credits with a cumulative grade point average of 0.67. The Student has not enrolled in any courses at the University since December 2016.
38. On December 2, 2016, Lynda Onorati, Senior Admissions Specialist, sent an email to

Paul Dixon at SMU requesting that they verify the authenticity of the Student's SMU transcript. Mr. Dixon responded that the transcript submitted by the Student was a forgery.

39. On January 15, 2018, Ms Onorati sent another email to Mr. Dixon at SMU asking if the Student was ever registered at SMU. Ms Onorati attached to her email another copy of the SMU transcript submitted by the Student with his application, which includes the Student's name, date of birth and a student number. On January 22, 2018, Dave Peters, Assistant Registrar, Systems and Records at SMU, confirmed that SMU has "no student or applicant" with the Student's name.
40. Evidence was also led that the Student applied to the UTSC as a high school applicant in 2014 but was denied admission to the University.
41. Following deliberations at the conclusion of the liability hearing, the Tribunal found the Student guilty on counts one, two and three. In light of our findings, the Provost withdrew counts four and five. The Tribunal indicated we would provide reasons for our decision. The following are those reasons.
42. Based on the evidence presented, the Tribunal found that the SMU transcript submitted with the Student's application for admission is a forgery. The emails from Mr. Dixon and Mr. Peters provide clear evidence that the transcript is forged and the Student was never registered at SMU. The Tribunal also found that the reference to the Student attending SMU from September 2012 until December 2015 in his OUAC application was false. Finally, the Tribunal found that the statement in the signed and dated letter submitted electronically by the Student on June 15, 2016 that he went back to China to study English "after I finished my last course at St. Mary [sic] which

was on December 2015” was also false.

43. For the offences charged to be made out, the University must not only prove that the documents in question are forged or contain false statements. The University must also prove that the student “knowingly” forged, falsified or made use of a forged or falsified document. As set out in the *Code*, whenever an offence requires the University to prove it was done knowingly, “the offence shall likewise be deemed to have been committed if the person ought reasonably to have known.”
44. In an email to Ms. Fletcher dated March 5, 2018, the Student suggested that he had used a third party to assist him with his application to the University. He also suggested that it was the third party who submitted the false information in the application. Had the Student wanted to advance as a defence that he did not knowingly falsify or make use of falsified documents, he could have done so. Having not participated in the hearing, the University had no opportunity to test this claim.
45. Nonetheless, because the burden is on the University to prove the allegations, the Tribunal was required to consider all the evidence to determine if the Student knew or ought to have known the documents used in support of his application and transfer credit application were forged or falsified.
46. The Tribunal found that the evidence clearly establishes that the Student knew the SMU transcript submitted with his application was forged. As set out above, the Student was never enrolled at SMU. Any document that suggested the Student attended SMU and completed courses there was false. We are also satisfied that the Student submitted the forged application himself or knew the forged transcript was submitted with his application. Before he was offered admission to the University, he

was asked to account for his activities between September 2014 and January 2015 and after December 2015. The Student provided the University with a signed and dated letter explaining what he had done during those relevant periods. In the letter, he says he returned to China and studied English “after I finished my last course at St. Mary [sic]”. The reference to SMU in the letter was also false and clearly establishes that the Student knew an SMU transcript with a gap between September 2014 and January 2015 was submitted with his application.

47. The Student also submitted the same forged transcript from SMU with his transfer credit assessment after he enrolled at the University. This copy of the SMU transcript was submitted from a scanner at UTSC, where the Student was enrolled.

48. During the transfer credit assessment process, the Assessment Officer sent him a letter, which states, in part, as follows “You may be entitled for transfer credit for your studies at St. Mary’s University but before a decision can be reached you must send a final and official transcript to this office.” The letter also specifies that the Student may be entitled to credit for six courses listed on the transcript submitted but detailed course outlines were required for each court.

49. Had the SMU transcript been submitted with the Student’s application without his knowledge, at some point during the admission or transfer credit process he would have corrected the University’s understanding. He never did so. In fact, he perpetuated the lie by submitting a letter that purports to explain why he was not at SMU during the Fall 2014 term. On the basis of all the evidence, we find that the Student knowingly made a false statement on his application to UTSC that he attended SMU, he knowingly submitted the forged SMU transcript with his application

and he knowingly submitted a falsified letter with his application stating he finished his last course at SMU in December 2015.

E. Sanction

50. The Provost sought an order imposing the following sanctions on the Student:

- He be immediately suspended from the University for up to five years;
- The Tribunal recommend to the President of the University that he recommend to the Governing Council that the Student be expelled from the University;
- A permanent notation be placed on the Student's academic record and transcript;
- and
- The decision be reported to the Provost, for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the Student's name withheld.

51. After deliberations, the Tribunal accepted the Provost's submissions on penalty and signed an Order to that effect. These are our reasons for that decision.

52. It goes without saying that the falsification of an academic transcript or academic record threatens the integrity of the University's admission process and tarnishes the reputation of the University. It misrepresents a student's accomplishments and may result in a student obtaining a benefit that he or she does not deserve, thereby depriving a deserving student of that benefit.

53. In *University of Toronto v. Y.X.* (Case No. 952; April 4, 2018), the Tribunal dealt with very similar allegations. In that case, the Tribunal articulated a number of principles to be considered in cases involving the forgery or falsification of an academic record:

- Forgery or falsification of academic records is among the most serious academic

offences

- Forgery may be difficult to detect, so that deterrence is a significant consideration
- By its nature, forgery is only rarely the product of negligence or inadvertence.

More commonly, it is the product of planning and knowing participation.

54. It is clear from a number of recent decisions of this Tribunal that the usual sanction for forgery or falsification of academic transcripts is a recommendation for expulsion: *Z.Z.* (Case No. 958; April 17, 2018), *A.B.* (Case No. 917; June 13, 2017) at para. 18, *J.F.* (Case No. 915; May 29, 2017) at para. 14, *J.Z.* (Case No. 928; June 5, 2017) at para. 22, and *Y.X.*, *supra* at para. 39. It is an accepted principle of sentencing that like cases should be treated alike.

55. We heard no evidence of any prior record of academic offences and we proceeded on the basis that these were the Student's first offences.

56. We received evidence that the Student failed to schedule a meeting with the Academic Integrity Office when the matter was first under investigation. The Student did not attend a Dean's meeting.

57. Although the Student participated in a case management call in March, he did not participate in the hearing. We, therefore, have no explanation for his conduct. We also have no evidence of any mitigating circumstances that might exist.

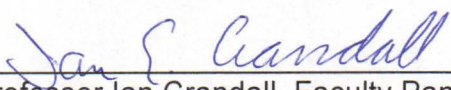
58. Having no evidence or submissions from the Student, we have no basis for departing from the sanction ordinarily imposed for these serious offences.

59. For these reasons, the Tribunal accepted the Provost's submissions and signed an Order imposing the following sanction:

- i. **THAT** the Student be immediately suspended from the University for a period of up to five years;
- ii. **THAT** the Tribunal recommends to the President of the University that he recommend to the Governing Council that the Student be expelled from the University;
- iii. **THAT** a permanent notation shall be placed on the Student's academic record and transcript; and
- iv. **THAT** this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed, with the name of the student withheld.

Prior to these Reasons being finalized, Justice Breese Davies was appointed a judge of the Superior Court of Justice of Ontario. Therefore these reasons were issued by the remaining two Panel members.

Dated at Toronto this 7th day of September, 2018



Professor Ian Crandall, Faculty Panel Member

Ms. Morgan Watkins, Student Panel Member

- i. **THAT** the Student be immediately suspended from the University for a period of up to five years;
- ii. **THAT** the Tribunal recommends to the President of the University that he recommend to the Governing Council that the Student be expelled from the University;
- iii. **THAT** a permanent notation shall be placed on the Student's academic record and transcript; and
- iv. **THAT** this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed, with the name of the student withheld.

Prior to these Reasons being finalized, Justice Breese Davies was appointed a judge of the Superior Court of Justice of Ontario. Therefore these reasons were issued by the remaining two Panel members.

Dated at Toronto this 10th day of September, 2018

Professor Ian Crandall, Faculty Panel Member



Ms. Morgan Watkins, Student Panel Member